

## ESCOLASTICO BUSTARGA AND FORTUNATA BUSTARGA NOTORIO, PETITIONERS, VS. FELICIANO NAVO II AND COURT OF APPEALS, RESPONDENTS.

*G.R. No. L-48153. April 30, 1984*

Ponente: AQUINO, J.

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### AQUINO, J.:

May the possessor en concepto de dueño of a parcel of land, after the lapse of more than ten years from the fraudulent issuance to another person of a free patent and title for that land, ask the patentee to reconvey the land? This question arises under the following facts:

Feliciano Navo II or Feliciano P. Navo bought in 1948 and 1949 certain adjoining parcels of land located in Sitio Sabang, Barrio San Roque, Bula, Camarines Sur, as tabulated below:

Date of Purchase

Sellers

Price

Area Purchased and Exhibit

5-19-48

Luis Clemenina and Teodorica Villaverde

**P160**

5,000 square meters, Exh. B and D.

6-30-48

Hermenegildo, Marciana and Leodegaria Guinoo

160

10,000 square meters, Exh. C.

6-19-48

Modesta, Luis and Ines Clemenina

480

15,000 square meters, Exh. E.

8-7-48

Juan Clemenina

160

10,000 square meters, Exh. F.

9-1-49

Felixberta Adie

350

10,000 square meters, Exh. A.

Total Area purchased

50,000 square meters.

All these parcels of land became Lot 2636 of the Bula cadastre with an area of 47,402 square meters (Exh. 1; 2-3, Record on Appeal). Navo has always been in possession of the five parcels of land. He was an heir of Alejandro Navo, the brother of Feliciano Navo, who was the mother of Escolastico Bustarga and Fortunata Bustarga Notorio. Navo and the Bustargas are first cousins.

On February 4, 1955, the Heirs of Feliciano Navo, represented by her son, Escolastico, filed an application for free patent for Lot 2636. On the false assumption that the said heirs (Escolastico and Fortunata) were in actual possession of Lot 2636, a free patent and a Torrens title, OCT No. 2245, dated May 12, 1955, were issued to the "Heirs of Feliciano Navo" (3, Record on Appeal; p. 58, Rollo). Exhibits K to K-5, the free patent application, were not elevated to the Court of Appeals by the lower court (18-19, Record on Appeal).

Then, on February 17, 1956, by virtue of an extra-judicial partition, Escolastico and Fortunata succeeded in obtaining TCT No. 1570 for Lot 2636 and for an adjacent lot, identified as Lot 1404 with an area of 28,477 square meters (14-16, Record on Appeal). One-half of Lot 1404 was already sold by Escolastico to Navo (Exh. J and 5). Exhibits L and M, the 1939 decision of the lower court in the prewar case, Civil Case No. 6264 regarding the land, which became Lot 1404, and the 1941 decision of the Court of Appeals affirming it, were likewise not elevated to the Court of Appeals by the lower court. The failure to elevate the said exhibits is censurable.

All these proceedings were not known to Feliciano Navo II. The Court of Appeals found that inasmuch as the Bustargas "were never in possession" of Lot 2636, "the patent was obtained under false pretenses".

Navo filed his action for reconveyance against the Bustargas on July 7, 1966 or more than ten years after the patent for Lot 2636 was issued to the Bustargas. The parties agreed during the pre-trial that should the commissioner appointed by the court find that TCT No. 1570 includes any parcel of land, in addition to Lot 1404, the subject-matter of the 1939 decision of the trial court, already mentioned, then that additional parcel of land should be reconveyed to Feliciano Navo II after paying a reasonable amount fixed by the court (11, Record on Appeal).

The geodetic engineer commissioned by the trial court to relocate Lots 1404 and 2636 reported that TCT No. 1570 embraced Lot 1404, which was the subject-matter of the prewar case, as indicated in his sketch, and which was adjudicated to Feliciano Navo, mother of the Bustargas. The said title also included Lot 2636, which was not involved in the prewar case and which has been occupied by Feliciano Navo II. As already stated, he bought the same from several persons (13-17, Record on Appeal).

Hence, the trial court in its decision ordered the Bustargas to reconvey Lot 2636 to Navo upon payment of P500,

the amount incurred in procuring the title. The Court of Appeals affirmed that decision.

We hold that the reconveyance is proper notwithstanding that the action was filed after the lapse of more than ten years from the issuance of the patent and title. The Bustargas had agreed during the pre-trial to the reconveyance if it was found as a fact that Lot 2636 was not adjudicated to them in the prewar case. That was tantamount to a waiver of the defense of prescription.

Not only that. The reconveyance is just and proper in order to terminate the intolerable anomaly that the patentees should have a Torrens title for the land which they and their predecessors never possessed and which has been possessed by Navo in the concept of owner. (As to cancellation of patent at the instance of the Director of Lands, see sec. 91 of the Public Land Law; Director of Lands vs. Abanilla, L-26324, August 31, 1983, 124 SCRA 358.)

He truthfully charged that through deceit, misrepresentation and clandestine machinations during the processing of the free patent application, Escolastico Bustarga succeeded in misleading the Bureau of Lands (3, Record on Appeal). It is relevant to mention that Escolastico also misled Judge Palacio into approving a compromise agreement in Civil Case No. 1648 which was not signed by some parties and was signed by another party due to the fraud perpetrated by Escolastico (Exh. H).

The controlling ruling is found in *Vital vs. Anore*, 90 Phil. 955, where it was held:

"Limitation of action; Torrens title on the patent; Patentee has never been in possession; Ownership belongs to possessor; Reconveyance lies. - A Torrens title issued upon a free patent may not be cancelled after the lapse of ten years from the date of its registration because the statute of limitations bars such cancellation.

"But if the registered owner, be he the patentee or his successor-in-interest to whom the free patent was transferred or conveyed, knew that the parcel of land described in the patent and in the Torrens title belonged to another who together with his predecessors-in-interest were never in possession thereof, then the statute barring an action to cancel a Torrens title issued upon a free patent does not apply x x x.

"(T)he true owner may bring an action to have the ownership or title to the land judicially settled and the Court in the exercise of its equity jurisdiction, without ordering the cancellation of the Torrens title issued upon the patent, may direct the defendant, the registered owner, to reconvey the parcel of land to the plaintiff who has been found to be the true owner thereof."

The *Vital* case involved a Torrens title issued on January 20, 1934 to Francisco Anore in pursuance of a homestead patent transferred to him. The title and patent were sought to be annulled by the actual possessor of the land, Montano Vital, in an action which he filed on December 13, 1945 or after more than eleven years. It was held that Vital had a cause of action for reconveyance.

WHEREFORE, the judgment of the Court of Appeals is affirmed. Treble costs against the petitioners.

### **SO ORDERED.**

Makasiar, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

De Castro, J., no part.

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