

**SPS. SAMUEL CANAPI AND ANA BELEN CANAPI,
PLAINTIFFS-APPELLANTS, VS. BO. CUPANG II HOMEOWNERS
ASSOCIATION, INC., DEFENDANT-APPELLEE.**

Ponente: BALTAZAR-PADILLA, J.

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BALTAZAR-PADILLA, J.:

Challenged before US in this appeal[1] are the Orders dated May 7, 2013[2] and February 7, 2014[3] of the Regional Trial Court of Antipolo City, Branch 95 (hereinafter, “RTC”) in Civil Case No. 12-9645.

In a petition filed before the RTC, herein appellants sought the declaration of nullity of Original Certificate of Title No. 114 (OCT 114) and all its derivative certificates of title. The petition alleged that appellants have been occupying a portion of Lot No. 8046 of 29 Ext. Antipolo Cadastre; that for 23 years, they have been in open, continuous, exclusive, adverse and notorious possession of the said property;[4] that after more than two (2) decades of residing therein, appellants were informed by appellee that the lot they occupy is part of the land which it owns; that to prove ownership over the same, appellee presented to them Transfer Certificate of Title No. 330492 (TCT 330492); that a perusal of TCT 330492 shows that the land covered by the said title was originally registered on June 12, 1925 in the Register of Deeds of Rizal under OCT 114 pursuant to a homestead patent granted under Act No. 2874; that OCT 114 was cancelled and was replaced with TCT 339522/T-1970 from which appellee's title, TCT 330492, was derived; that TCT 339522/T-1970 was a direct derivative of TCT No. 23702/T-396 in the name of Aquilina M. Obaña; that TCT No. 23702/T-396 was a direct transfer from TCT No. 22841 in the name of Juan M. Ruiz married to Conchita Parade; that TCT No. 22841 is a direct transfer from TCT No. 46191 in the name of Severino Mendoza. The property covered by appellee's certificate of title was later subdivided into smaller lots under survey authority Psd-32994. Because of appellee's threat to eject them, appellants agreed to enter into a Lease Purchase Agreement (LPA) on April 11, 1997. Appellants claimed that they requested for a certified copy of OCT 114 from the Antipolo City Registry of Deeds but the said office certified that the aforesaid title is not found in their files; that they obtained a torn copy of OCT 114 from the Registry of Deeds of Rizal at Pasig; that they later learned from the investigation conducted by the Department of Environment and Natural Resources (DENR) that OCT 114 covering Lot Nos. 8039, 8040, 8041, 8042, 8043, 8044, 8045, 8046, 8047, 8048, 8049, 8050, 8051, 8052 and 8053 at 29 Ext. Antipolo Cadastre is non-existent; that the only OCT 114 that was issued was that covering a certain land in Sampaloc, Tanay, Rizal which was already cancelled in favor of Donato Ritoria based on Homestead Patent V-11408 issued on October 12, 1952; that a certification[5] dated May 5, 2008 issued by the Provincial Environment and Natural Resources Office (PENRO) of Rizal Province stated that survey authority number Psd-32994 was issued for a land survey conducted in the Municipality of Solano, Nueva Vizcaya involving property covered by OCT 134; that the Region IV office of the DENR issued a certification[6] dated July 13, 1999 that “Psd-32994, Cupang, Antipolo” is not available on their file. Appellants contended that the letter[7] dated May 11, 2000 from the Records Officer of the Community Environment and Natural Resources Office (CENRO) of Antipolo stated that Lot Nos. 8039 to 8053 are not covered by any kind of public land application is concrete proof that appellee's OCT 114 is spurious; that the certification[8] dated May 24, 2000 issued by DENR-Region IV, Antipolo City shows that Lot Nos. 8039 to 8053

situated in Barangay Cupang, Antipolo, Rizal were verified to be within the alienable and disposable land only on March 11, 1927 by the Bureau of Forest Development; that considering that the subject property was only declared alienable and disposable on March 11, 1927, OCT 114 could not have been issued in 1925. Since OCT 114 is non-existent, the declaration of its nullity and all its derivative titles is indispensable. Consequently, the tax declarations issued based on the spurious OCT 114 should also be cancelled. Appellants argued that since the lot occupied by them for 23 years had long been declared open for alienation and disposition since March 11, 1927 and no one has applied for ownership of the same, they should be declared as the owners in fee simple of the subject lot. Upon the foregoing allegations, the petition concluded with the following prayer:

“WHEREFORE, it is respectfully prayed of the Honorable Court to issue a decision:

- Declaring as NULL and VOID Original Certificate of Title (OCT) No. 114 purportedly issued for parcels of lot covering Lot Nos. 8039, 8040, 8041, 8042, 8043, 8044, 8045, 8046, 8047, 8048, 8049, 8050, 8051, 8052 and 8053, Cad. 29 Ext., of Antipolo Cadastre;
- Declaring as NULL and VOID all certificates of title derived from that Original Certificate of Title No. 114, including purported TCT No. 330492 of Bo. Cupang II Homeowner's Association;
- Declaring that the petitioners are owners in fee simple of Lot 4, Block No. 7 of Psd 04-196297 of the approved plan of Cupang II Homeowners' Association, Inc.

Other reliefs just and equitable under the circumstances are also prayed for.”[9]

In its Answer, appellee averred that the petition should be dismissed on the grounds of forum shopping and lack of cause of action. Appellants' occupancy on the subject lot has already been declared unlawful by the Municipal Trial Court in Cities of Antipolo City in its decisions dated January 8, 2001 in Civil Cases Nos. 4004, 4009 and 4013. The judgment in the said cases had already become final and executory. Sheriff Ma. Theresa Simeon Leis implemented the judgment on March 26, 2012 by demolishing the house of appellants. However, after the demolition, appellants returned to the subject lot and rebuilt their present house. Appellants, being members of Urban Land Reform Beneficiaries Association, directly sought to annul the title of appellee over the subject property in Civil Case No. 98-4775 before the RTC, Branch 73 of Antipolo City but said case was dismissed for lack of merit. Also, appellants have no cause of action against it since the petition that they filed was truly for reversion which should be instituted only by the Solicitor General.

Subsequently, appellee's prayer to set for hearing its affirmative and special defenses to show that (a) the action is one for reversion; (b) that appellants violated the rule on forum shopping; and (c) that the case filed by appellants is barred by prior judgment, was granted by the trial court.

During the hearing for its affirmative and special defenses, appellee presented its President Adolfo Basbas as witness, whose testimony was summarized by the trial court in this wise:

“Basbas testified that he knew petitioners in this case [herein appellants] because they were among the original beneficiaries of the Community Mortgage Program of the government's socialized housing program and stayed in their subdivision for a long time. According to the witness, after some time, plaintiffs [herein appellants] joined the Urban Land Reform Beneficiaries Association which campaigned to declare OCT 114--from which the land title of the association and the title of Cupang II Homeowners Association was derived--null. Petitioners then stopped paying amortization and dues to the association.

When asked how the petitioners campaigned for the annulment of the title, witness answered that the Urban Land Reform Beneficiaries Association filed, in 1998, Civil Case No. 98-4775 with the Regional Trial Court of Antipolo City Branch 73 for the annulment of the association's title--TCT No. 330492--registered with the Registry of Deeds of Marikina City. When asked what happened to the case, witness answered that the same

was dismissed in 2004. At this juncture, witness was referred to a certified true copy of a Decision rendered by Judge Mauricio Rivera in Civil Case No. 98-4775[10] and a Certificate of Finality, which was later marked as Exhibit '2'[11] (adopted as Exhibit 'Y'). Witness narrated that the petitioner did not appeal the aforementioned Decision. Witness also presented a copy of TCT No. 330492[12] which was marked as Exhibit '3'. At the back of the title is an annotation of a notice of lis pendens[13] referring to Civil Case No. 98-4775. When asked what happened to the said annotation, witness answered that the annotation was subsequently cancelled as a result of the decision in Civil Case No. 98-4775 having acquired finality.[14]

When asked if Civil Case No. 98-4775 was the only case filed relative to the subject property, witness' answer was that there was another petition filed by the then president of the Urban Land Reform Beneficiaries Association against several title holders within the 15 hectare land to nullify OCT 114 and the titles derived from it. As proof of this, witness presented copy of an Order issued by the Regional Trial Court of Antipolo City Branch 73 in Civil Case No. 98-4856 on June 1, 2012 entitled 'Rizalino V. Gulla, Jr. vs. Rosa Mia, Maribel, Lourdes, Perlita Dimaano, et al.' In the said Order, the Court said:

'A comparative study of Civil Case No. 98-4775 and the instant case interestingly reveals that they both have substantially the same set of witnesses and documentary evidence which were all presented for the ultimate purpose of nullifying the OCT 114. Both plaintiffs in the two cases, represented by the same lawyer, basically have the same arguments that narrow down to the highly questionable issuance of OCT 114 in 1925 when the subject land of that title was still part of the unclassified forest zone. x x x.'

Ultimately, the Court therein sustained defendants' demurrer to evidence on the ground of res judicata and consequently, dismissed the case.

According to the witness, the above-quoted Order was appealed to the Court of Appeals but said appeal was dismissed in a Resolution issued in CA-G.R. CV Case No. 97122 dated April 23 2012[15], for appellant's failure to file the required brief. He also said that later on, an Entry of Judgment[16] was issued by the Court of Appeals with respect to the afore-mentioned resolution. Witness was referred to a copy of the Entry of Judgment in CA – G.R. CV Case No. 89784 which was asked to be marked as Exhibit '6'.

Witness further disclosed that there was also a pending case involving the petitioners and the Cupang II Homeowners Association before Branch 4 of the Municipal Trial Court in Cities of Antipolo City for indirect contempt. Witness elaborated that said case was an offshoot of the unlawful detainer case which was earlier initiated by the association. It appears that the Complaint[17], copy of which was identified by the witness in open court, was brought because '[a]fter the execution of the decision x x x defendants stayed in the lots and in the darkness of the night, rebuilt their respective structures and have stayed on the lots to this day, despite attempts of plaintiff to oust them it.' When asked about the status of the said cases, witness, in his judicial affidavit said that the complaint for indirect contempt has been declared submitted for decision.[18]

When asked if the cases already mentioned by the witness were the only cases filed by petitioners against the association, witness said that a complaint was also filed by petitioners against the association before Branch 71 of the Regional Trial Court of Antipolo City—Civil Case No. 10-9206 for TRO to stop demolition petitioners' houses, but that this case was also dismissed. Finally, witness stated that because of the filing of these numerous cases, the association spent a great deal of money and that despite the execution of the ejectment cases no money has been collected from petitioners.”[19]

After the parties filed their respective memoranda, the trial court received herein appellee's Formal Offer of Evidence consisting of Exhibits “1” to “8”. Appellee's formal offer of evidence having been admitted, the question on whether the case should be dismissed on account of the affirmative and special defenses of herein appellants was submitted for resolution.[20]

On May 7, 2013, the court a quo issued an Order^[21] dismissing herein appellants' petition and declaring that the action instituted by them is for reversion and not for nullity of title. Hence, they are not the proper party to initiate the action.^[22]

Appellants' Motion for Reconsideration was denied by the trial court on February 7, 2014 for lack of merit.^[23]

Hence, this appeal with the following assignment of errors:

- “1. The court a quo erred in applying the principle of action for reversion vis-a-vis action for declaration of nullity of spurious title;
2. The court a quo erred in applying the rule that the allegations in the complaint determine the causes of action; and
3. The court a quo erred that it did not rule that the issues raised in the affirmative defenses, including reversion, are evidentiary that can be threshed out only in a full-blown trial.”^[24]

Appellants maintain that the trial court erred in dismissing their complaint on the ground that their cause of action was truly for reversion which can only be initiated by the Solicitor General.

Appellants point-out that an action for reversion calls for the cancellation of a title that was actually issued to a private person when there is no other person claiming adverse ownership of the land. It is the remedy of the State in order to revert the subject parcel of land back to it, being its original owner. Such situation is not obtaining in the present case. In the case at bar, the petition alleged that the certificate of title (OCT 114) from which the certificate of title of appellee was derived, was never issued. OCT 114 does not exist but was merely inserted by corrupt persons into the registry of deeds. Hence, OCT 114 and all its derivative titles must be declared null and void. It is therefore clear that the trial court was mistaken in classifying the action instituted by them as one for reversion.

Anent the second assigned error, appellants contend that the court a quo forgot the rule that the allegations in the complaint alone determine the causes of action. It was an oversight on the part of the trial court to consider other facts in determining appellants' causes of action. It concluded that the case was one for reversion on erroneous reasoning that since their claim of ownership and possession on the property occurred only after June 12, 1925, the alleged date of the issuance of non-existent OCT 114, their action must be one for reversion that only the State can initiate. Appellants insist that the trial court should have confined itself only to the statements contained in their complaint in determining the existence of causes of action. Appellants posit that the allegations in their petition that OCT 114 has never existed; that since it is the source of the certificate of title of appellee, appellee's title is also non-existent; that OCT 114 and its derivative titles must therefore be declared as null and void; and that they have possessed the lot in controversy in the concept of the owner for at least two decades with no one ever applying for ownership or patent thereof, sufficiently show that their cause of action is one for the declaration of nullity of the non-existent OCT 114. They insisted that they have the personality to initiate the action.

Finally, appellants assert that appellee's affirmative defenses of forum shopping, res judicata and that the suit is essentially one for reversion should be threshed out in a full blown trial.

The arguments fail to convince this Court.

The issues in this case boil down to the following: (1) whether the case instituted by appellants before the court a quo is an action for reversion; and (2) whether appellee's affirmative defenses of forum shopping, res judicata and that the suit is essentially one for reversion should be threshed out in a full blown trial.

Heirs of Ambrocio Kionisala vs. Heirs of Honorio Dacut[25] distinguishes an action for reversion from an action for declaration of nullity of free patents and certificates of title as follows:

"An ordinary civil action for declaration of nullity of free patents and certificates of title is not the same as an action for reversion. The difference between them lies in the allegations as to the character of ownership of the realty whose title is sought to be nullified. In an action for reversion, the pertinent allegations in the complaint would admit State ownership of the disputed land. Hence in *Gabila v. Barriga* where the plaintiff in his complaint admits that he has no right to demand the cancellation or amendment of the defendant's title because even if the title were cancelled or amended the ownership of the land embraced therein or of the portion affected by the amendment would revert to the public domain, we ruled that the action was for reversion and that the only person or entity entitled to relief would be the Director of Lands.

On the other hand, a cause of action for declaration of nullity of free patent and certificate of title would require allegations of the plaintiff's ownership of the contested lot prior to the issuance of such free patent and certificate of title as well as the defendant's fraud or mistake, as the case may be, in successfully obtaining these documents of title over the parcel of land claimed by plaintiff. In such a case, the nullity arises strictly not from the fraud or deceit but from the fact that the land is beyond the jurisdiction of the Bureau of Lands to bestow and whatever patent or certificate of title obtained therefor is consequently void ab initio. The real party in interest is not the State but the plaintiff who alleges a pre-existing right of ownership over the parcel of land in question even before the grant of title to the defendant. Xxx."

Based on the above pronouncement of the High Court, plaintiff in an action for declaration of nullity title is required not only to allege his ownership over the property in controversy but also to allege that he exercises ownership over it prior to the issuance of title in favor of defendant, as well as the latter's fraud or mistake in successfully obtaining his title over the property. In this case, the complaint filed by appellants alleged that they claim ownership of the subject property for having possessed the same in the concept of an owner, openly, continuously, exclusively, adversely and notoriously for 23 years. However, they did not allege that their occupancy of the lot in the concept of owner was prior to the issuance of certificate of title in favor of appellee through fraud or mistake. Instead, they claim that the original title from which appellee's title derived from is spurious[26] which makes its derivative certificate of titles null and void. In addition, they maintain that the lot covered by the spurious original title was declared open for alienation and disposition since March 11, 1927 and no one has applied for ownership over the land covered by the alleged spurious title.[27]

The allegations of appellants in their complaint that the lot covered by the spurious original title was declared open for alienation and disposition since March 11, 1927 and that no one has applied for ownership over the land covered by the same spurious title in effect is an admission or a recognition on the part of appellants that the contested lot is a public land which belongs to the State.

The trial court was correct in holding that the ultimate effect of declaring OCT 114 void or inexistent would be the reversion of the property to the State.[28] Therefore, the action should be in the name of the government for even if the title of appellee would be declared null, it would not, as a matter of course, follow that the court may award the subject land to appellants. The courts have no authority to do that. The management and disposition of public land belong to the DENR Secretary, with the assistance of the Bureau of Lands. Section 4, Chapter 1, Title XIV of Executive Order No. 292 reads:[29]

"Section 4. Powers and Functions. - The Department [of Environment and Natural Resources] shall:

x x x

(4) Exercise supervision and control over forest lands, alienable and disposable public lands, mineral resources and, in the process of exercising such control, impose appropriate taxes, fees, charges, rentals and any such

form of levy and collect such revenues for the exploration, development, utilization or gathering of such resources;

x x x

(15) Exercise exclusive jurisdiction on the management and disposition of all lands of the public domain and serve as the sole agency responsible for classification, sub-classification, surveying and titling of lands in consultation with appropriate agencies[.] (Underscoring supplied.)”[30]

Under Section 14(f) of Executive Order No. 192,[31] the Director of the Lands Management Bureau has the duty, among others, to assist the DENR Secretary in carrying out the provisions of Commonwealth Act No. 141 (C.A. No. 141)[32] by having direct executive control of the survey, classification, lease, sale or any other forms of concession or disposition and management of the lands of the public domain.[33] The DENR, in the exercise of its jurisdiction to manage and dispose of public lands, must also determine the applicant’s entitlement (or lack of it) to a free patent.[34]

Since appellants in this case are not the owners of the lot in controversy, they are not the real parties in interest under the rules,[35] who have the legal personality to sue appellee. The land as alleged in their complaint is an alienable and disposable land which is not yet registered in favor of anyone. Hence, the same still belongs to the State who stands to be benefited or injured by the outcome of the litigation involving the said property. Therefore, the State is the real party in interest which is entitled to institute the action against appellee to defend its claim.

WE also find untenable the contention of appellants that appellee’s affirmative defenses should be resolved only after a full blown trial.

Section 6, Rule 16 of the 1997 Rules of Civil Procedure only provides for a preliminary hearing on affirmative defenses and the conduct thereof even rests on the sound discretion of the court, viz -

“SEC. 6. Pleading grounds as affirmative defenses.- If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed. ...”

When the defendant perceives that a ground for dismissal of the complaint exists, the better procedure would be to file a motion to dismiss. If, however, none is filed, that ground may be pleaded in the answer as an affirmative defense and a preliminary hearing may be had thereon.[36]

Moreover, considering the nature of the affirmative defenses put up by appellee, a full dress trial is not necessary. They may be resolved on the basis alone of the parties’ pleadings.

WE sustain the finding of the trial court that the complaint filed by appellants is dismissible on the following grounds, to wit: res judicata, forum shopping and that the action is one for reversion.

The principle of res judicata is applicable.

The decision in Civil Case No. 98-4775 which already attained finality bars the litigation of the case filed by herein appellants before the court a quo.

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." [37] Res judicata lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. [38]

The elements of res judicata are: (1) the judgment sought to bar the new action must be final; (2) the decision

must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second actions, identity of parties, subject matter, and causes of action.[39]

All the foregoing elements are present in this case. As regards the fourth requisite, although it was the Urband Land Reform Beneficiaries Association, Inc. who instituted the first action (Civil Case No. 98-4775) where it sought the declaration of nullity of OCT 114 and its derivative titles against herein appellee, there is still identity of parties as between the said first action and the second action (Civil Case No. 12-9645) subject of this appeal. For purposes of res judicata, only substantial identity is required and not absolute identity.[40] There is substantial identity of parties when there is community of interest between a party in the first case and a party in the second case even if the latter was not impleaded in the first case.[41] Appellants in this case are members of the Urband Land Reform Beneficiaries Association, Inc. As such, the decision in the earlier case, Civil Case No. 98-4775, is binding on appellants. Evidently, there is substantial identity of parties in the two cases.

There is also identity of subject matter in Civil Case No. 98-4775 and Civil Case No. 12-9645 since the complaints in both cases pertain to the same land covered by the mother title OCT 114.

The first and second case likewise have similar cause of action proceeding from the alleged nullity of OCT 114. The argument in both cases is that OCT 114 could not have been issued in 1925 because the land covered by said title was still part of the Forest Zone at that time. Appellants are seeking exactly the same reliefs as those sought by the Urband Land Reform Beneficiaries Association, Inc. in the first case which were already passed upon by the Regional Trial Court of Antipolo, Branch 73 (hereinafter, "RTC Branch 73") in its decision dated July 7, 2004 in Civil Case No. 98-4775, viz -

"The plaintiff (Urband Land Reform Beneficiaries Association, Inc.) seeks the annulment of OCT 114 and its derivative titles, on the ground that the OCT, having been issued in 1925 pursuant to a Homestead Patent, when the land was still part of the Forest Zone. The OCT allegedly is null and void, as the land became alienable and disposable only on March 11, 1927.

However, there was proof that the property undertook several transfer of ownership. And there is no evidence that the defendants (Barrio Cupang Homeowners Association, Inc. and Cupang II Homeowner's Association, Inc. [herein appellant]) are purchasers in bad faith; neither is there evidence that the original owners have fraudulently secured title to the property.

It had been repeatedly held that, unless bad faith can be established on the part of the person appearing as owner on the certificate of title, there is no other owner than that in whose favor it has been issued (Villanueva vs. CA,) 193 SCRA 472)

And since the alleged nullity of title is attributable to an irregularity substantive and not procedural in nature, only the state, by an action for reversion, can question the same, as testified and suggested by a witness for the plaintiff."[42]

Res judicata rests on the principle that parties ought not to be permitted to litigate the same issues more than once; that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.[43]

Appellants committed forum shopping.

There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and

circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." [44] Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets. [45]

An important factor in determining its existence is the vexation caused to the courts and the parties-litigants by the filing of similar cases to claim substantially the same reliefs. [46]

The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration. [47] All the foregoing elements of forum shopping are present in this case. After RTC Branch 73 dismissed the case for declaration of nullity of OCT 114 and its derivative titles filed by Urban Land Reform Beneficiaries Association, Inc. (Civil Case No. 98-4775), herein appellants who are members of the aforesaid association initiated an action which likewise sought the declaration of nullity of OCT 114 and its derivative titles (Civil Case No. 12-9645).

The case instituted by appellants is one for reversion.

For reasons already discussed above, WE maintain that the case filed by herein appellants cannot be considered as one for declaration of nullity of title.

Meanwhile, after the instant appeal has been declared submitted for decision on October 31, 2014, a motion for leave to intervene was filed by the heirs of Perry Samonte on November 14, 2014. They claimed that they are the registered owners of TCT No. 163-2013000640. They alleged that they learned that there is now a notice of *lis pendens* annotated at the back of their title relating to Civil Case No. 12-9645 which was dismissed by the court *a quo* and the subject of the present appeal. They prayed for the cancellation of the *lis pendens* annotation since their certificate of title is not among the alleged derivative titles of OCT 114 in the complaint and appellants merely caused the annotation to harass them or just to indiscriminately include all the certificates of title covering properties located within the vicinity of the property in dispute.

To avoid delay in the disposition of the case, WE opt to already resolve the said Motion. Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose: to enable the third party to protect or preserve a right or interest that may be affected by those proceedings. [48] This remedy, however, is not a matter of right. Rule 19 of the Rules of Court provides, thus - [49]

“Sec. 1. Who may intervene. - A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Sec. 2. Time to intervene. - The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.”

It can be readily discerned from the foregoing that intervention is left to the trial court's sound discretion. The trial

court must not only determine if the requisite legal interest is present, but also take into consideration the delay and the consequent prejudice to the original parties that the intervention will cause. Both requirements must concur, as the first requirement on legal interest is not more important than the second requirement that no delay and prejudice should result.[50] To help ensure that delay does not result from the granting of a motion to intervene, the Rules also explicitly say that intervention may be allowed only before rendition of judgment by the trial court.[51]

In *Executive Secretary vs. Northeast Freight*,[52] the High Court made clear that:

“Intervention is not a matter of absolute right but may be permitted by the court when the applicant shows facts which satisfy the requirements of the statute authorizing intervention. Under our Rules of Court, what qualifies a person to intervene is his possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both; or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof. As regards the legal interest as qualifying factor, this Court has ruled that such interest must be of a direct and immediate character so that the intervenor will either gain or lose by the direct legal operation of the judgment. The interest must be actual and material, a concern which is more than mere curiosity, or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral. However, notwithstanding the presence of a legal interest, permission to intervene is subject to the sound discretion of the court, the exercise of which is limited by considering whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding.”

Applying the above ruling, the heirs of Perry Samonte may not be permitted to intervene. They failed to show that they have legal interest in the matter in litigation. The subject of the case filed by herein appellants pertains to land covered by OCT 114. Since the heirs of Perry Samonte claim that their certificate of title was not derived from OCT 114, the outcome of the extant case cannot affect them. Besides, with the dismissal of the main case, there is no more case in which they may intervene. It is well-settled that intervention cannot exist as an independent action; it is merely ancillary and supplemental to an existing litigation[53]. This is not to say that the intervention was belatedly sought. The motion for intervention must be filed before the rendition of judgment by the trial court, not appellate court.

WHEREFORE, premises considered, the Decision under review is hereby **AFFIRMED**.

Accordingly, the appeal is **DISMISSED**.

The Motion for Leave to Intervene filed by the heirs of Perry Samonte is **DENIED**.

SO ORDERED.

Barrios, M.M., and Reyes-Carpio, A.,[*] JJ., concur.

[*] Vice J. Noel G. Tijam, who is on leave as per Office Order No. 493-14-RSF, dated November 28, 2014.

[1] Rollo, pp. 17-31

[2] *Id.*, pp. 32-40

[3] *Id.*, pp. 41-43

[4] Record, p. 11

- [5] Id.,pp.39-40
- [6] Id.,p.43
- [7] Id.,p.44
- [8] Id.,p.45
- [9] Record,pp.14-15
- [10] TSN, October 15, 2012, p.9; Record,pp.270-278.
- [11] TSN, October 15, 2012, p.9; Record,p.279.
- [12] TSN, October 5, 2012, p.10;Record,pp.282-283.
- [13] Record,p.282-A
- [14] Id.,pp.283 and 308.
- [15] TSN, October 15, 2012, p.12; Record,p.315.
- [16] TSN, October 15, 2012, p.12; Record,p.319.
- [17] TSN, October 15, 2012, p.13; Record,pp.286-287.
- [18] Record,p.309.
- [19] Rollo,pp.32-34
- [20] Id.,p.34
- [21] Id.,pp.32-40
- [22] Id.,p.34
- [23] Id.,pp.41-43
- [24] Id.,pp.18-19
- [25] G.R. No. 147379, February 27, 2002.
- [26] Record,p.13
- [27] Id.
- [28] Rollo,p.36
- [29] See Bagunu vs. Sps. Aggabao, G.R. No. 186487, August 15, 2011.
- [30] Id.
- [31] Providing for the Reorganization of the Department of Environment, Energy and Natural Resources, Renaming it as the Department of Environment and Natural Resources, and for Other Purposes, June 10, 1987.
- [32] Otherwise known as The Public Land Act.
- [33] Bagunu vs. Sps. Aggabao, supra.
- [34] Id.

[35] Rule 3, Section 2 of the 1997 Rules of Civil Procedure states:

“Section 2. Parties in interest - A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be presented or defended in the name of the real party in interest.”

[36] Gubat, The 1997 Rules of Civil Procedure Annotated, First Edition, p. 245.

[37] Manila Electric Company vs. Philippine Consumers Foundation, Inc., G.R. No. 101783, January 23, 2002.

[38] Oropeza Marketing Corporation vs. Allied Banking Corporation, G.R. No. 129788, December 2002, 393 SCRA 278, 286.

[39] Republic vs. Court of Appeals, G.R. No. 103412, February 3, 2000 citing Casil vs. Court of Appeals, G.R. No. 121534, January 28, 1998.

[40] Republic, et al. vs. CA, G.R. No. 103412, February 3, 2000.

[41] Sps. Serrano vs. CA, et al., G.R. No.122930, February 6, 2002; Heirs of de Leon vda. De Roxas vs. CA, et al., G.R. No. 138660, February 5, 2004.

[42] Record, pp. 277-278.

[43] Gubat, The 1997 Rules of Civil Procedure Annotated, First Edition, pp. 226-227 citing Calalang vs. Register of Deeds of Quezon City, G.R. No. 76265; and De Leon vs. CA, G.R. No. 83280, March 11, 1994; Kilayko vs. Tengco, G.R. No. 45425, March 27, 1992.

[44] Heirs of Marcelo Sotto, et al. vs. Palicte, G.R. No. 159691, February 17, 2014 citing Chua vs. Metropolitan Bank & Trust Company, G.R. No. 182311, August 19, 2009.

[45] Heirs of Marcelo Sotto, et al. vs. Palicte, supra, citing Executive Secretary vs. Gordon, G.R. No. 134171, November 18, 1998.

[46] Heirs of Marcelo Sotto, et al. vs. Palicte, supra, citing Foronda vs. Guerrero, A.C. No. 5469, August 10, 2004.

[47] Heirs of Marcelo Sotto, et al. vs. Palicte, supra.

[48] Ongco vs. Dalisay, G.R. No. 190810, July 18, 2012 citing Hi-Tone Marketing Corporation vs. Baikal Realty Corporation, 480 Phil. 545 (2004).

[49] See Ongco vs. Dalisay, supra.

[50] Ongco vs. Dalisay, supra, citing Magsaysay-Labrador vs. CA, 259 Phil 748 (1989).

[51] Ongco vs. Dalisay, supra.

[52] G.R. No. 179516, March 17, 2009.

[53] Republic v. Sandiganbayan, 182 SCRA 911, 918 [1990]; Chavez v. Ongpin, 186 SCRA 331, 338 [1990]; Saw v. Court of Appeals, 195 SCRA 740, 746 [1991]; Islamic Directorate of the Philippines v. Court of Appeals, 338 Phil. 970, 980-981 [1997]; Clareza v. Rosales, 2 SCRA 455, 457-458 [1961]; Barangay Matictic v. Elbinias, 148 SCRA 83, 89 [1987]; Ordoñez v. Gustilo, 192 SCRA 469, 475 [1990].

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