

HEIRS OF AMADO D. DITONA AND TECLA R. DITONA, REP. BY ATTY. RAYMUNDO DITONA, SR., PLAINTIFFS-APPELLANTS, VS. HEIRS OF SALVADOR ALBARECE, SR. REP. BY JOHNNY C. ALBARECE,[] DEFEND...

Ponente: CAMELLO, J.

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CAMELLO, J.:

This is an appeal from the Judgment[1] dated 26 January 2012 of the Regional Trial Court, Branch 11, Manolo Fortich, Bukidnon in Civil Case No. 03-480 for Quieting of Title/Reconveyance and Damages.

This case involves a portion of Lot 1 and covered by Transfer Certificate of Title (TCT) No. T-704[2] under the name of the late spouses Amado Ditona (Amado) and Tecla Reyes (Tecla). Lot 1 is more particularly described as:

LOT No. 1

Beginning at point marked 1 on plan F-49660, S. 43' E. 260.24 m. more or less from B.L.L.M. No. 1, Bo. of Tankulan, Mp. Of Maluko, thence

S. 84-37' E. 41.32 m. to point 2; S. 6-42' W. 10.55 m. to point 3;
S. 80-22' E. 17.91 m. to point 4; S. 6-39' W. 41.81 m. to point 5;
N. 84-38' W. 13.80 m. to point 6; S. 1-24' W. 54.00 m. to point 7;
N. 86-11' W. 54.70 m. to point 8; N. 9-46' E. 41.30 m. to point 9;
N. 8-23' E. 67.97 m. to point 1, point of beginning.

Containing an area of 0.5792 hectares.

Point 3, G.I.S on Tree.

Bounded on the North, by Lot No. 2; on the East, by property claimed by Simeon Velez and Silverio Melgar; on the South, by property claimed by Fortunata de Bayani; and on the West, by properties Fortunata de Rubin and the Municipal Government of Maluko (Presidential Site)
xxx[3]

This property is registered under Original Certificate of Title (OCT) No. F-366 in the name of Cirilo Rubin.[4]

Sometime in October 2002, plaintiff Atty. Raymundo Ditona Sr. (Raymundo), the only child of the late spouses Amado and Tecla from whom he inherited Lot No. 1, and Lot No. 2, both covered by TCT No. T-704, wanted to convey to his children the property by way of donation inter vivos. Thus, he caused the relocation survey of this property. The relocation survey, which was duly approved by the Department of Environment and Natural Resources (DENR), resulted in Raymundo's discovery that defendants heirs of Salvador Albarece Sr., (heirs of Salvador) have allegedly encroached on a portion of Lot No. 1, covering an area of about 622 square meters.

Raymundo also discovered that OCT No. P-22860[5] was issued to the heirs of Salvador which included this 622

sq. m. in 1995.

These discoveries prompted Raymundo to bring the matter before the office of the Sangguniang Barangay of Brgy. Tankulan. No settlement was reached, however. Hence, this complaint.[6]

In answer[7] to the allegations in the complaint, the heirs of Salvador averred that their predecessors-in-interest acquired this 622 sq. m.-property from Raymundo's predecessors. For this reason, a declaration of real property was issued in the name of the late Salvador Albarece on 31 August 1950, although no annotation was made in the tax declaration of the late Amado.

They further claimed that in that same year, Salvador Albarece built in good faith a residential house in the property covered by their OCT No. P-22860. A hog wire fence was installed to delineate the boundary of their property from the adjacent properties.

They claimed that the old Salvador was not aware that Amado was already issued a title which still included the 622 sq. m.

According to them, political antagonism between the two families started to sprout when Salvador Albarece supported Amado's political opponent. This antagonism between the two families continued, claimed by the Albarece, up till the present.

Meanwhile, a cadastral survey was undertaken by the erstwhile Bureau of Lands sometime in 1985. The cadastral survey identified the bigger portion of Lot No. 1 as Lot 522. The 622 sq. m., on the other hand, was included in the adjacent lot identified as Lot 523 whose claimant based on the Bureau of Lands' record was the late Salvador Albarece. This Lot 523 was consequently titled in the name of the Heirs of Salvador Albarece Sr.

In addition, the heirs of Salvador averred that the historical ownership of their property would reveal that their property which includes the 622 sq. m. was indeed issued Tax Declaration No. 8143.[8] The historical ownership would further show that Tax Declaration No. 8501 which cancelled Tax Declaration 8143 was not on file with the Municipal Assessor of Manolo Fortich, Bukidnon.[9] They alleged that someone who had adverse interest against them pulled it out in the records. They claimed that Tax Declaration 8501 would have contained the basis of their ownership, i.e. deed of conveyance. They also argued that their title – OCT No. P-22860 - which was granted to them through cadastral proceeding is binding on the whole world, including persons not parties to the proceeding.

The heirs of Salvador also invoked the principle of prescription as title in their name was issued sometime in 1995. According to them, Amado or his heirs had abandoned their claim over the 622 sq. m.

They further contended that the Ditonas were already estopped from claiming ownership over the property when Raymundo filed a complaint against them for constructing a gasoline station on the property not on the ground of ownership, but on environmental hazard.

On these contentions, the heirs of Salvador prayed for the dismissal of the case.

With the pleadings in, pre-trial ensued, with the parties agreeing on the following issues:

A) Factual issues:

- Whether the disputed 622 sq. m. is within the registered land of the Ditonas or the Albareces;
- Whether the Ditonas or the Albareces are in actual possession of the disputed property.

B) Legal issues:

- Which of the two (2) certificates of title - TCT No. T-704 or OCT No. P-22860 - shall prevail?

- Whether or not Ditona's cause of action over the 622 sq. m. has prescribed or barred by laches?
- Whether or not the Ditonas are in estoppel?
- Whether the Ditonas or Albareces are entitled to damages?[10]

At trial, the Ditonas presented the following witnesses to substantiate their claim of ownership over the 622 sq. m, namely: Raymundo;[11] Fernando Gurrea,[12] a geodetic engineer; Alma Marimo,[13] land investigator of DENR-CENRO, Manolo Fortich, Bukidnon; Crisostomo Binayao,[14] Assistant Statistician, Municipal Assessor's Office, Manolo Fortich, Bukidnon; and Diosdado Ditona.[15]

Raymundo and his son Diosdado Ditona admitted that the former filed a complaint against the Albareces for putting up a gasoline station adjacent to their properties on the ground of environmental hazard. They explained that this was in 1999, before they knew in 2002 that the property where this gasoline station was erected was actually part of their property covered by TCT No. T-704.[16]

In the meantime, Raymundo died and was substituted by his heirs.[17]

The Albareces, for their part, presented, Salvador Albarece, Jr.,[18] and Johnny Albarece[19] who maintained that their family had occupied Lot 523 since 1950. Their father, the late Salvador Sr., constructed a house in the property sometime in 1950. This property was surrounded with a hog wire fence. The boundaries of their property were also lined with trees.

Meanwhile, the supposed witness for the Albareces, Felix Ragay, Surveyman of DENR was ordered by the trial court to re-survey the property – the 622 sq. m.[20] In his compliance-letter[21] addressed to the court below, it appears that this 622 sq. m. which is plotted in Lot 523 is also inside the lot 1 which is described in TCT No. T-704. His letter specifically says:

“xxx

That the survey team just finished the re-survey xxx; and the Team xxx re-established on the ground corner 2 of Lot 523 of which is identical to corner 7 of Lot 522 xxx

xxx

That corner 1 of Lot 523 is also identical to corner 1 of Lot 522 xxx”

On 26 January 2012, the trial court rendered a Judgment, which fallo reads:

WHEREFORE, the judgment is hereby rendered:

1. Declaring plaintiff the true owner of the lot subject matter of the case;
2. Ordering the plaintiff to reimburse the defendants its investments and the useful and necessary expenses they have made on the subject Lot; and
3. Ordering the defendants to reconvey to plaintiff the 622 sq. m. lot subject of the case after payment by the latter of the useful and necessary expense of the land.

The trial court reasoned:

“xxx, it is not disputed that TCT No. T-704 in the name of plaintiff's predecessor in interest was issued 39 years earlier than OCT Blg. P-22860. TCT No. T-704 was a transfer from the Original Certificate of Title No. 336 which was issued in 1932. It was not shown in the record that plaintiff's predecessor-in-interest obtained TCT No. T-704 through fraud or is otherwise jurisdictionally flawed. There is also no document presented to show that plaintiff or his predecessor-in-interest had waived in favor of the defendants the indefeasible character of his land in TCT No. T-704 was a mistake. In fact, defendants admitted in their answer and pre-trial brief that the subject lot is part of the land of the plaintiff but the latter's predecessor-in-interest had already conveyed the same to the defendant's predecessor-in-interest. In line with the settled rulings of the Supreme

Court in the matter, plaintiff's certificate of title is regarded as superior to that of the defendants.

The settled rule is that if a person obtains a title under the Torrens system, which includes by mistake or oversight land which can no longer be registered under the system, he does not, by virtue of said certificate alone, become the owner of the lands illegally included. (*Coronel v. IAC*, 155 SCRA 270, 29 October 1987). In this case, the subject lot was already covered by a free patent and an original certificate of title and transfer certificate of title were already issued over it. The DENR has no more authority in a cadastral survey to convey the subject lot to another person because the same is no longer part of the alienable public land. The case of *Pajomayo*, supra; *Duran*, supra; xxx and a long line of cases, decree that property once registered under the Torrens system can no longer be subject of any inquiry, determination or judgment or be the subject of a cadastral proceeding and that any title issued thereon is null and void. In this case, when the DENR conducted the survey in 1985, the subject lot was already included in the title of plaintiff's predecessor, Amado Ditona, and earlier on, Cerilo Ruben. The DENR has no more authority or jurisdiction to award the same to defendants' predecessor. Accordingly, the inclusion of the subject lot in the certificate of title of defendants' predecessor is null and void.

xxx

Meanwhile, xxx there is no evidence, whatsoever, to support defendants' contention that their predecessor had acquired the subject property from plaintiff's predecessor. Likewise, there is no evidence, that plaintiff's predecessor had fraudulently caused the inclusion of the subject lot in their title.

As to the defense of prescription, Section 47 of Presidential Decree No. 1529 is clear. No title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession. Since the subject lot is titled in the name of Amado Ditona, defendants cannot acquire the same by prescription. A title once registered cannot be defeated even by adverse, open and notorious possession. The title, once registered, is notice to the world. All persons must take notice. No one can plead ignorance of the Registration. xxx

xxx

xxx, it cannot be said that the defendants, by their long period of possession, are the true owners of the land. The Cardinal rule under the Land Registration Act remains: Laches, adverse possession, and prescription can have absolutely no effect in the ownership of the registered owner or his successor-in-interest.

xxx

Estoppel does not lie in this case. It is established that defendants fenced off the subject lot as early as 1951. They already occupied, took possession of and exercise dominion over the subject lot. The construction of the gasoline station was merely a continuation of the acts of dominion of defendants over the contested lot. The plaintiff did not deliberately mislead them, because the defendants were already exercising acts of ownership over the lot long before 1999.

Aggrieved, the heirs of Salvador appealed the judgment on 15 February 2012 with the following assignment of errors,[22] to wit:

I

THE TRIAL COURT ERRED IN NOT FINDING PLAINTIFF'S COMPLAINT PROCEDURALLY DEFECTIVE WARRANTING THE DISMISSAL THEROF AT THE OUTSET.

II

THE TRIAL COURT ERRED IN NOT FINDING THAT THE (SIC) FAILED TO STATE A CAUSE OF ACTION, THAT THE ACTION IS BARRED BY PRESCRIPTION AND LACHES, THERE WAS

ESTOPPEL ON THE PART OF PLAINTIFF, AND THE NON-APPLICABILITY OF THE PRINCIPLE OF SUPERIORITY OF A PRIOR TITLE IN THAT DEFENDANTS HAVE PROCURED THEIR VALID TITLE IN A CADASTRAL PROCEEDING.

III

THE TRIAL COURT ERRED IN NOT FINDING THE FACTUAL ISSUES TO BE IN FAVOR OF DEFENDANTS WHO HAS (SIC) ESTABLISHED ACTUAL PHYSICAL POSSESSION IN THE CONCEPT OF AN OWNER SINCE 1947 AND THE FACT THAT THERE WAS NO ENCROACHMENT OF THE AREA COVERED BY LOT 523 IN PLAINTIFF'S AREA COVERED BY TCT NO. T-704 CONSISTING OF LOT 1 AND 2.

IV

THE TRIAL COURT ERRED IN FINDING PLAINTIFF IN BAD FAITH THUS LIABLE FOR DAMAGES.

V

THE TRIAL COURT ERRED IN GRANTING THE NOTICE OF APPEAL OF PLAINTIFF FOR BEING UNMERITORIOUS CONSIDERING THAT IT IS PRECISELY TO APPEAL ON THE FINDING OF TRIAL COURT THAT DEFENDANTS WERE BUILDERS IN BAD FAITH.

VI

INDIRECT ATTACK ON DEFENDANTS OCT NO. P-29660 WHICH IS DEEMED VALID UNTIL ANNULED. INCIDENTALLY, THE ACTION FOR "RECONVEYANCE" IS NOT AVAILING AND THE SAME IS A SUBTERFUGE FOR AN ACTION FOR RECOVERY OF POSSESSION AND OWNERSHIP.

The heirs of Ditona, on the other hand, filed a Partial Motion for Reconsideration on 20 February 2012[23] which was denied by the trial court in its resolution dated 27 February 2012.[24]

Dismayed with the denial of their motion, they appealed the specific findings of the trial court that the heirs of Salvador are builders in good faith and are entitled to reimbursement of investments and useful and necessary expense. They raise the lone assigned error[25] that:

THE HONORABLE COURT A QUO WITH ALL DUE RESPECT, COMMITTED REVERSIBLE ERROR IN FINDING THAT DEFENDANTS-APPELLANTS ARE ENTITLED TO REIMBURSEMENT OF THEIR INVESTMENTS AND USEFUL AND NECESSARY EXPENSES INTRODUCED ON THE LITIGATED LOT BEING ALLEGEDLY BUILDERS IN GOOD FAITH.

Before resolving the substantive issues raised by both parties. The Court will first address the procedural infirmities ascribed by the Albareces which – they claim - should have warranted the dismissal of the complaint, such as, i) defective verification and affidavit of non-forum shopping; ii) failure to pay the proper docket fees; iii) failure to implead indispensable parties; and iv) no proper substitution of the late Raymundo and non-execution of a special power of attorney rendering the authority of counsel to represent.

They contended that the Verification and Affidavit of Non-Forum Shopping of the complaint merely alleged the following:

xxx

3. That, I have read the same and all allegations therein are true to my personal knowledge and belief,

which according to the Albarece does not conform with Section 4, Rule 7 of the 1997 Revised Rules of Court.

It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below.

Any issue raised for the first time on appeal is barred by estoppel. Basic considerations of fairness and due process impel this rule, thus said by the Supreme Court in *S.C. Megaworld Construction and Development Corp. v. Parada*.^[26] The records of the case tell us that this alleged procedural defect was not put in issue during the pre-trial of the case. It was not even mentioned in the responsive pleading of the Albareces. They may not anymore be raised first time on appeal.

Besides, the *S.C. Megaworld*^[27] case is categorical that the requirement of verification and certification of non-forum shopping is not jurisdictional, but a mere formal requirement. Any objection regarding its non-compliance should be timely raised in the proceedings below. Or it will be too late to do so for the first time on appeal.

The Albareces lamented that the Ditonas failed to pay proper docket fees which failure is a ground for an outright dismissal of their complaint.

The mandatory rule on payment of docket fees in full within the prescribed period, as laid down in *Manchester v. Court of Appeals*,^[28] has been considerably relaxed by subsequent Supreme Court rulings.

In *United Overseas Bank v. Ros*,^[29] for instance, the High Court ruled that where the party does not deliberately intend to defraud the court in the payment of docket fees, and manifests its willingness to abide by the rules by paying additional docket fees when required by the court, the liberal doctrine in the earlier case of *Sun Insurance Office, Ltd.*,^[30] will apply. Citing the case of *La Salette College v. Pilotin*,^[31] the High Court in *Heirs of Reinoso v. Court of Appeals*^[32] said:

Notwithstanding the mandatory nature of the requirement of payment of appellate docket fees, we also recognize that its strict application is qualified by the following: first, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; second, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances.

This relaxation of the rule on non-payment of docket fees is to afford parties the opportunity to fully ventilate their cases on the merits.

The Ditonas' willingness to pay the proper docket fees was well manifested in their payment of the docket fees as computed by the Office of the Clerk Court. Their failure to attach the latest Tax Declaration of the property is not per se indication of intent to evade payment of the correct filing fees. Nothing in particular was cited by the Albareces to convince this Court that the Ditonas intentionally evaded to pay proper and correct docket fees. This warrants liberality in the application of the *Manchester* rule.

Nonetheless, the Ditonas would still be liable for the difference between the actual fees paid and the correct payable docket fees to be assessed by the clerk of court, which shall constitute a lien on the judgment.^[33]

The Albareces contended, too, that the Ditonas failed to implead indispensable parties which makes the complaint dismissible.

We do not agree.

Jurisdiction over the defendant may be acquired, in the absence of his voluntary submission, by proper and fairly obtained service of process, actual or constructive.

Records of the case show that summons for the heirs of Salvador was served upon one of them, Johnny C. Albarece. Although no showing was made that he was the authorized heir to represent all the rest of them. The records, however, do reveal that the Albareces, in filing their Answer, had voluntarily submitted themselves to the

jurisdiction of the trial court. We note the verification and certification of non-forum shopping categorically named Salvador C. Albarece, Jr., as the representative of the Heirs of Salvador. He in fact stated that he represents the eight (8) heirs of Salvador. Also, Salvador C. Albarece, Jr., during his testimony in open court, declared that he is authorized by his co-heirs to represent them in the proceedings. Estoppel precludes disavowal of that admitted representation.

We do not agree, either, that there was no proper substitution of the late plaintiff Raymundo.

It appears that on 19 August 2009, the trial court issued an order stating that Phoebe D. Baculio, Edwin N. Ditona, Raymundo N. Ditona, Jr., Lucia Barbara D. Sulit, Diosdado Ryder N. Ditona and Ambo N. Ditona were ordered to be the substituted plaintiffs of the late Raymundo. No opposition/objection was filed by the Albareces. None was filed, either, by the newly substituted plaintiffs for the termination of the services of counsel on record.

It pays to point out that it is far better to dispose of a case on the merits which is litigation's primordial end, rather than on technicality at the expense of justice.

Now, on the substantial issues.

The Albareces argued that the action is a collateral attack on their title, invoking the following provision of the Property Registration Decree:[34]

Sec. 48. Certificate not subject to collateral attack. A certificate of title shall not be subject to collateral attack. It cannot be altered, modified or cancelled except in a direct proceedings in accordance with law.

The attack is considered direct when the object of an action is to annul or set aside such proceeding, or enjoin its enforcement. Conversely, an attack is indirect or collateral when, in an action to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof. Such action to attack a certificate of title may be an original action or a counterclaim, in which a certificate of title is assailed as void.

Is quieting of title a collateral attack?

We hold in the negative.

Whenever there is a cloud on title to real property or any interest in real property by reason of any instrument, record, claim, encumbrance, or proceeding that is apparently valid or effective, but is, in truth and in fact, invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.[35]

The court, in action to quiet title, is tasked to determine the respective rights of the complainant and the other claimants, not only to place things in their proper places, and to make the claimant, who has no rights to said immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce the improvements he may desire, as well as use, and even abuse the property as he deems fit.

Here, the Ditonas averred:

3.2

That, sometime in October 2002, plaintiff xxx caused the relocation survey of the properties xxx covered by xxx Certificate of Title. xxx. The relocation survey resulted to the discovery that the defendants, acting in BAD FAITH and malice, fraudulently, illegally and unlawfully transgressed, encroached unto and claimed portion of xxx registered Lot 1, xxx an area of SIX HUNDRED TWENTY TWO (622) sq. meters, more or less, xxx;

3.3

That, xxx, defendants, with BAD FAITH, belatedly secured a TITLE covering their Lot No. 523, Cad-867, which included the said 622 sq. meters of the registered property of the plaintiff. xxx, defendants have clearly unlawfully and illegally usurped, infringed upon and trespassed portion of the registered lot of the plaintiff xxx;

The allegations show that the Ditonas did not assail the validity of OCT No. P-22860. The action only sought the removal of a cloud over a portion of the property which was allegedly wrongfully included in the title, and the confirmation of their ownership over it. It is not a collateral attack on OCT No. P-22860.

Moreover, it should not be overlooked that the Albareces, in the Answer with Affirmative Defenses and Counterclaim, claimed ownership over this portion which was included in their title. Hence, the court below could rightfully pass on the issue of its ownership.

There is no dispute that the 622 sq. m. property is covered by two titles – OCT No. P-22860 and TCT No. T-704, a derivative of OCT No. F-366. Now, which of these two titles must prevail?

It is a rule that where two certificates of title are issued to different persons covering the same land in whole or in part, the earlier date must prevail as between the original parties, and in case of successive registration where more than one certificate is issued over the land, the person holding under the prior certificate is entitled to the land as against the person who relies on the second certificate.[36]

TCT No. T-704 was issued to the late spouses Ditona on 24 May 1954. It was originally registered (OCT No. F-366) on 16 November 1932. OCT No. P- 22860, on the other hand, was issued only on 16 June 1995. Clearly, there can be no doubt that TCT No. T-704 was registered earlier than OCT No. P-22860. This being so, the Ditonas who are holder of this prior title is entitled to the property in dispute.

The cause of action of the Ditonas, where they apparently claim that the 622 sq. m. property subject of this litigation was included by mistake in OCT No. P-22680 of the Albarece, is essentially a suit to enforce an implied trust. In particular, Article 1456 of the Civil Code provides:

Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

Jurisprudence has time and again held that when the plaintiff in an action is not in possession of the subject property, the action prescribes in ten years from the date of registration of the deed or the date of the issuance of the certificate of title over the property; when the plaintiff is in possession of the subject property, the action does not prescribe. In the case at bar, the Ditonas (who are the plaintiffs below – Civil Case No. 03-480) are not in possession of the subject property as it was established that the 622 sq. m. property is where the gasoline station of the Albareces was constructed. The Civil Case No. 03-480, if it were to be considered as that of enforcing an implied trust, should be filed within ten years from the issuance of OCT No. P-22860 on 16 June 1995. Civil Case No. 03-480 was filed on 15 July 2003, still within the prescriptive period. Prescription has not set in.

Even granting for the sake of argument that OCT No. P-22860 became incontrovertible upon the expiration of one year from the date of its entry,[37] the rule remains that:

xxx notwithstanding the irrevocability of the Torrens title already issued in the name of another person, he can still be compelled under the law to reconvey the subject property to the rightful owner. The property registered is deemed to be held in trust for the real owner by the person in whose name it is registered.[38]

It must be emphasized that when the DENR awarded the OCT No. P-22860 to the Albareces, the 622 sq. m. is no

longer part of the public land as it is already been awarded to the Ditonas' predecessor-in-interest as early as 16 November 1932. Well-settled is the rule that once the patent is granted and the corresponding certificate of title is issued, the land ceased to be part of the public domain and becomes private property over which the DENR has neither control nor jurisdiction.[39] Thus, the 622 sq. m. could no longer be further awarded by the DENR to the Albareces precisely because it was no longer part of the public domain to which the DENR ceases to have control and jurisdiction.

In fine, the Ditonas are the owners of the 622 sq. m. property subject of this present case. As such, they should be placed in possession of this property. Considering, however, that the Albareces have built a gasoline station on the property, the question now is, should the Ditonas be allowed to take possession of these improvements? In order to settle this issue, it is necessary to determine whether the Albareces were builders in good faith as they alleged in their answer.

The essence of good faith says, the High Court in *Ochoa v. Apeta*,[40] lies in an honest belief in the validity of one's right, ignorance of a superior claim and absence of intention to overreach another. Applied to possession, one is considered in good faith if he is not aware that there exists in his title or mode of acquisition any flaw which invalidated it.[41]

Under this parameter, this Court is convinced that the Albareces were in good faith when they built the gasoline station on the 622 sq. m. property since it was within the coverage of their title. It was not shown to the satisfaction of this Court that they were aware of the flaw which invalidated their claim over this property. Absent such a showing the presumption of good faith[42] favors them.

We accordingly apply Article 448 of the Civil Code. It states:

Article 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546, 43 and 548, 44 or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

Under this provision, the landowner, the Ditonas in this case, can choose either to appropriate as their own the gasoline station by paying the proper indemnity or to oblige the Albareces to pay the price of the land which is not more than that of the improvements. Unfortunately, the court below made no factual findings pertaining to the value of either the 622 sq. m. property or the gasoline station. No evidence is also submitted by either party on this matter. Since the value of these two (2) properties, which are necessary to the proper application of Article 488, are yet to be determined; the Court is thus constrained to remand this case to the court below in keeping with *Heirs of Cabal v. Spouses Cabal*[45] and *Depra v. Dumlao*[46] in order to determine matters necessary for the application of Article 488 in relation to Articles 546 and 548.

FOR THESE REASONS, the decision appealed from is **AFFIRMED** in so far as the plaintiffs-appellants, Heirs of Amado D. Ditona, are declared true owners of the 622 sq. m.

This case, however, is **REMANDED** to the Regional Trial Court, Branch 11, Manolo Fortich, Bukidnon for the determination of the respective rights and obligations of the parties under Articles 448, 546, 548 and related provision of the Civil Code of the Philippines.

SO ORDERED.

Inting and Perez, JJ., concur.

[*] Heirs of Salvador Albarece represented by Salvador Albarece Jr., per Verification and Non-Forum Shopping Certification, Records, p. 90

[1] Records, pp. 407-417; Rollo, pp. 83-93.

[2] Records, pp. 7-8.

[3] Id., p. 7.

[4] Ibid.,

[5] Records, p. 97.

[6] Id., pp. 1-6.

[7] Id., pp. 81-90 (Answer with Affirmative Defenses and Counterclaim).

[8] Id., p. 92.

[9] Id., p. 94.

[10] Id., pp. 280-281.

[11] TSN, December 10, 2008.

[12] TSN, January 27, 2009.

[13] TSN, February 26, 2009.

[14] TSN, October 27, 2009.

[15] TSN, January 19, 2010.

[16] TSN, December 10, 2008, pp. 17-19; TSN, January 19, 2010, pp. 11, 13.

[17] Records, p. 319.

[18] TSN, May 12, 2010.

[19] TSN, September 28, 2010.

[20] Records, p. 366.

[21] Id., p. 370

[22] Rollo, pp. 59-60.

[23] Records, pp. 421-427.

[24] Id., p. 431.

[25] Rollo, p. 19

[26] G.R. No. 183804, September 11, 2013.

[27] Supra.

[28] G.R. Nos. 75919, May 7, 1987.

[29] G.R. No. 171532, August 7, 2007.

[30] G.R. Nos. 79937-38 February 13, 1989

[31] 463 Phil. 785 (2003).

[32] G.R. No. 116121, July 18, 2011.

[33] Rules of Court, Rule 141, Section 2

[34] Presidential Decree No. 1529

[35] Civil Code, Article 476

[36] Iglesia ni Cristo v. Development Bank of the Philippines, G.R. No. L-35273 July 25, 1983.

[37] The Property Registration Decree, Presidential Decree No. 1529

[38] Heirs of Domingo Valientes v. Ramas, G.R. No. 157852, December 15, 2010.

[39] Sumail v. Judge of CFI of Cotabato, 96 Phil. 946; Lee Hong Hok v. David, 48 SCRA 372; Heirs of Gregorio Tengco v. Heirs of Jose Aliwalas, G.R. No. 77541 November 29, 1988; Manalo v. Intermediate Appellate Court, G.R. No. L-64753 April 26, 1989

[40] G.R. No. 146259, September 13, 2007

[41] Arangote v. Spouses Maglunob, G.R. No. 178906, February 18, 2009

[42] Civil Code, Article 527

Article 527. Good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof.

[43] Article 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

[44] Article 548. Expense for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successors in the possession do not prefer to refund the amount expended.

[45] G.R. No. 153625, July 31, 2006

[46] G.R. No. 57348, May 16, 1985

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