

VICENTE G. DIVINA, PETITIONER, VS. HON. COURT OF APPEALS AND VILMA GAJO-SY, RESPONDENTS.

G.R. No. 117734. February 22, 2001

Ponente: QUISUMBING, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-117734/>

QUISUMBING, J.:

Before us is a petition for review of the decision[1] dated October 27, 1994 of the Court of Appeals in CA-GR CV No. 03068 reversing and setting aside the judgment dated July 7, 1979 of the Court of First Instance of Sorsogon, Branch II, in LRC Case No. N-147.

The facts of this case are as follows:

Lot No. 1893 located at Gubat, Sorsogon, was originally owned by Antonio Berosa. On July 22, 1960, he sold it to Teotimo Berosa. The portion is particularly described as:

"A parcel of land unirrigated situated in San Ignacio, Gubat, Sorsogon, Philippines, with an area of TWENTY THOUSAND (20,000) square meters and bounded on the North by Lot #1464 - Fausto Ayson and Lot #1888 - Gloria Fajardo; on the East, by Lot # 1446 - Silverio Garcia; on the South, by Lot #1891 - Antonio Escobedo and on the West, by Lot #1880 - Federico Faronas and Lot #1890 - Eugenia Espedido. Cadastral concrete posts are the visible signs of boundary. It has no permanent improvement thereon. Designated as Lot 1893 of Antonio Berosa. Declared under Tax No. 13038, valued at P760.00 for the current year in the name of ANTONIO BEROSA"[2]

On March 23, 1961, the Berosa spouses sold the same Lot 1893 to Jose P. Gamos. In the deed of sale to Gamos, the lot was more particularly described as:

"A parcel of RICE land situated in San Ignacio, Gubat, Sorsogon, Philippines, with an area of TWENTY THOUSAND (20,000) square meters and bounded on the North, by Lot #1462 - Fausto Ayson and Lot #1888 - Gloria F. Estonante; on the East, by Lot #1464 - Zacarias Espadilla; and Lot #1466 - Felix Arimado; on the South, by Lot #1898 - Silverio Garcia; and on the West, by Lot #1890 - Eugenia Espedido and Lot #1892 - Antonio Escobedo. Concrete cements posts are the visible signs of boundary. No permanent improvements thereon. Covered by Lot #1893 of Teotimo E. Berosa, and declared under Tax No. 13039, valued at P760.00 for the present year in the name of TEOTIMO E. BEROSA."[3]

On April 26, 1960, Gamos acquired from the heirs of Felix Arimado, a boundary owner of Lot 1893, a 20,687 sq. m. parcel of land identified as Lot 1466, also in Gubat. It adjoins Lot 1893. On March 28, 1961, Gamos had these two parcels of land under Tax Declaration No. 13237 and declared it had a total area of 4.0867 hectares. He also had the property resurveyed by private land surveyor Antonio Tiotangco. In 1967, Tax Declaration No. 13237 was cancelled by Tax Declaration No. 9032 in Gamos' name.

The re-survey plan (AP-9021), of Lots 1466 and 1893 conducted on June 16, 1961 for Gamos, showed that the consolidated properties contained a total area of 100,034 sq. m. This plan was approved on July 12, 1961 by the Acting Director of Lands.

On November 23, 1968, Tax Declaration No. 12927 which cancelled Tax Declaration No. 9032 was secured by Gamos and declared therein that the area of the consolidated property was 10.0034 hectares with 2500 sq. m. planted to coconut, 3.8187 irrigated for rice planting and 5.9347 were thickets.

On January 19, 1967, Teotimo Berosa conveyed to Vicente G. Divina, herein petitioner, a portion of Lot 1893 referred to as Lot 1893-B. It is described as follows:

"A parcel of dry and thicket land situated in San Ignacio, Gubat, Sorsogon, Philippines, having an area of 54,818 square meters and bounded on the N., by Lot 1888 (Inocencio Eroo); Lot 1887 (Jaime Enaje); and Lot 1462 (Heirs of Zacarias Espadilla); on the (Illegible), by Lot 1466; on the SE, by Lot 1893-A; on the S., by Lot 1898 (Heirs of Silverio Garcia); on the E., by Lot 1892 (Antonio Escobedo) and Lot 1890 (Eugenia Espedido); and on the NE, by Lot 1889 (Pedro Fajardo); all of Gubat Cadastre. NOTE: This lot is designed as Lot 1893-B, a portion of Lot 1893, Cad 308-D".[4]

On November 28, 1968, two years from the date of said sale and five (5) days after November 23, 1968, when Gamos secured Tax Declaration No. 12927 declaring the consolidated property as containing 100,034 sq. m., the deed of sale was registered. An undated "Subdivision PLAN" of Lot 1893, was prepared for petitioner. The plan, without Bureau of Lands approval, showed that Lot 1893 was divided into two, Lot 1893-A and Lot 1893-B.

On July 24, 1970 Gamos sold the consolidated property to private respondent Vilma Gajo-Sy, for P20,000.00. The land was particularly described as follows:

"A parcel of land located at San Ignacio, Gubat, Sorsogon, under Tax Declaration No. 12927 in the name of Jose P. Gamos, covered by Lots No. 1466 and 1893 of the Gubat Cadastre, with an area of 100,034 sq. m., more or less...."[5]

On July 29, 1970, Tax Declaration No. 13768 secured by private respondent, was cancelled by Tax Declaration No. 12509.

On August 28, 1972, she filed an application for registration of title to the property at the then Court of First Instance of Sorsogon, docketed as LRC Case No. N-147, GLRO Record No. 42920. The application was amended on March 8, 1973, on order of Branch II of the said court "to include therein the postal address of Inocencio Erpe, adjoining owner of Lot No. 1893 described in Plan AP-9021".

The land registration court, by Decision of July 29, 1975, ordered the registration of private respondent's title over Lots Nos. 1466 and 1893.

On July 13, 1977, pending issuance of the final decree of registration petitioner filed before the same court a Petition for Review of the July 29, 1975 judgment. He alleged that he is the owner of a portion of Lot 1893 consisting of 54,818 sq. m. conveyed to him by Teotimo Berosa on January 19, 1967; that he was unaware of the registration proceedings on Lot 1893 due to private respondent's failure to give him notice and post any notice in the subject lot; and that private respondent fraudulently misrepresented herself as the owner of the disputed portion despite her knowledge that another person had acquired the same.

Private respondent opposed the petition alleging that the registration case had long become final and the court no longer had any jurisdiction thereon; and that lack of personal notice to the petitioner of the registration proceedings did not constitute actual fraud.

The trial court, in its Decision[6] dated June 7, 1979, found that the petition for review was timely filed. It also ruled that the failure of private respondent to include a known claimant in her application for registration constituted "deliberate misrepresentation that the lot subject of her application is not contested when in fact it was. Private respondent, according to the trial court, should have included in her application at least "the person of

petitioner's cousin, Elena Domalaon" who had, before respondent filed her application for registration, made known to the latter's sister her apprehension of "their land" being included in respondent's application for registration. This misrepresentation, according to the court, amounted to fraud within the contemplation of Section 38 of Act 496.[7] The trial court in its decision disposed as follows:

WHEREFORE, judgment is hereby rendered:

(a)

Setting aside the Decision rendered in the land registration case and revoking the order for the issuance of a Decree;

(b)

Declaring petitioner Vicente G. Divina the owner of the portion of the land applied for containing an area of 54,818 square meters which is described in paragraph 3 of the Petition for Review of Judgment; and

(c)

Allowing this land registration case to proceed as to the portion applied for which is outside the limits of the portion herein awarded to the petitioner Vicente G. Divina; and

(d)

Ordering a subdivision survey of the lots applied for, delimiting therein the area not contested and which is registrable in favor of applicant Vilma Gajo-Sy, and the area herein adjudicated to petitioner Vicente G. Divina, as to whom the land registration proceedings shall likewise be allowed to proceed after he shall have adduced such other evidence as are appropriate in land registration cases.

SO ORDERED.[8]

Private respondent assailed the decision of the trial court before the Court of Appeals. It averred that the trial court erred (1) in declaring petitioner-appellee owner of a portion of Lot 1893, in ordering a subdivision survey, and allowing petitioner-appellee to proceed with registration after adducing evidence as are appropriate; (2) in declaring respondent-appellant guilty of "actual fraud" in the land registration case; (3) in taking cognizance of the petition for review of judgment, setting aside the decision dated June 29, 1975, and revoking the order of the issuance of the final decree in the land registration case; and (4) in not dismissing the petition for review of judgment with cost.[9]

The CA reversed the trial court and dismissed the petition. It ruled:

In the case at bar, petitioner-appellee did not indeed appear in the survey plan as an adjoining owner of the subject property. Neither was he a known claimant or possessor of the questioned portion of Lot 1893 which was found by the court a quo to be untouched and thickly planted with bigaho. A fortiori, there was no need to mention in the application for registration the apprehension or claim of "at least" petitioner-appellee's cousin Evelyn (sic) Domalaon in the application for registration, nor to personally notify Elena about registration proceeding.

There could, therefore, have been no misrepresentation in any form on the part of respondent-appellee.

x x x

There being no extrinsic or collateral fraud attendant to the registration of the property in the name of respondent-appellee, We find it unnecessary to discuss the rest of the assigned errors. Suffice it to state that Lot 1893 bought by Teotimo Berosa which he sold to Jose P. Gamos who in turn sold it to respondent-appellee in 1970 was designated by boundaries in such a manner as to put its identity beyond doubt; that the total area of

Lot 1893 lot was determined after a resurvey/relocation was conducted for Gamos in 1961 the result of which is reflected in the Plan approved by the Bureau of Lands also in 1961; that what really defines a piece of land is not the area but the boundaries therein laid down (Peña, Registration of Land Titles and Deeds, 1988 Edition, p. 213); that the "Lot 1893-B" sold to petitioner-appellee made no mention of any tax declaration covering it, unlike the different deeds of sale covering Lot 1893, thereby raising the presumption that "Lot 1893-B" was really part of the Lot 1893 sold by Gamos to respondent-appellant; and that the "subdivision" of Lot 1893 into Lots A and B, caused to be made by petitioner-appellee who claims Lot 1893-B to have been the "Lot 1893-B" subject of the January 19, 1967 Deed of Sale in his favor which was registered on November 28, 1968, appears to have been made in 1977, ten years from the date of said deed of sale, a confirmation that there was no such "Lot 1893-B" subject of his purchase in 1967; and in any event, as the subdivision survey prepared for petitioner-appellee was not approved by the Bureau of Lands, it is not of much value (vide *Flores vs. Director of Lands*, 17 Phil. 512 [1910]).

In fine, not all the basic elements for the allowance of the reopening or review of the judgment rendered in the land registration case in respondent-appellant's favor are present. The present appeal is thus meritorious.

WHEREFORE, the assailed judgment is hereby REVERSED and set aside and another rendered DISMISSING petitioner-appellee's petition at the court a quo.[10]

Hence, the present petition. Petitioner now assails the reversal of the Court of Appeals of the trial court decision. In substance, he raises the primary issue of whether or not, there was deliberate misrepresentation constituting actual fraud on private respondent's part when she failed to give or post notice to petitioner of her application for registration of the contested land, such that it was error for the trial court to declare private respondent owner of the disputed land.

Prefatorily, on the timeliness of the petition for review of judgment, we have repeatedly said that the adjudication in a registration of a cadastral case does not become final and incontrovertible until the expiration of one year after the entry of then final decree. As long as the final decree is not issued, and the one year within which it may be revised had not elapsed, the decision remains under the control and sound discretion of the court rendering the decree, which court after hearing may set aside the decision or decree or adjudicate the land to another party.[11] In the present case, a certification was issued by the Land Registration Commission that no final decree of registration had yet been issued and by the order of the trial court dated September 28, 1977, it restrained the Commission from issuing such a decree. Clearly, the tolling of the one year period has not even begun. Thus, the trial court did not err when it entertained the petition.

Now, we consider the crux of the petition. Both the trial and appellate courts found that petitioner's name did not appear in the survey plan as an adjacent owner, nor claimant nor possessor. However, the trial and appellate courts differed in their conclusion on whether or not there was deliberate misrepresentation constituting fraud in private respondent's part when it failed to give notice or post notice to potential claimant and include their names in the application for registration. The trial court said there was, but the appellate court disagreed.

Section 15 of P.D. 1529[12] is explicit in requiring that in the application for registration of land titles, the application "shall also state the full names and addresses of all occupants of the land and those of the adjoining owners if known, and if not known, it shall state the extent of the search made to find them." As early as *Francisco vs. Court of Appeals*, 97 SCRA 22 [1980] we emphasized that a mere statement of the lack of knowledge of the names of the occupants and adjoining owners is not sufficient but "what search has been made to find them is necessary." The trial court was correct when it took notice that respondent's sister Lydia Gajo-Anonuevo admitted that she had a conversation with petitioner's cousin Elena Dumalaon about the latter's apprehension that their land may have been included in respondent's application for registration of the disputed land.[13] Respondent's omission of this material information prevented petitioner from having his day in court.

The trial court in its decision more than amply supported its conclusion with jurisprudence to the effect that it is fraud to knowingly omit or conceal a fact upon which benefit is obtained to the prejudice of a third person.[14] Such omission can not but be deliberate misrepresentation constituting fraud, a basis for allowing a petition for review of judgment under Section 38 of Act No. 496, The Land Registration Act.

Additionally, it should be noted that petitioner acquired the bigger portion of Lot 1893 long after the initial survey of Barrio San Ignacio. Teotimo Berosa sold Lot 1893 to Jose P. Gamos who in turn sold it to respondent in 1970. Clearly, going by the records, petitioner's name would not be found on the said survey plan approved by the Bureau of Lands in 1961, years before his purchase of the portion of Lot 1893. Petitioner's claim is clearly meritorious.

WHEREFORE, the petition is GRANTED. The assailed decision of the Court of Appeals dated October 24, 1994 is REVERSED and SET ASIDE. The judgment in LRC Case No. N-147 of the then Court of First Instance, Branch II in Gubat, Sorsogon is REINSTATED. Costs against private respondent.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 21-32.

[2] Id. at 21-22; Records, p. 17.

[3] Id. at 22 only.

[4] Id. at 23-24.

[5] Id. at 24 only.

[6] Id. at 36-44.

[7] Sec. 38. If the Court after hearing finds that the applicant or adverse claimant has title as stated in his application or adverse claim and proper for registration, a decree of confirmation and registration shall be entered. Every decree of registration shall bind the land, and quiet title thereto, subject only to the exceptions stated in the following section. It shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description "To all whom it may concern." Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decrees; 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 the entry of the decree, provided no innocent purchaser for value has acquired an interest. Upon the expiration of said term of one year, every decree or certificate of title issued in accordance with this section shall be incontrovertible. If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal herein before provided: Provided, however, That no decree or certificate of title issued to persons not parties to the appeal shall be cancelled or annulled. But any person aggrieved by such decree in any case may pursue his remedy by action for damages against the applicant or any other person for fraud in procuring the decree. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Act, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value. (As amended by Section 3, Act 3621; and Sec. 1, Act No. 3630). [Emphasis ours.]

[8] Rollo, p. 44.

[9] Id. at 12.

[10] Rollo, pp. 29-32.

[11] *Laburada vs. Land Registration Authority*, 287 SCRA 333, 341 (1998) citing *Gomez vs. Court of Appeals*, 168 SCRA 503 (1988); *Republic vs. Asociacion Benevola de Cebu*, 178 SCRA 692, 699 (1989) citing *Afalla and Pinaroc vs. Rosauero*, 60 Phil 622 (1934); *Capio vs. Capio*, 94 Phil 113 (1953).

[12] SEC. 15. Form and contents.--The application for land registration shall be in writing, signed by the applicant or the person duly authorized in his behalf, and sworn to before any officer authorized to administer oaths for the province or city where the application was actually signed. If there is more than one applicant, the application shall be signed and sworn to by and in behalf of each. The application shall contain a description of the land shall state the citizenship and civil status of the applicant, whether single or married, and, if married, the name of the wife or husband, and, if the marriage has been legally dissolved, when and how the marriage relation terminated. It shall also state the full names and addresses of all occupants of the land and those of the adjoining owners, if known, and if not known, it shall state the extent of the search made to find them.

[13] Rollo, pp. 40-41.

[14] *Varela vs. Villanueva*, 95 Phil 248 (1954); *Labayen vs. Talisay-Silay Milling Co.*, 68 Phil 376 (1939); and *Palanca vs. American Food Manufacturing Co.*, 24 SCRA 819, 827 (1968).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.