

**REPUBLIC OF THE PHILIPPINES, AS REPRESENTED BY THE
DIRECTOR OF FORESTRY (NOW DIRECTOR OF FOREST
DEVELOPMENT), PETITIONER, VS. HONORABLE COURT OF APPEALS,
MIGUEL MARCELO, CELIA Z...**

G.R. No. L-46048. November 29, 1988

Ponente: REGALADO, J.

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REGALADO, J.:

Petition for review on certiorari of the decision[1] of the Court of Appeals in CA-G.R. No. 49640-R[2] which affirmed, with modifications, the decision of the Court of First Instance of Masbate in Land Registration Case No. N--9419, LRC Record No. N-9414, thereof.

The proceedings in the court a quo started on February 8, 1955 when herein private respondent Miguel Marcelo filed an application for the registration of two (2) parcels of land with an aggregate area of 116.8441 hectares, situated in Sitio Calulod, Barrio Pauwa, Masbate, Masbate.[3]

Oppositions were filed by the Government and private parties. The opposition of the Director of Forestry (now Forest Development), which is the one involved in the present recourse, was based on the ground that the 22 hectares of the aggregate area of the two parcels of land applied for form part of Timberland Block F, Land Classification Project No. 3, L.C. Map No. 452, Masbate, Masbate, certified on December 22, 1924.[4]

The antecedent facts, as found by the trial court and quoted with approval by the respondent court, are as follows:

"The evidence of the herein applicant disclosed that from 1909 and during the conjugal union of the spouses Jose Zurbito and Soledad Zurbito, they commenced to purchase small parcels of land from various owners adjoining the 30 hectares of land located in Calulod, Pwa (sic), Masbate, which Jose Zurbito inherited from his parents. The land thus acquired by the spouses comprises the two parcels of land which (the spouses) described in Plan Psu-104631. The parcels of land which the spouses bought have (sic) fruit-bearing coconut trees at the time they were purchased, some of which are estimated to be one year old. Jose Zurbito, however, continued to plant more coconut trees and there are now no less than 10,000 trees on the land. A small area outside of the coconut plantations is devoted to pasture and the marshy portion not covered by nipa palms has been converted into a fishpond. The spouses occupied and cultivated these properties and their possession was peaceful, adverse, public, open, and in the concept of owners. Upon the death of Jose Zurbito on June 22, 1955 (sic), his wife Soledad Buencamino Zurbito and his children succeeded to his estate and continued his possession. The estate of Jose Zurbito was placed under administratrix (sic) thereof. On April 13, 1943, Soledad vda. de Zurbito sold, under a deed of absolute sale, her rights, title, interest and participation in the parcels of land subject of this registration proceedings in favor of the herein applicant, Dr. Miguel Marcelo, who is also her son-in-law, for and inconsideration of the sum of P10,000.00 (Exhibit H). Then on October 24, 1944, Soledad vda. de Zurbito, as administratrix of the estate of the deceased Jose Zurbito and in behalf of her children, Engracia, Gaspar and Felipe, co-signed with her other children, namely, Guadalupe, Adelaida, Jose and Celia, a deed of sale with a right to repurchase wherein they sold to Miguel Marcelo for and in consideration of the

sum of P12,000.00 the remaining one-half undivided portion of the properties mentioned in the previous deed of sale. Under the provisions of the aforementioned deed, the vendors were given the option to repurchase the properties within five years from the date thereof (October 24, 1944) extendible for another period of one year at the option of the vendors. It is further stipulated that upon failure of the vendors to redeem the properties, within the allotted (sic) time, title shall automatically vest in the vendee, Dr. Miguel Marcelo. Inasmuch as the properties were already covered by another pacto de retro sale in favor of one Adela Romero, part of the consideration of the sale was paid to the said Adela Romero in order to redeem the properties from her. When the vendors-a-retro failed to repurchase the properties within the period agreed upon, Dr. Marcelo consolidated ownership of the properties by executing and registering in 1954 an affidavit of consolidation dated December 2, 1953 in the office of the Register of Deeds of Masbate (Exhibits M, M-1 and M-2). The evidence of the applicant shows that after Dr. Marcelo consolidated ownership of the properties in 1954 and paid the delinquent taxes in the sum of P2,691.21, he allowed his mother-in-law, Soledad vda. de Zurbito, to continue managing the properties because he and his wife are living in Manila where he is engaged in the practice of medicine. Soledad vda. de Zurbito attended to the affairs of the hacienda, paid the taxes due thereon, deducted from the income whatever expenses she might have incurred including her subsistence and remitted to Dr. Marcelo in Manila the excess, if any. This arrangement was made in consideration of the personal relationship between the applicant and Soledad vda. de Zurbito."[5]

With respect to the opposition of the Government, said decision states, *inter alia*:

"The Director of Lands did not adduce evidence to show that the land is part of the public domain and left to the applicant the burden of proving that in the absence of any form of grant from the state, he acquired an imperfect or incomplete title thereto, and has all the qualifications and perfumed (sic) all the conditions prescribed by law to justify the registration of the land in his name.

"The Opposition of the Director of Forestry is centered on the claim that approximately 22 hectares of the land is within the forest zone indicated in the sketch (Exhibit 22-government) as Exh. 22-B. In his report, Forester Anacleto B. Espinas stated that the area is a portion of Block F, Timber Land, Land Classification project No. 3, Masbate, Masbate, certified on December 22, 1924, L.C. Map No. 452. Inside this portion is a fishpond containing an area of 15 hectares covered by fishpond lease agreement of Leocadio Guzon with the Bureau of Fisheries. After the expiration of the fishpond permit granted to Leocadio Guzon, the Director of Lands refused to approve the private land survey of the fishpond as a prerequisite to the renewal of the lease agreement with the Bureau of Fisheries on the ground that the land in question is under litigation. The authentic document evidencing the classification of the land applied for registration as a forest zone has (sic) been presented. Neither the order setting aside the said portion as timber land by the Director of Forestry nor the original plan nor a certified copy thereof showing the segregation from which the sketch (Exhibit 22-government) has been traced or copied, was introduced. Without these proofs, the testimony alone of a forester will not be considered sufficient and convincing for the Court to adjudge the area in question as timber land (Director of Lands vs. Abaldonado, CA-G.R. No. 177-R; 45 O.G. 2128). It has been held that this will not convert ipso facto the land into a forest land. (Vigor vs. Director of Lands, CA-G.R. No. 24582?R, October 21, 196-; 57 O.G. 5888). x x x"[6]

After trial, the Court a quo promulgated its decision the decretal portion whereof provides:

"WHEREFORE, judgment is hereby rendered:

Confirming and ordering the registration of the title over the property described in Plan Psu-104631 (Exhibit A) and its technical descriptions (Exhibits B and C) in the name of Miguel Marcelo, married to Celia Zurbito, Filipino, of legal age and residing at 687 General Geronimo, Sampaloc, Manila.

Once this decision becomes final and executory, let a decree of confirmation be issued in favor of the applicant."[7]

The Director of Forestry (now Director of Forest Development) and the Heirs of Jose Zurbito, as oppositors, appealed the aforequoted decision to respondent Court of Appeals.

On January 26, 1977, respondent court rendered judgment declaring the applicant and the private oppositors, now the private respondents herein, as co-owners, in stated shares, of the entire property involved. A motion for reconsideration filed by oppositor-appellant Director of Forestry was denied.

Hence, this petition.

The decisive issue for resolution is whether the 22-hectare area which forms part of the land applied for registration by and decreed in favor of herein private respondents is disposable agricultural land. Petitioner relies mainly upon the testimony of District Forester Anacleto Espinas, who submitted a report that the land in dispute is within a forestal zone and cannot, therefore, be awarded to private respondents in land registration proceedings.

A careful perusal of his testimony,[8] however, reveals that, insofar as relevant to this issue, said witness merely identified and described the condition of the area claimed by the Government and verified the location thereof as stated in Plan Psu-104631 which, as heretofore stated, is covered by Land Classification Project No. 3 under LC Map No. 452, Masbate, Masbate, certified on December 22, 1924.[9] As correctly observed by the trial court, supra, no authentic document evidencing the classification of the land applied for registration as a forest zone was ever presented by the oppositor Director of Forestry.

Furthermore, said forester admitted that the subject area is planted with fruit-bearing coconut trees and nipa palms, and that it is, only partly covered by mangroves.[10] Petitioner would, however, insist that since the contested area has "manglares" or mangrove swamps, then, pursuant to Section 1820 of the Revised Administrative Code, such swamplands with nipa and mangrove growth are distinctly classified as forestal areas.

It has, however, been held that said statutory provision does not warrant the conclusion sought to be drawn therefrom, thus:

"x x x For instance, section 1820 of the administrative Code of 1917 provides: 'For the purpose of this chapter, 'public forest' includes, except as otherwise specially indicated, all unreserved public land, including nipa and mangrove swamps, and all forest reserves of whatever character. This definition of 'public forest', it will be noted, is merely 'for the purpose of this chapter'. A little further on, section 1827 provides: 'Lands in public forests, not including forest reserves, upon the certification of the Director of Forestry that said lands are better adapted and more valuable for agricultural than for forest purposes and not required by the public interests to be kept under forest, shall be declared by the Department Head to be agricultural lands.' x x x

x x x

Either way we look at this question we encounter difficulty. Indubitably, there should be conservation of the natural resources of the Philippines. x x x On the other hand, the presumption should be, in lieu of contrary proof, that land is agricultural in nature. One very apparent reason is that it is for the good of the Philippine Islands to have the large public domain come under private ownership. Such is the natural attitude of the sagacious citizen.

"If in this instance, we give judicial sanction to a private claim, let it be noted that the Government, in the long run of cases, has its remedy. Forest reserves of public land can be established as provided by law. When the claim of the citizen and the claim of the Government as to a particular piece of property collide, if the Government desires to demonstrate that the land is in reality a forest, the Director of Forestry should submit to the court convincing proof that the land is not more valuable for agricultural than for forest purposes. Great consideration, it may be stated, should, and undoubtedly will be, paid by the courts to the opinion of the technical expert who speaks with authority on forestry matters. But a mere formal opposition on the part of the Attorney-General for the Director of Forestry, unsupported by satisfactory evidence, will not stop the courts

from giving title to the claimant." [11]

Furthermore, in *Garchitorena Vda. de Centenera vs. Obias, et. al.*, [12] in disposing of the opposition of the Director of Forestry to an application for land registration, it was explicitly held that:

"This opposition rests mainly upon the proposition that in the land covered by the application there are mangrove lands as shown in this opponent's Exhibit 1, but we think this opposition of the Director of Forestry is untenable, inasmuch as it has been definitely decided that mangrove lands are not forest lands in the sense in which this phrase is used in the Act of Congress (*Montano vs. Insular Government*, 12 Phil., 572; and *Jocson vs. Director of Forestry*, 39 Phil., 560)."

It is not disputed that the aforesaid Land Classification Project No. 3, classifying the 22-hectare area as timberland, was certified by the Director of Lands only on December 22, 1924, whereas the possession thereof by private respondents and their predecessor-in-interest commenced as early as 1909. While the Government has the right to classify portions of public land, the primary right of a private individual who possessed and cultivated the land in good faith much prior to such classification must be recognized and should not be prejudiced by after-events which could not have been anticipated. Thus, We have held that the Government, in the first instance may, by reservation, decide for itself what portions of public land shall be considered forestry land, unless private interests have intervened before such reservation is made. [13]

On the matter of classification of the land into either agricultural or forestal area, petitioner's invocation of Section 1838 of the Revised Administrative Code is not in point since said provision is merely a general conferment of authority and administrative control on the Director of Forestry to lease or grant to qualified persons, under the conditions therein stated, permits for the use of forest lands or vacant non-agricultural public lands. However, as to whether the particular land in question is forestry or any other class of land is a question of fact to be settled by the proof in each particular case. [14]

Regarding the contention that the controverted lot has been the subject of a fishpond lease agreement between the Bureau of Fisheries and one of the private respondents and is, therefore, incapable of registration, even under considerations of only the *res inter alios* rule the act of that party cannot bind the applicant in the land registration proceeding. Furthermore, the Bureau of Fisheries has no jurisdiction to administer or dispose of swamplands or mangrove lands forming part of the public domain until such lands have been released for fishery or other purposes. [15]

WHEREFORE, the judgment appealed from is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairperson), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Penned by Magno S. Gatmaitan, J., with the concurrence of Sixto A. Domondon and Samuel F. Reyes, JJ., First Division.

[2] Miguel Marcelo, Applicant-appellee, vs. Director of Lands, et. al., Applicants-oppositors.

[3] Brief for Petitioner, 2.

[4] *Ibid.*, 2-3.

[5] *Rollo*, 52-54.

[6] *Ibid.*, 54-55.

[7] Ibid., 51-52.

[8] TSN, August 25, 1970, 101-117.

[9] Exhibit A.

[10] TSN, August 25, 1970, 104-107.

[11] Ramos vs. Director of Lands, 39 Phil. 175, 181-187 (1918).

[12] 58 Phil. 21, 24 (1933).

[13] Ankron vs. Government of the Philippine Islands, 40 Phil. 10, 16 (1919).

[14] Ibid., 15-16, citing Jocson vs. Director of Forestry, 39 Phil. 560.

[15] Yngson vs. Hon. Secretary of Agriculture and Natural Resources, 123 SCRA 441 (1983).

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