

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. THE HON. COURT OF APPEALS, AND EMILIO BERNABE, SR., EMILIO BERNABE, JR., LUZ BERNABE, AMPARO BERNABE, AND ELISA BERNABE, RESPONDENTS.

G.R. No. L-40402. March 16, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking a reversal of the decision of Respondent Court of Appeals[1] dated February 5, 1975 in CA-G.R. No. 50076-R, entitled "EMILIO BERNABE SR., et al. v. REPUBLIC OF THE PHILIPPINES", affirming the order of the Court of First Instance of Bataan dated August 14, 1971 in Cadastral Case No. 19, LRC Cadastral Record No. 1097, which dismissed petitioner Republic's petition for review of the decrees of registration issued pursuant to the decision rendered on December 17, 1968 adjudicating in favor of the private Respondents herein, the lots applied for by them, and the Resolution of Respondent Court dated March 19, 1975 denying herein Petitioner's motion for reconsideration.

The undisputed facts are as follows:

Lot No. 622 of the Mariveles Cadastre was declared public land in a decision rendered before the last war in Cadastral Case No. 19, LRC Cadastral Record No. 1097.

On July 6, 1965, Lot 622 was segregated from the forest zone and released and certified by the Bureau of Forestry as an agricultural land for disposition under the Public Land Act (Record on Appeal, p. 7).

On April 26, 1967, Respondents filed in the Court of First Instance of Bataan a petition to reopen Cadastral Case No. 19, LRC Cadastral Record No. 1097, under Republic Act 931, as amended by Republic Act 2061, concerning a portion of Lot No. 622 — Lot Nos. 792, 793, 794, 795, 796, 797, 798 — and a portion of Lot No. 324 — Lot Nos. 791 and 799 — more particularly identified and delineated in the segregation plans of Sgs-3343, Sgs-3440, Sgs-3340, Sgs-3341, Sgs-3342 and Sgs-3339, approved by the Director of Lands, to perfect their rights and register their titles to said lots, having allegedly acquired ownership and possession of said parcels of land by purchase from the original owners thereof, whose possession of the same including that of the herein Respondents, has always been continuous, open, active, exclusive, public, adverse, and in the concept of owners thereof for more than 30 years (Record on Appeal, pp. 3-5 and 11).

On May 17, 1967, the lower court issued an Order setting the petition for hearing and directing that the Republic of the Philippines be notified thereof by furnishing the Solicitor-General, the Director of Lands and the Director of Forestry, a copy of said Order together with Respondents' petition by registered mail (Record on Appeal, p. 6).

On August 24, 1967, the Director of Forestry filed an opposition to the petition praying for the denial of the petition once the area involved is found to be within the timberland and therefore inalienable under the Constitution (Record on Appeal, p. 7). Upon verification, however, the Director of Forestry found the area to be the portion of the timberland already released by the government from the mass of public forests and promptly

withdrew his Opposition (Record on Appeal, p. 8).

On September 1, 1967, the Acting Provincial Fiscal of Bataan, for and in behalf of the Director of Lands, filed his opposition to the petition alleging that the land is still, in truth and in fact, public land and as such cannot be the subject of a land registration proceeding under Act 496.

The lower court found that the petitioners have complied with all the terms and conditions which would entitle them to a grant. Thus, the dispositive portion of its decision dated December 17, 1968 (Record on Appeal, p. 19), reads:

"WHEREFORE, the segregation plans, Sgs-3340, Sgs-3339, Sgs. 3341, Sgs-3342, Sgs. 3343 and Sgs-3340 and their technical descriptions are hereby APPROVED, and pursuant to Sec. 11 of Act 2259, the court hereby adjudicates in favor of petitioners Emilio Bernabe, Sr., married; Emilio Bernabe, Jr., married; Luz Bernabe, single; Amparo Bernabe, single and Elisa Bernabe, single, all Filipinos and residents of Balanga, Bataan, the lots herein applied for as follows:

Luz Bernabe
3339

Sgs-791

82,771 sq. m.

Elisa Bernabe
3341

Sgs-793

71,596 sq. m.

Amparo Bernabe
3342

Sgs-794795

43,399 sq. m.
100,439 sq. m.

Josefina Bernabe
3343

Sgs-796797

69,355 sq. m.
75,100 sq. m.

Emilio Bernabe, Jr.

Sgs-798

100,183 sq. m.

Sgs-3440

Sgs-799

64,052. sq. m.

and upon this decision having become final, the Commissioner of Land Registration is hereby directed to issue the corresponding decrees of registration therefor."

Pursuant to the aforecited decision, the Commissioner of Land Registration issued Decrees Nos. N-124813-124818, all dated May 7, 1969 (Record on Appeal, pp. 20-25).

On May 7, 1979, petitioner Republic of the Philippines, acting in its behalf and in behalf of the Director of Lands and the Director of Forestry, through the Solicitor-General, filed a petition for review of the decrees of registration under Section 38, of Act No. 496, as amended, and the corresponding decision of the lower court, on the grounds that the entire proceeding was vitiated by lack of notice to the Solicitor-General of the subsequent hearings of the petition for re-opening of the cadastral proceedings; that the parcels of land subject matter of the petition to re-open cadastral proceedings are portions of the public domain, admittedly within the unclassified public forest of Mariveles, Bataan, opened for disposition only on or about July 6, 1965; that subsequently, respondents do not have a registerable title to the land subject matter of the proceedings; and the lower court, without jurisdiction to decree the confirmation of registerable title to respondents over portions of the public domain, as respondents do not qualify under the provisions of Section 48(b) of CA 141, as amended, and that under the circumstances, respondents employed actual fraud in procuring title over the parcels of land (Record on Appeal, p. 25).

On May 29, 1979, respondents moved to dismiss the Petition for Review on the grounds that: (1) The trial court has no jurisdiction over the nature of the action or suit as there is no fraud to justify the setting aside on review of a decree of registration. If the Solicitor-General was not notified of the subsequent hearings, it was because he delegated his appearance to the Provincial Fiscal of Bataan. Besides the setting aside or review was filed out of time. (2) The petition states no cause of action, the parcels of land involved in the actions having been already transferred to innocent purchasers for value long before the Solicitor-General even filed the petition for review (Record on Appeal, pp. 27-40).

Their motion to dismiss having been held in abeyance until the hearing of the merits of the case which was set for August 16, 1970, respondents filed their answer to the Petition for Review on August 4, 1970. In their answer, respondents reiterated their grounds in their motion to dismiss (Record on Appeal, pp. 40-44).

On November 12, 1970, Petitioner filed an amended Petition for Review, with the additional allegation that after having fraudulently secured title over the parcels of land involved, the petitioners executed simulated deeds of sale purporting to convey various lots composing portions of the parcels involved to third parties for fictitious considerations in an obvious attempt to remove the parcels of land involved from the coverage of Section 38 of Act 496, but in truth, the aforementioned third parties are not innocent purchasers for value, being mere dummies of the petitioners, holding the parcels of land involved only in trust for the petitioners. On November 23, 1970, respondents filed their Answer to the Amended Petition for Review (Record on Appeal, p. 56).

On August 14, 1971, the lower court issued its Order denying petitioner's Amended Petition for Review (Record on Appeal, p. 56).

On appeal to the Court of Appeals on September 20, 1971, the questioned Order of the Court of First Instance of Bataan, Branch I was affirmed (Rollo, p. 33).

On February 25, 1975, Petitioner filed a Motion for Reconsideration which was denied by the Court of Appeals for lack of merit, in the Resolution of a special Division of Five, promulgated on March 19, 1975.

Hence this petition.

Without giving due course to the Petition, the Court, through its First Division, resolved on May 5, 1975 to

require the respondents to comment thereon. On May 30, 1975, respondents filed their comment, alleging that the decision of respondent Court and the questioned resolution were not rendered without or in excess of its jurisdiction. Neither was the discretion exercised by respondent Court arbitrary or despotic.

In Its Resolution dated June 4, 1975, the Court resolved to give due course to the Petition and denied the urgent motion of respondents for leave to file a supplemental and/or amended comment. Petitioner filed its Brief on November 29, 1975; respondents, on March 2, 1976. Petitioner filed its Reply Brief on March 25, 1976 and on May 5, 1976, the case was deemed submitted for decision.

Petitioner assigns the following errors:

I. THE RESPONDENT COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN TOTALLY DISREGARDING THE UNDISPUTED FACT THAT THE LOTS CLAIMED BY HEREIN PRIVATE RESPONDENTS BECAME AGRICULTURAL ONLY ON JULY 6, 1965 WHEN THE SAME WERE RELEASED FROM THE FOREST ZONE AND THAT CONSEQUENTLY THEY LACK THE REQUISITE THIRTY (30) YEARS POSSESSION TO ENTITLE THEM TO A GRANT.

II. THE RESPONDENT COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN NOT HOLDING THAT THE ENTIRE PROCEEDING FOR REOPENING OF THE CADASTRAL CASE OVER THE LOTS IN QUESTION WAS VITIATED BY LACK OF NOTICE TO THE SOLICITOR-GENERAL.

III. THE RESPONDENT COURT ERRED IN NOT HOLDING THAT THE ALLEGED TRANSFER OF THE LOTS IN QUESTION BY PRIVATE RESPONDENTS TO THIRD PARTIES WHEN THEIR TITLES WERE STILL SUBJECT TO THE ONE-YEAR PERIOD OF REVIEW CONSTITUTES FRAUD SCHEMED BY THE TRANSFERORS AS A MEANS OF FRUSTRATING ANY ACTION AIMED AT NULLIFYING THEIR TITLES THERETO.

The government's cause is meritorious.

I

It is evident from the facts of the case at bar that private respondents did file a claim for Lot No. 622 of the Mariveles Cadastre and in fact a decision was rendered before the last war in Cadastral Case No. 19 LRC Cadastral Record No. 1097, declaring the lot in question as public land. It must be stressed that said lot was declared public land by virtue of a court decision which has become final and as held by the Supreme Court aforesaid decision is *res judicata*. (*Republic v. Estenzo*, 120 SCRA 222 [1983]). It is therefore beyond question that the trial court has no jurisdiction to reopen the cadastral proceeding under R.A. 931 as amended by R.A. 2061 and the decision therein rendered is null and void *ab initio*.

Furthermore, it is undisputed that aforesaid Lot No. 622 was released as an agricultural land for disposition under Public Land Act only on July 6, 1965. The lower court ordered the issuance of the corresponding decrees of registration for the lots, pursuant to Sec. 48(b), C.A. 141, otherwise known as the Public Land Act, as amended by Republic Act No. 1942, providing for the confirmation of imperfect or incomplete titles, which reads:

"(b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands 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 pointed out by petitioner, the question is whether or not the lots claimed by respondents could legally be the

subject of a judicial confirmation of title under the aforequoted provisions of the Public Land Act, as amended.

The answer is in the negative.

Section 48(b) of C.A. No. 141, as amended, applies exclusively to public agricultural land. Forest lands or areas covered with forests are excluded. They are incapable of registration and their inclusion in a title, whether such title be one issued during the Spanish sovereignty or under the present Torrens system of registration, nullifies the title (*Li Seng Giap v. Director of Lands*, 55 Phil. 693 [1931]; *Director of Lands v. Reyes*, 68 SCRA 177 [1975]). Thus, possession of forest lands, however long, cannot ripen into private ownership (*Vano v. Government*, 41 Phil. 161 [1920]; *Adorable v. Director of Forestry*, 107 Phil. 401 [1960]; *Director of Forestry v. Munoz*, 23 SCRA 1183 [1968]; *Director of Lands v. Abanzado*, 65 SCRA 5 [1975]). A parcel of forest land is within the exclusive jurisdiction of the Bureau of Forestry and beyond the power and jurisdiction of the cadastral court to register under the Torrens System (*Republic v. Court of Appeals*, 89 SCRA 648 [1979]; *Republic v. Vera* (120 SCRA 210 [1983]; *Director of Lands v. Court of Appeals*, 129 SCRA 689 [1984]).

Thus, even if the reopening of the cadastral proceedings was at all possible, private respondents have not qualified for a grant under Sec. 48(b) of Commonwealth Act 141, the facts being that private respondents could only be credited with 1 year, 9 months and 20 days possession and occupation of the lots involved, counted from July 6, 1965, the date when the land area in sitio San Jose, barrio Cabcanan, Mariveles, Bataan, known as Bataan PMD No. 267, which includes the lots claimed by respondents, had been segregated from the forest zone and released by the Bureau of Forestry as an agricultural land for disposition under the Public Land Act. (Record on Appeal, p. 19). Consequently, under the above mentioned jurisprudence, neither private respondents nor their predecessors-in-interest could have possessed the lots for the requisite period of thirty (30) years as disposable agricultural land.

II

Petitioner argues that the government, being a necessary party in the cadastral case, as reopened, its counsel, the Solicitor-General, should have been furnished copies of all court orders, notices and decisions, as in ordinary cases, in order to bind the government. Failure to give such notice deprives the State of its day in Court, and renders the decision void. (Brief for Petitioner, pp. 16-17).

The records show that the Solicitor-General was duly notified of the initial hearing on the petition to reopen Cadastral Case No. 19 but thereafter, notice of subsequent hearings as well as a copy of the decision itself promulgated by the lower court on December 19, 1968 was sent instead to the Provincial Fiscal of Bataan, admittedly the duly authorized representative of the Solicitor-General in the cadastral proceeding as shown in a telegram dated January 19, 1968. (Record on Appeal, p. 47).

In the case of *Republic v. Director of Lands* (71 SCRA 426 [1976]), the Supreme Court, applying the time-honored principle of agency ruled that the service of the questioned decision on the Provincial Fiscal must necessarily be service on the Solicitor-General, and added that technical transgressions relative to the filing and service may be brushed aside when the adverse party (this time the Director of Lands and Forestry and their counsel, the Solicitor-General) is aware of the matter which his adversary would want the court to act upon. Once it appears that the party is already informed by one means or another of what he is to be notified, the required service becomes an empty gesture and strict observance thereof is considered waived. (Citing *Estrada v. Sto. Domingo*, 28 SCRA 890 [1969]).

In the case at bar, it does not appear that the Solicitor-General was so apprised of the decision of the lower court in question as there is no proof that the Provincial Fiscal of Bataan ever sent the Solicitor-General a copy thereof.

Furthermore, after the 3rd Assistant Provincial Fiscal filed a notice of appeal from the decision of the trial court, the Provincial Fiscal on March 21, 1969 manifested that he was withdrawing the appeal upon the intervention of the District Forester. (Respondent's Brief, p. 44).

It will be observed however that later decisions of the Supreme Court tend to be more strict in the matter of giving notice to the Solicitor-General. In a more recent case, *Republic v. Court of Appeals*, 135 SCRA 161 [1985], it was established that the Solicitor-General is the only legal counsel of the government in land registration cases and as such, he alone may withdraw the Government's appeal with binding effect on the latter. He is entitled to be furnished copies of all court orders, notices and decisions and as held the reglementary thirty-day period for appeal should be reckoned from the time the Solicitor-General's Office is apprised of the 1970 order of denial and not from the time the special counsel or the fiscal was served with that order. Thus, representatives of the Solicitor-General in the case at bar, had no power to decide whether or not an appeal should be made. They should have referred the matter to the Solicitor-General and without copies of court orders, notices and decisions, having been provided by either the trial court or the Provincial Fiscal of Bataan to the Solicitor-General, the assailed decision has no binding effect on the government.

III

The petition for review of Decrees Nos. N-124813 to N-124818 under Sec. 38 of Act No. 496 as amended was filed by the Solicitor General on May 7, 1970 in representation of the Republic of the Philippines, in the same Cadastral Case No. 19, LRC Cadastral Record No. 1097, exactly a year after the issuance of aforesaid decrees of registration, on the ground of actual fraud. (Record on Appeal pp. 43-44).

The basic elements for the allowance of the reopening or review of a decree, are: (1) that the petitioner has real or dominical right; (2) that he has been deprived thereof through fraud; (3) that the petition is filed within one year from the issuance of the decree and (4) that the property has not as yet been transferred to an innocent purchaser. (*Libudan v. Gil*, 45 SCRA 27 [1972]; *Rubico, et al. v. Orellana*, 30 SCRA 513 [1969]). It has been held however that the action to annul a judgment, upon the ground of fraud would be unavailing unless the fraud be extrinsic or collateral and the facts upon which it is based have not been controverted or resolved in the case where the judgment sought to be annulled was rendered. (*Libudan v. Gil*, *supra*). Review of the decree demands a showing of actual (not constructive) fraud, i.e. actual malice. (*Rubico v. Orellana* (*supra*)).

In the case at bar, it cannot be said that private respondents employed actual fraud in procuring titles over parcels of land of the public domain as it is a matter of record that the land in question was opened for disposition and alienation only on July 6, 1965. The matter was threshed out in the lower court and the decision of the latter was affirmed by the Court of Appeals. Actual malice is therefore absent.

However, it has been held that, if a decree issued in pursuance of a valid decision, obtained by fraud, may be annulled within one (1) year from entry of said decree, there is more reason to hold that the same is true if entered in compliance with a decision suffering from a fatal infirmity, such as want of due process, (*Vda. de Cuaycong v. Vda. de Sangbengco*, 110 Phil. 118 [1960] or lack of jurisdiction of the court that decided the cadastral case. (*Republic v. De Kalintas*, 25 SCRA 720 [1969])). Thus, on both counts, the case at bar can properly be the subject of review, it having been shown that the Solicitor-General was not properly furnished the requisite notices and copy of the assailed decision but more importantly, the lower court as previously stated had no jurisdiction to re-open the cadastral proceeding under Republic Act 931 as amended by R.A. No. 2061.

IV.

As to whether or not the transferees of the lot in question are innocent purchasers for value, it is a well settled rule that a purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor. (*Leung Yee v. F. L. Strong Machiner Co., et al.*, 37 Phil. 651 [1918]). Without the needed verification, he cannot claim to be an innocent purchaser for value in contemplation of law.

Moreover, it is well-settled that a certificate of title is void, when it covers property of public domain classified as forest or timber and mineral lands. Any title issued on non-disposable lots even in the hands of an alleged innocent purchaser for value, shall be cancelled. (*Lepanto Consolidated Mining Company v. Dumyung*, 89 SCRA 540 [1979] underscoring supplied). In the case at bar, it will be noted that in granting titles to the land in dispute, the lower court counted the period of possession of private respondents before the same were released as forest lands for disposition, which release is tantamount to qualifying the latter to a grant on said lands while they were still non-disposable. Thus, under the foregoing rulings, even assuming that the transferees are innocent purchasers for value, their titles to said lands derived from the titles of private respondents which were not validly issued as they cover lands still a part of the public domain, may be cancelled.

PREMISES CONSIDERED, the assailed decision of the Court of Appeals and the decision of the Court of First Instance are hereby SET ASIDE and REVERSED, because the lots in question still form part of the public domain. The certificates of title issued over them are hereby ordered CANCELLED.

SO ORDERED.

Fernan, (Chairman), Padilla, Bidin, and Cortes, JJ., concur.

Alampay, J., on leave.

Gutierrez, Jr., J., no part as one of the parties was my former colleague.

[1]PENNED BY JUSTICE ANDRES REYES and concurred in by Justices Luis B. Reyes, Crisolito Pascual and Godofredo P. Ramos; dissenting Justice Francisco Ma. Chanco.

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