

**EUGENIA NELAYAN, ET AL., PLAINTIFFS AND APPELLANTS, VS.
CECILIA NELAYAN, ET AL., DEFENDANTS AND APPELLEES,***G.R. No. L-14518. August 29, 1960*

Ponente: REYES, J.B.L., J.

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On December 15, 1952, plaintiffs filed versus Cecilia Nelayan and the Director of Lands a complaint with the Court of First Instance of Camarines Sur for "Cancellation of Title and Reconveyance", alleging that they (plaintiffs) have been since time immemorial, in actual possession as owners, respectively, of various parcels of land described therein; that such possession has been public, uninterrupted and in the concept owner; that on October 23, 1952, Original Certificate of Title No. 518 was issued in the name of defendant Cecilia Nelayan as a result of her application for free patent over the parcels of land in dispute; that said certificate of title is null and void with respect to the parcels claimed by plaintiffs, as the same were no longer part of the public domain, and that the Director of Lands was without jurisdiction in entertaining the application for, and in granting, the free patent; that plaintiffs were never informed nor had they any knowledge of the survey of said lands or of the proceedings instituted by Cecilia Nelayan; and that the latter, who very well knew that said parcels of land were being possessed by the plaintiffs as owners thereof, is guilty of fraud in failing to notify them of the said proceedings. Plaintiffs, therefore, prayed that Original Certificate of Title No. 518 be annulled and that they be declared owners of the parcels of land in question. They further asked for such other relief as the court might deem just and equitable.

Answering the complaint, defendant Cecilia Nelayan denied all material allegations of the complaint, and by way of special defense, asserted ownership over the disputed parcels, having allegedly acquired the same by purchase and in having been in continuous, peaceful, public, adverse and material possession over it for a period of over 50 years. Defendant Director of Lands, in his answer, likewise denied the material allegations of the complaint and attested, as a special defense, to the regularity of the proceedings leading to the issuance in Cecilia's favor of the certificate of title in question.

On February 11, 1957, defendant Cecilia Nelayan filed a motion to dismiss the complaint on the ground that (1) the complaint failed to state facts sufficient to constitute a cause of action and (2) that the lower court had no jurisdiction to annul or set aside the certificate of title already issued to her. Over plaintiff's objections, the lower court ordered the dismissal of the case for lack of jurisdiction (Order of April 30, 1957). From this order of dismissal and from the orders denying their motions for reconsideration and another motion for leave to amend the complaint so as to add a specific prayer for reconveyance, plaintiffs interposed the present appeal to the Court of Appeals, that certified the same to us, because it involves only questions of law.

Appellants contend, while appellees deny (1) that the Court of First Instance of Camarines Sur, notwithstanding the certificate of title under free patent already issued to defendant Nelayan, still had the right to exercise its jurisdiction to try the case; (2) that the complaint stated a good cause of action against the defendant; and lastly, (3) that the lower court erred in denying plaintiffs' motion for leave to accept the amended complaint.

Pertinent to the first issue is the rule that once a patent is issued, the land acquires the character of registered property under section 122 of Act No. 496, and is, therefore, deemed brought within the operation of the said Land Registration Act (see *Tomas Roco, et al., vs. Juan Gimeda*,[*] 55 Off. Gaz. [37] 7922). It follows that after issuance of the patent, an aggrieved party is accorded the same or similar remedies as are extended in ordinary registration proceedings after entry of the decree of confirmation or registration. One of such remedies may be found under section 38 of Act 496, which, in part provides:

"* * * subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the competent Court of First Instance a petition for review within one year after entry of the decree provided no innocent purchaser for value has acquired an interest. Upon expiration of said term of one year, every decree of certificate of title issued in accordance with this section shall be incontrovertible. * * *"

In *Diwaling Sumail vs. the Court of First Instance of Cotabato, et al.*, 96 Phil., 946; 51 Off. Gaz. [5] 2413, this Court opined that the one-year period provided under section 38 should, in the case of public land grants (patents), be counted from the issuance of the patent by the Government under the Public Land Act (C. A. 141). Free Patent No. V-2371 was issued only on October 9, 1952, while the complaint in the case at bar was filed on December 15, 1952, or after a period of only two months and six days. Having been filed in due time, the case should have been given its regular course by the lower court, instead of having been ordered dismissed outright.

Neither is the complaint insufficient in stating a cause of action. Among other matters, it contains allegations to the effect that the plaintiffs have been, since time immemorial, in possession as owners of the disputed parcels of land, but that through actual fraud, defendant Cecilia Nelayan succeeded in securing for herself the certificate of title in question. Defendants-appellees state that plaintiffs-appellants must base their claim of ownership or right of action on Section 48 (B) of the Public Land Act, providing that:

"Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive and notorious possession and occupation of agricultural land of the public domain, under a bona fide claim of acquisition of ownership for at least thirty years immediately preceding the filing of the application for confirmation of title, except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter." (As amended by Republic Act No. 1942, June 22, 1957)[1]

under which they may ask for the judicial confirmation of their imperfect or incomplete title; but which course of action, appellees argue, is no longer available to the appellants because section 48, in connection with section 47 of the Public Land Act ceased to become operative on the day following December 31, 1938, the original period fixed in the said Act within which possessors or occupants of public lands could avail of its benefits. Appellees evidently overlook that this period has been extended from time to time by the legislature, the latest prorogation being by Republic Act No. 2061, which extends the terms of its effectivity until December 31, 1968.

There is likewise no merit in appellees' contention that the complaint does not aver sufficient facts of ownership to hold against either the appellee Nelayan or the government.

Plaintiffs' allegation that they have been in continued possession of the properties in dispute since time immemorial as owners thereof is a sufficient averment of private ownership.[2] It should be remembered that possession since time immemorial carries the presumption that the land had never been part of the public domain or that it had been a private property even before the Spanish conquest. And so, we said in one case—

"* * * All lands that were not acquired from the Government, either by purchase or by grant, belong to the public domain. An exception to the rule would be any land that should have been in the possession of an

occupant and of his predecessors in interest since time immemorial for such possession would justify the presumption that the land had never been part of the public domain or that it had been a private property even before the Spanish conquest." (*Oh Cho vs. Director of Lands*, 75 Phil., 890 892, Citing *Cariño vs. Insular Government*, 212 U. S. 449, 53 L. ed. 394). (Italics supplied)

Whether this presumption should hold as a fact or not is a question appropriately determinable only after the parties have already adduced, or at least, are given the opportunity to adduce, their respective evidence.

The ruling of this Court in *Susi vs. Razon*, and *Director of Lands*, 48 Phil., 424, 428 (reaffirmed in *Mesina vs. Pineda*, 108 Phil., 251; 58 Off. Gaz. [25] 4603), is also conclusive in favor of appellants herein. It said:

"In favor of Valentin Susi, there is moreover, the presumption *juris et de jure* established in paragraph (b) of section 45 of Act No. 2874, amending Act No. 926, that all the necessary requirements for a grant by the Government were complied with, for he has been in actual and physical possession, personally and through his predecessors, of an agricultural land of the public domain openly, continuously, exclusively and publicly since July 26, 1894, with a right to a certificate of title to said land under the provisions of Chapter VIII of said Act. So that when Angela Razon applied for the grant in her favor, Valentin Susi had already acquired, by operation of law, not only a right to grant, but a grant of the Government for it is not necessary that certificate of title should be issued in order that said grant may be sanctioned by the courts, an application therefor is sufficient, under the provisions of section 47 of Act No. 2874. If by a legal fiction, Valentin Susi had acquired the land in question by a grant of the State, it had already ceased to be of the public domain and had become private property, at least by presumption, of Valentin Susi, beyond the control of the Director of Lands. Consequently, in selling the land in question to Angela Razon, the Director of Lands disposed of a land over which he had no longer any title or control, and the sale thus made was void and of no effect, and Angela did not thereby acquire any right.

The Director of Lands contends that the land in question being of the public domain, the plaintiff-appellee cannot maintain an action to recover possession thereof.

If, as above-stated, the land, the possession of which is in dispute, had already become, by operation of law, private property of the plaintiff, there lacking only the judicial sanction of his title, Valentin Susi lifts the right to bring an action to recover the possession thereof and hold it."

The case of *Reyes, et al., vs. Rodriguez, et al.*, 62 Phil., 771, cited by the appellees, is not authority to the contrary. In said case, there was a trial and upon the evidence at hand, it did not appear that the appellant really had any title or interest in the land in question, presumed or proven, to hold against the appellee or the government. The presumption of ownership could not likewise hold because appellants' possession was neither alleged nor proven to be since time immemorial. In fact, the averment made there, that the claimant's possession started in 1883, was not even believed by the Court. For similar reasons, *Li Seng Giap & Co. vs. Director of Lands*, 59 Phil., 687 does not govern in the case at bar, considering that the possession therein averred started only during the Spanish regime.

It may not be amiss to state, furthermore, that the remedial provisions of section 38 of the Land Registration Act, prescribing a mode by which a decree may be set aside upon petition by private individuals, are expressly made applicable even to those who may have been deprived merely of an estate or interest in (not necessarily ownership of) the land.

The fraud averred by plaintiffs is actual fraud, consisting in the alleged concealment from the plaintiffs of the proceedings leading to the issuance to defendant Nelayan of the questioned free patent, notwithstanding her knowledge that the land covered under her application was being possessed by the appellants as the owners thereof. This is fraud as contemplated under section 38 of the Land Registration Act (*Angelo vs. Director of*

Lands, et al., 49 Phil., 838).

The third issue, presented by the parties in this appeal, is whether or not the amended complaint should have been admitted by the court a quo. No discussion is called for, since in substance and in contents, the original complaint (which has been captioned "For Cancellation of Title and Reconveyance"), as shown in the preceding discussion, contains sufficient averments for either the cancellation of defendant Nelayan's title or the reconveyance of the property, thereby negating further need for an amendment. As authorized by the Rules (Section 9, Rule 15, Rules of Court; see also Section 1, Rule 2, *ibid*), plaintiff may allege causes of action in the alternative, be they compatible with each other or not, to the end that the real matter in controversy may be resolved and determined.

Wherefore, the order of dismissal appealed from is hereby set aside, and the case is ordered remanded to the lower court for further proceedings. Costs in this appeal against appellee Cecilia Nelayan.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

[*] 104 Phil. 1011. [1] Note that under the latest amendatory provisions, the phrase "except as against the government" found in the original Act and previous amendments was deleted; (See R. A. 2061 and 1942)

[2] In fact, plaintiffs pray in their complaint that they be declared owners of the parcels of land in litigation.

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