

**CONSUELO N. VDA. DE GUALBERTO, FE GUALBERTO-CHAVEZ,  
AMADOR GUALBERTO, CESAR GUALBERTO, RODOLFO GUALBERTO,  
LUZVIMINDA GUALBERTO MIRANA, AND VIRGINIA GUALBERTO,  
PETITIONERS, VS. F...**

*G.R. No. 139843. July 21, 2005*

Ponente: GARCIA, J.

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**GARCIA, J.:**

Before the Court is this petition for review on certiorari under Rule 45 of the Rules of Court to nullify and set aside the following issuances of the Court of Appeals in CA-G.R. CV No. 57690, to wit:

1)

Decision[1] dated May 21, 1999, affirming, with modification, an earlier decision of the Regional Trial Court at Siniloan, Laguna in an action for conveyance, accion publiciana, and quieting of title with damages, thereat commenced by the petitioners against the herein respondents; and

2)

Resolution[2] dated August 25, 1999, denying petitioners' motion for reconsideration.

The pertinent factual antecedents as found by the two (2) courts below may be briefly summarized, as follows:

Petitioners are the heirs of the late Generoso Gualberto, former registered owner of a parcel of land situated at Redor Street, Barangay Redor, Siniloan, Laguna under Transfer Certificate of Title (TCT) No. 9203, containing an area of 169.59 square meters, more or less, and declared for taxation purposes under Tax Declaration No. 4869.

Sometime in 1965, the subject parcel of land was sold by Generoso Gualberto and his wife, herein petitioner Consuelo Natividad Vda. De Gualberto (Consuelo, for brevity), to respondents' father Go S. Kiang for P9,000.00, as evidenced by a deed entitled "Kasulatan ng Bilihang Tuluyan"[3] dated January 15, 1965 ("Kasulatan", for brevity), which deed appears to have been duly notarized by then Municipal Judge Pascual L. Serrano of the Municipal Court of Siniloan, Laguna and recorded in his registry as Doc. No. 9, Page No. 12, Book No.12, Series of 1965[4].

On April 1, 1973, petitioner Consuelo executed an Affidavit[5] attesting to the fact that the aforementioned parcel of land had truly been sold by her and her husband Generoso to the spouses Go S. Kiang and Rosa Javier Go, as borne by the said "Kasulatan". Evidently, the affidavit was executed for purposes of securing a new tax declaration in the name of the spouses Go.

In December, 1973, in a case for Unlawful Detainer filed by a certain Demetria Garcia against herein petitioners, the latter alleged that therein plaintiff Garcia "is not a real party in interest and therefore has no legal capacity and cause of action to sue the defendants; that the real parties in interest of the parcel of commercial land and the

residential apartment in question are Generoso Gualberto and Go S. Kiang respectively as shown by TCT No. 9203 issued by the Register of Deeds of Laguna."[6]

In a Forcible Entry case filed by respondents against petitioners before the Municipal Circuit Trial Court of Siniloan-Famy, Siniloan, Laguna docketed as Civil Case No. 336, a decision was rendered in favor of respondents, which decision was affirmed in toto by the RTC of Siniloan, Laguna. When elevated to the Court of Appeals, that same decision was affirmed by the latter court, saying that "the Court finds that the judgment of the court a quo affirming the previous judgment of the municipal court is supported by sufficient and satisfactory evidence and there is no reason for the Court to hold otherwise."[7]

In the meantime, on June 14, 1978, Original Certificate of Title (OCT) No. 1388 was issued in the name of respondent Rosa Javier Go, wife of Go S. Kiang.

Such was the state of things when, on August 10, 1995, in the Regional Trial Court at Siniloan, Laguna petitioners filed against respondents their complaint[8] in this case for Conveyance, Accion Publiciana, and Quieting of Title with Damages, thereat docketed as Civil Case No. S-690. After due proceedings, the trial court, in a decision[9] dated August 28, 1997, dismissed petitioners' complaint and ordered them to pay attorney's fees to respondents, thus:

WHEREFORE, premises considered, judgment is hereby rendered ordering the dismissal of the complaint. Plaintiffs are hereby ordered to pay defendants the amount of P10,000.00 for and as Attorney's fees. To pay the cost.

SO ORDERED.

On appeal to the Court of Appeals in CA-G.R. CV No. 57690, the appellate court, in the herein assailed decision dated May 21, 1999,[10] affirmed that of the trial court, minus the award of attorney's fees, to wit:

WHEREFORE, subject to the modification as above indicated, the decision appealed from is hereby AFFIRMED. Without pronouncement as costs.

SO ORDERED.

With their motion for reconsideration having been denied by the same court in its resolution of August 25, 1999, petitioners are now with us, commending for our resolution the following issues:

- WHETHER OR NOT A TITLED PROPERTY CAN BE THE SUBJECT OF A FREE PATENT TITLE.
- WHETHER OR NOT THE RIGHT OF A REGISTERED OWNER TO DEMAND THE RETURN OF HIS PROPERTY CAN BE LOST BY PRESCRIPTION OR LACHES.
- WHETHER AN ACTION FOR RECONVEYANCE OF PROPERTY BASED ON A NULLITY OF TITLE PRESCRIBES.

We DENY.

The first issue raised by petitioners attacks the validity of respondent Rosa Javier Go's free patent title. This cannot be done in the present recourse for two (2) basic reasons: first, the validity of a torrens title cannot be assailed collaterally; and second, the issue is being raised for the first time before this Court.

In *Trinidad vs. Intermediate Appellate Court*,[11] the Court reiterated the doctrine on the indefeasibility of a torrens title in this wise:

The said property is covered by TCT No. 102167 of the Registry of Deeds of Quezon City. Under the Land

Registration Act, title to the property covered by a Torrens certificate becomes indefeasible after the expiration of one year from the entry of the decree of registration. Such decree of registration is incontrovertible and is binding on all persons whether or not they were notified of or participated in the registration proceedings.

If such title is to be challenged, it may not be done collaterally, as in the present case, because the judicial action required is a direct attack. Section 48 of the Property Registration Decree expressly provides that a certificate of title cannot be subject to collateral attack and can be altered, modified or cancelled only in a direct proceeding in accordance with law. This was the same rule under Act 496.

To stress, the action filed by petitioners is one for "Conveyance, Accion Publiciana, and Quieting of Title With Damages", and not an action for annulment of OCT No. 1388 issued to Rosa Javier Go. We, therefore, cannot entertain the issue in the present petition for review on certiorari.

Besides, as it may readily be noted, petitioners never raised this issue before any of the two (2) courts below. As it is, the issue is being raised only for the first time in this petition before this Court. Settled is the rule that issues not raised in the proceedings below cannot be raised for the first time on appeal.

In *Labor Congress of the Philippines vs. NLRC*,<sup>[12]</sup> we have made it clear that "to allow fresh issues on appeal is violative of the rudiments of fair play, justice and due process."<sup>[13]</sup> Likewise, in *Orosa vs. Court of Appeals*<sup>[14]</sup>, the Court disallowed it because "it would be offensive to the basic rule of fair play, justice and due process if it considered issue raised for the first time on appeal." We cannot take an opposite stance in the present case.

The next two (2) remaining issues boil down to whether or not a registered owner's right to assail the validity of his defendant's title and to thereafter seek reconveyance thereof, may be lost by prescription or laches. Being interrelated, these will be addressed jointly.

The doctrine governing prescription of actions for reconveyance of real property was clearly stated by the Court in *Salvatierra vs. Court of Appeals*,<sup>[15]</sup> as follows:

At this juncture, we find the need to remind the court a quo as well as other trial courts to keep abreast with the latest jurisprudence so as not to cause possible miscarriages of justice in the disposition of the cases before them. In the relatively recent case of *Caro v. CA*, 180 SCRA 401, the Supreme Court clarified the seemingly confusing precedents on the matter of prescription of actions for reconveyance of real property, as follows:

"We disagree. The case of *Liwalug Amerold, et al. v. Molok Bagumbaran*, G.R. L-33261, September 30, 1987, 154 SCRA 396 illuminated what used to be a gray area on the prescriptive period for an action to reconvey the title to real property and corrolarily, its point of reference:

"x x x. It must be remembered that before August 30, 1950, the date of the effectivity of the new Civil Code, the Old Code of Civil Procedure (Act No. 190) governed prescription. It provided:

"SEC. 43. Other civil actions; how limited. - Civil actions other than for the recovery of real property can only be brought within the following periods after the right of action accrues:

"3. Within four years: x x x An action for relief on the ground of fraud, but the right of action in such case shall not be deemed to have accrued until the discovery of the fraud:

x x x x x x x x

"In contract (sic) under the present Civil Code, we find that just as an implied or constructive trust in (sic) an offspring of the law (Art. 1465, Civil Code), so is the corresponding obligation to reconvey the property and the title thereto in favor of the true owner. In this context, and vis-à-vis prescription, Article 1144 of the Civil Code is applicable.

"Article 1144. The following actions must be brought within ten years from the time the right of action

accrues:

- 1) Upon a written contract;
- 2) Upon an obligation created by law;
- 3) Upon a judgment;

x x x x x x x x

`An action for reconveyance based on an implied or constructive trust must perforce prescribe in ten years and not otherwise. A long line of decisions of this Court, and of very recent vintage at that, illustrates this rule. Undoubtedly, it is now well-settled that an action for reconveyance based on an implied or constructive trust prescribes in ten years from the issuance of the Torrens title over the property. The only discordant note, it seems, is *Balbin v. Medalla*, which states that the prescriptive period for a reconveyance action is four years. However, this variance can be explained by the erroneous reliance on *Gerona v. de Guzman*. But in *Gerona*, the fraud was discovered on June 25, 1948, hence Section 43(3) of Act No. 190 was applied, the New Civil Code not coming into effect until August 30, 1950 as mentioned earlier. It must be stressed, at this juncture, that Article 1144 and Article 1456, are new provisions. They have `no counterparts in the old Civil Code or in the old Code of Civil Procedure, the latter being then resorted to as legal basis of the four-year prescriptive period for an action for reconveyance of title of real property acquired under false pretenses.

"An action for reconveyance has its basis in Section 53, paragraph 3 of Presidential Decree No. 1529, which provides:

`In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder of the decree of registration on the original petition or application, x x x.'

"This provision should be read in conjunction with Article 1456 of the Civil Code, which provides:

`Article 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.'

"The law thereby creates the obligation of the trustee to reconvey the property and the title thereto in favor of the true owner. Correlating Section 53, paragraph 3 of Presidential Decree No. 1529 and Article 1456 of the Civil Code with Article 1144 (2) of the Civil Code, *supra*, the prescriptive period for the reconveyance of fraudulently registered real property is ten (10) years reckoned from the date of the issuance of the certificate of title. In the present case, therefore, inasmuch as Civil Case No. 10235 was filed on June 4, 1975, it was well-within the prescriptive period of ten (10) years from the date of the issuance of "Original Certificate of Title No. 0-6836 on September 17, 1970."

The assailed decision of the Court of Appeals, which affirmed that of the trial court, faithfully adhered to the above-stated doctrine. We simply find no cogent reason to disturb the same, much less to review the factual basis of both courts' holding that the 10-year prescriptive period had expired.

Petitioners insist that their action for reconveyance is imprescriptible.

We do not agree.

An action for reconveyance of real property based on implied or constructive trust is not barred by the aforementioned 10-year prescriptive period only if the plaintiff is in actual, continuous and peaceful possession of the property involved. In *DBP vs. CA*,<sup>[16]</sup> the Court explained:

xxx. Generally, an action for reconveyance based on an implied or constructive trust, such as the instant case, prescribes in 10 years from the date of issuance of decree of registration. However, this rule does not apply when the plaintiff is in actual possession of the land. Thus, it has been held:

"... [A]n action for reconveyance of a parcel of land based on implied or constructive trust prescribes in ten years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the property, but this rule applies only when the plaintiff or the person enforcing the trust is not in possession of the property, since if a person claiming to be the owner thereof is in actual possession of the property, as the defendants are in the instant case, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe. The reason for this is that one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, the reason for the rule being, that his undisturbed possession gives him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by one who is in possession."

Here, it was never established that petitioners remained in actual possession of the property after their father's sale thereof to Go S. Kiang in 1965 and up to the filing of their complaint in this case on August 10, 1995. On the contrary, the trial court's factual conclusion is that respondents had actual possession of the subject property ever since. The action for reconveyance in the instant case is, therefore, not in the nature of an action for quieting of title, and is not imprescriptible.

Finally, to write finis once and for all to this case, petitioners may well be reminded that "as a rule, the conclusions of fact of the trial court, especially when affirmed by the Court of Appeals, are final and conclusive and cannot be reviewed on appeal by the Supreme Court." [17] Albeit the rule admits of several exceptions [18], none of them are in point in this case. It is not our function to review, examine and evaluate or weigh the probative value of the evidence adduced by the parties. In any event, we have carefully examined the factual findings of the Court of Appeals and found the same to be borne out of the record and sufficiently anchored on the evidence presented.

WHEREFORE, petition is hereby DENIED. No pronouncements as to costs.

**SO ORDERED.**

Panganiban, (Chairman), Sandoval-Gutierrez, and Corona, JJ., concur.  
Carpio-Morales, J., no part.

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[1] Penned by Associate Justice Artemon D. Luna (now retired) and concurred in by Associate Justices Conchita Carpio Morales (now a member of this Court) and Bernardo P. Abesamis (now retired); Rollo, pp. 28-59.

[2] Rollo, p. 60.

[3] Exhibit "1" (see RTC Decision, p. 7; Rollo, p. 68).

[4] See recital of petitioner Consuelo's Affidavit dated April 1, 1973 quoted in the RTC Decision at pp. 8-9 thereof; Rollo, p. 69-70.

[5] Witnessed and signed by petitioner Amador Gualberto, and one Robert B. Perez, and subscribed and sworn to before Notary Public Alfonso C. Sanvictores, recorded as Reg. No. 239, Page 49, Book No. 2, Series of 1973; Exhibit "8" (see RTC Decision, pp. 8-9; Rollo, pp. 69-70).

[6] See RTC Decision, p. 11; Rollo, p. 72.

[7] Gualberto vs. Tarriela, CA G.R. SP No. 36913, Sept. 13, 1995; quoted in RTC Decision , pp. 10-11; Rollo, pp. 71-72.

[8] Later amended.

[9] Rollo, pp. 62-74.

[10] Rollo, pp. 28-59.

**[11] 204 SCRA 525 [1991].**

**[12] 292 SCRA 469 [1998].**

[13] Citing Association of Marine Officers and Seamen of Reyes and Lim Co. vs. Laguesma, 239 SCRA 468 [1994].

**[14] 329 SCRA 652 [2000].**

**[15] 261 SCRA 45 [1996].**

**[16] 331 SCRA 267 [2000].**

[17] Baylan vs. Court of Appeals, 312 SCRA 502 [1999]; Fortune Motors Phils. Corp. vs. Court of Appeals, 267 SCRA 653 [1997]; Meneses vs. Court of Appeals, 246 SCRA 162 [1995]; Tan Chun Suy vs. Court of Appeals, 229 SCRA 151 [1994].

[18] Commissioner of Internal Revenue vs. Embroidery and Garments Industries (Phil.), Inc., 305 SCRA 70 [1999]; Mangahas vs. Court of Appeals, 304 SCRA 375 [1999].

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