

**BARTOLOME GACAYAN, PETITIONER-PLAINTIFF-APPELLANT, VS.
IRENEO LEAÑO AND PATRICIA SEREMONIA,
RESPONDENTS-DEFENDANTS-APPELLEES.**

G.R. No. L-33754. March 28, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review of an order of the Court of First Instance of Cotabato, Branch IV, dismissing the complaint for reconveyance and damages in Civil Case No. 171, entitled "Bartolome Gacayan, Plaintiff, v. Ireneo Leaño and Patricia Seremonia, Defendants."

Petitioner Bartolome Gacayan and respondent Ireneo Leaño entered into an Agreement of Ownership on June 22, 1954, over Lot No. 762, Project 1, cp 45 situated at Calawag, Norala, Cotabato, wherein both parties agreed and stipulated that respondent Leaño would be the applicant for a homestead patent over a 37,489 square meter farm lot with the understanding that the northern half of the lot would be owned by him while the southern half would belong to petitioner Gacayan. The parties also agreed to effect the division of the farm lot after five years from the issuance of the homestead patent.

Accordingly, respondent Leaño filed Homestead (Settlement) Application No. V-5898 (E-V-5038) over Lot No. 522, Pls-208-D-13 (formerly Lot No. 762, Pls-208-D-13). On or about March 29, 1955, pursuant to said homestead application, Homestead (NARRA) Patent No. V-4600 was issued to Ireneo Leaño. This patent was later transmitted to the Register of Deeds of Cotabato for registration and issuance of the appropriate certificate of title but apparently got lost before the same could be done.

Subsequently, Ireneo Leaño submitted an affidavit stating that he never received the corresponding certificate of title and requested for the amendment of the patent on the ground that the land applied for, which had been previously described as Lot No. 762, Pls-208-D-13, had been renumbered after its re-survey as Lot No. 522, Pls-208-D-13. A certification from the Register of Deeds of Cotabato dated July 12, 1965, to the effect that Homestead (NARRA) Patent No. V-4600 had not been registered in his registry books was also submitted to support Leaño's request.

On May 15, 1967, the Acting Director of Lands issued an order revoking and declaring lost and of no legal force and effect Homestead (NARRA) Patent No. V-4600. In lieu thereof, the Acting Director ordered the issuance of Homestead Patent No. 9844 in the name of Ireneo Leaño, for Lot No. 522, Pls-208-D-13 and directed its transmission to the Register of Deeds of Cotabato for registration and issuance of the necessary certificate of title.

Barely two years later, the petitioner filed Civil Case No. 171 for Reconveyance and Damages before the Court of First Instance of Cotabato, Branch IV, against the private respondents where he sought to enforce the Agreement of Ownership entered into fifteen years earlier.

To this complaint, the private respondents filed a Motion to Dismiss premised on the following grounds:

- That the plaintiff has no personality or capacity to institute the present suit;
- That the complaint states no cause of action; and
- That the court for the present has no jurisdiction over the subject and nature of the complaint.

The trial court initially denied the motion to dismiss. A motion for reconsideration of this order was likewise denied. However, upon a second motion for reconsideration, the motion to dismiss was granted. The dismissal is now questioned in this petition.

In dismissing the complaint, the trial court considered the date of the issuance of the patent, August 17, 1967, as the date from where to begin the counting of the five-year period as agreed upon by the parties in their contract. Since less than two years had transpired from the issuance of the patent to the filing of the complaint the action was considered prematurely filed.

The petitioner contends that since the original Patent No. V-4600 was issued in favor of the respondents on March 29, 1955, it was on that date when the applicant or patentee was considered in law, to have complied with all the requisites for the issuance of a patent under the Public Land Act. According to him, the loss of the original patent did not alter the fact that the applicant had already fulfilled the requirements of the law for the issuance of said patent as of March 29, 1955. The subsequent issuance of a substitute patent twelve years later was allegedly a mere act of reproduction of a new testimonial of the lost patent and could not have had the legal effect of erasing the facts confirmed by the issuance of the first but lost patent over the land.

The contentions of the petitioner are without merit. The order of the Acting Director of Lands shows that the lot awarded to the respondents had been resurveyed and given a new number. The 1955 NARRA patent had never been registered with the Register of Deeds, No torrens title was ever issued. The 1967 order of Acting Director Vicente A. Valdellon clearly states that his office was not merely revoking the lost patent but was declaring it of no legal force and, effect. The contention of the petitioner that this order directing the issuance of a patent and its registration was a mere testimonial of an act perfected more than a decade earlier is against the clear wording of the order. And for us to disregard the Acting Director's order and to reckon the five-year period from the date of the lost patent would be to validate a void patent expressly declared to have no legal force and effect.

The cases cited by the petitioner which recognize joint tenancy are not applicable. The parties in this case agreed to effect the division of the farm lot after five years from the issuance of the patent. The five years had not lapsed when the petitioner sought the division.

The petitioner was not an applicant for a patent. The fact that the parties agreed to divide the lot after the lapse of the five-year period during which alienations or encumbrances are prohibited shows an awareness and an intent to circumvent the policy behind the five-year prohibition. As pointed out by the respondents, the alleged mere physical possession of a piece of public land, granting without admitting the same to be true would not vest title or right to the land because there are qualifications to be determined and requirements of the Public Land Law to be followed before a homestead application is approved. Except where compelling considerations of right and justice are shown, and there is no such showing in this petition, it would be a dangerous precedent to allow a qualified applicant to apply for a homestead by himself even as he has a secret understanding with other persons to share that homestead with them after its grant and after the five years during which alienations are banned have lapsed. Furthermore, the petitioner cannot question the validity of the patent issued in favor of Ireneo Leaño. This Court, in the case of *Maninang v. Consolacion* (12 Phil. 342) held that when a grant of land is made by the Government, the question of its validity is a matter between the grantor and the grantee, and unless the point is raised by the Government and the grant is set aside, a third person cannot question the legality of the concession. The petitioner should have applied and shown that he was qualified to be given a homestead.

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Relova, J., concurs.

Teehankee (Chairman), I concur on the grounds stated in the separate concurring opinion of Mr. Justice Vasquez.

Melencio-Herrera, J., I concur in the dismissal of the petition and in the opinion of Mr. Justice Vasquez that the Agreement of Ownership is void ab initio.

Plana, J., see attached concurrence.

Vasquez, J., please see concurring opinion.

CONCURRING OPINION

PLANA, J.:

I vote with Justice Gutierrez in dismissing the petition, even as I join Justice Vasquez in his opinion on the nullity of the Agreement of Ownership between him and Gacayan, and its effect on the homestead grant.

A copy of the decision in this case should be sent to the Solicitor General and the Director of Lands for appropriate action.

CONCURRING OPINION

VASQUEZ, J.:

Under the facts appearing in this case, my view is that, even if the petitioner sought to enforce the Agreement of Ownership after the lapse of five years from August 17, 1967, he still lacks a cause of action. I do not consider it material to determine whether the petitioner's claim was asserted within the five-year period from March 29, 1955 or from August 17, 1967.

I believe that the Agreement of Ownership is illegal ab initio and should not be given any valid effect. The main opinion inferentially recognizes the impropriety of such an arrangement by calling it "dangerous precedent." The agreement, if sanctioned, could easily allow circumvention of the requirements for the grant of homesteads, and defeat the underlying policy of the State in granting such benefit to actual occupants of public lands. It likewise involves a disposition of the land made not only during the prohibited period, but even before the prohibited period starts to run. It has been held that the limitation on the right of the patentee to dispose of the homestead applies to dispositions made even before the issuance of the patent (*Gonzaga v. Court of Appeals*, 54 SCRA, 381).

It is also my submission that the patent issued to the respondents is void due to the same having been procured thru misrepresentation. Respondents could not have been occupying and cultivating the whole parcel of land, inasmuch as the petitioner was apparently in possession of the other half thereof. Otherwise, there would have been no reason for the petitioner to agree to the terms of their Agreement of Ownership. As earlier stated, even assuming that the respondents obtained a valid title to the whole parcel, the grant in his favor is voided due to an unlawful disposition of a portion thereof during the period when he could not validly do so.

Under Section 124 of the Public Land Act, the land in question should be deemed reverted to the government. Existing jurisprudence, however, requires that such reversion may only be effected at the instance of the government itself.

I accordingly concur in the conclusion that the dismissal of the action filed by the petitioner in the trial court should be maintained.

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