

**SPOUSES HAYMATON S. GARINGAN AND JAYYARI PAWAKI,  
PETITIONERS, VS. HADJI MUNIB SAUPI GARINGAN, HADJA TERO  
SAUPI GARINGAN, AND HADJA JEHADA SAUPI GARINGAN,  
RESPONDENTS.**

*G.R. NO. 144095. April 12, 2005*

Ponente: CARPIO, J.

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**CARPIO, J.:**

**The Case**

Before this Court is a petition for review[1] to reverse the Decision[2] dated 19 June 2000 and the Order[3] dated 19 July 2000 of the Shari'a District Court, Third Shari'a Judicial District, Zamboanga City in Civil Case No. 13-3. The Shari'a District Court cancelled Transfer Certificate of Title ("TCT") No. 2592 in the name of "Djayari or Jayyari Moro." The Shari'a District Court also ordered the partition of the land in dispute, and the issuance of new TCTs in the names of Hadji Munib Saupi Garingan, Hadja Tero Saupi Garingan, Hadja Jehada Saupi Garingan and Haymaton Garingan Jayyari.

**The Antecedent Facts**

On 23 February 1993, Hadji Munib Saupi Garingan, Hadja Tero Saupi Garingan and Hadja Jehada Saupi Garingan ("Hadji Munib, et al.") filed an action for Partition and Injunction with prayer for Preliminary Injunction against their sister Haymaton Saupi Garingan[4] ("Haymaton") and her husband Jayyari Pawaki ("Pawaki"), also known as Djayari Moro. Hadji Munib, et al. alleged that their grandfather Saupi Moro owned an agricultural lot, fully planted with coconut and other fruit bearing trees, containing an area of 11.3365 hectares. The land is situated in Sitio Tinebbasan, Barangay Semut, Municipality of Lamitan, Basilan Province. Saupi Moro acquired the land through purchase from Gani Moro. Saupi Moro donated the land to his daughter Insih Saupi ("Insih"), mother of Hadji Munib, et al. and Haymaton. After the donation, Insih predeceased her father and her interest over the land passed to her children Hadji Munib Saupi Garingan, Hadja Tero Saupi Garingan, Hadja Jehada Saupi Garingan, and Haymaton Garingan.

After the death of Saupi Moro in 1954,[5] Haymaton and Pawaki took over the administration of the land. Later, Haymaton and Pawaki declared the land, then still untitled, in their names for taxation purposes under Tax Declaration No. 1675. Haymaton and Pawaki refused to share with Hadji Munib, et al. the income from the sale of fruits from the land.

Haymaton and Pawaki, on the other hand, claimed that on 22 September 1969, Pawaki bought the land from Jikirum M. Adjaluddin ("Jikirum"). TCT No. T-2592 was issued in the name of Djayari Moro. Pawaki took possession of the land in the concept of an owner in the same year. He declared the land for taxation purposes under Tax Declaration No. 1675.

**The Decision of the Shari'a District Court**

The Shari'a District Court found that Saupi Moro acquired the land in dispute from Gani Moro. Insih Saupi, during her lifetime, accepted the land by way of donation from her father. Upon the death of Insih and her husband, their children succeeded to the rights of their parents over the property. The Shari'a District Court ruled:

From the foregoing evidence of the plaintiffs it appears that the property in question was given by Saupi Moro during his lifetime to his daughter Insih Saupi, who thereafter, stayed in the land and introduced improvements consisting of coconut trees with her husband Garingan until they died, predeceasing Saupi Moro, which shows that the property given by Saupi Moro to his daughter Insih Saupi Garingan during the former's lifetime, was accepted by the latter during her lifetime.

The herein plaintiffs in this case, including their sister and defendant, Haymaton Garingan Jayyari, being the children of Insih Saupi and Garingan, steps (sic) into whatever rights or properties left by their deceased parents.

On the basis of the evidence of the case, the herein property in question was acquired by their grandfather Saupi Moro from Gani Moro before World War II or sometime during the Japanese occupation. (See Exhibit "A-1", p. 297, Record). During their grandfather's lifetime he donated it to his daughter plaintiff's (sic) mother Insih Garingan who together with her husband Garingan occupied and planted said property; After plaintiff's mother Insih Saupi Garingan died, the property was left to plaintiff's sister now defendant Haymaton Garingan Jayyari; And, after the latter also died, her husband and co-defendant Jayyari Pawaki took over the property. There is therefore, an implied trust relation established between the heirs of Insih Saupi Garingan plaintiffs herein and their sister defendant Haymaton Garingan and the latter husband Jayyari Pawaki over the said property. In a case, it was held, "that the Torrens System was never calculated to forment (sic) betrayal in the performance of a trust." (*Escobar v. Locsin*, 74 Phil. 86). Thus, through the continuous possession of the property beginning from the plaintiff's grandparent Saupi Moro sometime in 1941, until the latter died sometime in 1954 up to the time it was held in trust by plaintiffs co-heir, defendant Haymaton Garingan, and the latter husband and co-defendant Jayyari Pawaki, who after Haymaton Garingan's death continued to hold the land claiming to have acquired it by purchase from Adjaluddin Moro, tacking the periods, more than thirty years had elapsed which gives the herein plaintiffs the right over the said property, though the donation made in favor of their mother Insih Garingan by their grandfather Saupi Moro was not in a public instrument, but merely verbal. In a case the Court held, "That while donation of immovable property not made in a public instrument, such as verbal one, is not effective as a transfer of title, yet it is a circumstance which may explain the adverse and exclusive character of the possession of the intended donee, and such possession may ripen into ownership by prescription." (*Pensader vs. Pensader*, 47 Phil. 959; *Apilado vs. Apilado* (C.A.) 34 O.G. p. 144; *Macabasco vs. Macabasco* (C.A.) 45 O.G. 2532; *Espique vs. Espique* (S.C.) 53 O.G. 4079; *Cabacutan vs. Serrano* (C.S.) 59 O.G. 292; Cited on p. 523, *A. Tolentino, Civil Code of the Philippines*, Vol. II, 1987 ed.).

Plaintiffs herein, namely (1) Hadji Munib Saupi Garingan, (2) Hadja Tero Saupi Garingan, (3) Hadja Jehada Saupi Garingan, together with their sister, and defendant (4) Haymaton Garingan-Jayyari are the children of Insih Saupi and Garingan. Upon the death of their parents Insih Saupi and Garingan, they succeeded to whatever hereditary rights over the estates of their deceased parents. The evidence shows that plaintiff's mother Insih Saupi Garingan predeceased her father Saupi Garingan. x x x.

In Civil Case No. 41 entitled *Janjalawi Moro, et. al., plaintiffs vs. Andaang Moro, et. al., defendants* that was filed before the then Court of First Instance of Basilan City is dated July 16, 1956 on paragraph 3 of the said Civil complaint states, "that Saupi Moro died intestate in 1954" (sic); Thus, Insih Saupi and Imam Garingan, the plaintiffs parents, who both predeceased Saupi Moro, their death occurred sometime before the death of Saupi Moro in 1954. Such being the case, the law then governing the successional rights of Filipino Muslims was still the Civil Code of the Philippines, R.A. No. 386 which became effective on August 30, 1950. (*Ilejay vs. Ilejay, et. al.*, (S.C.) 49 O.G. 4903). And, under Article 90 of the present Code of Muslim Personal Laws of the Philippines, P.D. 1083, "The rights to succession are transmitted from the moment of the death of the decedent". This provision is an adoption of Article 77 of the Civil Code of the Philippines, which provides:

"The rights to the succession are transmitted from the moment of the death of the decedent"; which has been interpreted that the succession is opened by the death of the person from whom the inheritance comes. (A. Tolentino, Civil Code, p. 13, Vol. III, 1979 ed.; Cited 3 Navarro Amandi 82). Considering the applicable laws on this regard, since Insih Saupi Garingan and Imam Garingan who were plaintiffs parents, predeceased Saupi Moro who died in 1954, the law then applicable to successional rights of Filipino Muslims was the prevailing law at that time which was still the Civil Code of the Philippines. This rule is recognized by the Code of Muslim Personal Laws of the Philippines, P.D. 1083, under Article 186, which provides:

"Art. 186. Effect of Code on Past Acts. - (1) Acts executed prior to the effectivity of this Code shall be governed by the laws in force at that time of their execution, and nothing herein except as otherwise specifically provided, shall affect their validity or legality or operate to extinguish any right acquired or liability incurred thereby."

And, the applicable provisions of the Civil Code of the Philippines on this regard are as follows, to quote:

"Art. 979. Legitimate children and their descendants succeed the parents and other ascendants, without distinction as to sex or age, and even if they should come from different marriages"; And,

Art. 980. The Children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares."

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

(1)

That the following described real property, viz: "A parcel of agricultural land located in Semut, Lamitan, Basilan City, Philippines, identified as Bureau of Lands Plan H-V-18368 bounded on N., by seashore, 20 m. wide; on the SE., by property of Turavin Moro; on the S., by property of Hatib Hiya; and on the W., by property of Husin Moro, containing an area of ONE HUNDRED THIRTEEN THOUSAND THREE HUNDRED AND SIXTY FIVE (113,365) SQUARE METERS more or less' is ordered partitioned among the following in EQUAL SHARES, to wit: Hadji Munib Saupi Garingan, Hadja Tero Saupi Garingan, Hadja Jehada Saupi Garingan, and Haymaton Garingan Jarryari, shall get entitled to ONE FOURTH (1/4) SHARE EACH of the aforesaid property;

(2)

Transfer Certificate of Title No. 2592 covering said property in the name of Djayari or Jarryari Moro married to Haymaton Mora of the Office of the Register of Deeds of Basilan City is hereby ordered annulled and cancelled, and, in lieu thereof the Office of the Register of Deeds of Basilan City is ordered to issue a New Certificate of Title in the names of the owners mentioned in the preceding paragraph 1, and in the proportion given therein;

(3) Ordering the defendant and anyone acting for the defendants to peacefully, and voluntarily surrender the afore-mentioned parcel of land together with the improvements existing thereon to the plaintiffs, their heirs or legal representatives, and restore them in the occupation and enjoyment thereof.

### **SO ORDERED.[6]**

In an Order dated 19 July 2000, the Shari'a District Court denied the motion for reconsideration of Haymaton and Pawaki.

Hence, the present petition.

The Issues

In their memorandum, petitioners raise the following issues:

Whether the Shari'a District Court erred in ordering the partition of the subject property and annulment of Transfer Certificate of Title No. T-2592 on the basis alone of respondents' claim that Saupi Moro, their predecessor-in-interest, was the one who owned the said parcel of land during his lifetime, thereby disregarding the protection accorded to persons dealing with property registered under the Torrens system.

Whether the Third Shari'a District Court erred in not ruling that respondents' right to seek a reconveyance of the subject property had already prescribed or is barred by laches.

Whether the Third Shari'a District Court erred in not ruling that respondents have no cause of action against the petitioners in an action for partition as they are not co-owners of the subject property, petitioners being the sole owners of the property.[7]

### The Ruling of the Court

The petition is meritorious.

The settlement of the issue of ownership is the first stage in an action for partition, and the action will not lie if the claimant has no rightful interest in the property in dispute.[8] In this case, Hadji Munib, et al. failed to prove their right to the land in dispute.

### The Derivative Title of Jayyari Pawaki

The land in dispute was originally registered in the name of Andaang Gani ("Andaang") under Original Certificate of Title ("OCT") No. P-793[9] issued on 6 December 1955. OCT No. P-793 was issued upon the approval of Andaang's homestead application and the issuance on 17 February 1955 of Letters of Patent No. V-41831.

Andaang died intestate on 29 August 1959. On 13 April 1960, Andaang's widow and sole heir, Cristeta Santiago vda. de Gani ("Cristeta"), executed an Extrajudicial Settlement and Sale[10] adjudicating to herself the land in dispute and at the same time selling it to Jikirum. On 31 August 1967 or seven years after the sale, Cristeta caused the cancellation of OCT No. P-793 and the issuance in her name of TCT No. T-1940.[11] On the same date, TCT No. T-1940 was cancelled and TCT No. T-1941[12] was issued in the name of Jikirum.

On 22 September 1969, Jikirum executed a Deed of Absolute Sale[13] in favor of Djayari Moro. On 10 June 1971, TCT No. T-1941 was cancelled and TCT No. T-2592[14] was issued in the name of Djayari Moro also known as Jayyari Pawaki.

### The Claim of Hadji Munib, et al.

Hadji Munib, et al. claim that before or during the Japanese occupation of the Philippines, Saupi Moro acquired the land in dispute through sale from Gani Moro. After Gani Moro's death, his heirs, which included Andaang, offered to repurchase the land from Saupi Moro. Saupi Moro refused. The heirs of Gani Moro[15] instituted Civil Case No. 31 for Illegal Detainer[16] against Saupi Moro.[17] Although the Municipal Trial Court of Basilan City[18] declared Saupi Moro in default for non-appearance, it dismissed the complaint in a Decision dated 24 September 1951, as follows:

Does an action lie against the defendant for Illegal Detainer: Rule 72, pp. 247-248, Moran's Rules of Court, provides, that there are two (2) kinds of Detainer: (1) that by a tenant, and (2) that by a vendee or vendor, or other person unlawfully withholding possession of any land or building (sic). In the present case, the cause of action is based only on a verbal contract that took place years ago, one of the principal parties is now dead. The court believes that the right of the plaintiffs to recover possession has not been clearly established. In their complaint, they stated that the alleged contract took place before World War II, while in open court they stated that it took place during the Japanese occupation. The plaintiffs likewise failed to explain in Court, why Gani Moro during his lifetime failed to redeem the property, although the amount involved is a pittance (sic). Gani

Moro has all the time in the world and the means to repay said amount of seventy (P70.00), before his death on May, 1949, and if said contract really existed, he would not have hesitated to redeem said property knowing that his children stands (sic) to be deprived of their inheritance of a substantial parcel of land with improvements.

Although, the allegations of the plaintiffs stands unrefuted (defendant being in default) yet the Court in the interest of justice, has to sift and analyze the evidence of the plaintiffs in order that justice could be meted to the parties.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court is of the opinion and so hold, that the plaintiff has failed to prove its case, and judgment is hereby rendered dismissing the above complaint, without costs.

IT IS SO ORDERED.[19]

Despite the decision, Andaang applied for a homestead patent over the disputed land. Andaang's application was approved and on 17 February 1955, he was issued Letters of Patent No. V-41831. On 6 December 1955, OCT No. P-793 was issued in Andaang's name.

In July 1956, the brothers and sisters of Saupi Moro,[20] claiming to be his heirs,[21] filed Civil Case No. 41 for Annulment of Certificate of Title to a Parcel of Land and Damages against Andaang and the Register of Deeds of Basilan before the then Court of First Instance ("CFI") of Basilan City.[22] However, the case did not prosper. In a certification dated 18 September 1994, Clerk of Court Selso M. Manzanaris of the Regional Trial Court of Isabela, Basilan declared that the building housing the sala of the CFI of Basilan City was burned in 1975. The records of Civil Case No. 41 were destroyed. The plaintiffs did not revive the case which was "considered abandoned." [23]

#### The Homestead Application of Andaang Gani

Under Commonwealth Act No. 141 ("CA 141"),[24] as amended, agricultural lands may be acquired by homestead, as follows:

SEC. 12. Any citizen of the Philippines over the age of eighteen years, or the head of a family, who does not own more than twenty-four hectares of land in the Philippines or has not had the benefit of any gratuitous allotment of more than twenty-four hectares of land since the occupation of the Philippines by the United States, may enter a homestead of not exceeding twenty-four hectares of agricultural land of the public domain.

SEC. 13. Upon the filing of an application for a homestead, the Director of Lands, if he finds that the application should be approved, shall do so and authorize the applicant to take possession of the land upon the payment of five pesos, Philippine currency, as entry fee. Within six months from and after the date of the approval of the application, the applicant shall begin to work the homestead, otherwise he shall lose his prior right to the land.

SEC. 14. No certificate shall be given or patent issued for the land applied for until at least one-fifth of the land has been improved and cultivated. The period within which the land shall be cultivated shall not be less than one nor more than five years, from and after the date of the approval of the application. The applicant shall, within the said period, notify the Director of Lands as soon as he is ready to acquire the title. If at the date of such notice, the applicant shall prove to the satisfaction of the Director of Lands, that he has resided continuously for at least one year in the municipality in which the land is located, or in the municipality adjacent to the same and has cultivated at least one-fifth of the land continuously since the approval of the application, and shall make affidavit that no part of said land has been alienated or encumbered, and that he has complied with all the requirements of this Act, then, upon the payment of five pesos, as final fee, he shall be entitled to a patent.

CA 141 requires the applicant to enter in possession of, improve and cultivate the land.

Andaang was one of the plaintiffs in Civil Case No. 31 for illegal detainer against Saupi Moro.[25] In that case, the plaintiffs prayed that they be allowed to redeem the land in dispute which Gani Moro verbally mortgaged to Saupi Moro during the Japanese occupation. The plaintiffs also prayed that the trial court order Saupi Moro to vacate the land and to restitute the premises to the plaintiffs. The trial court dismissed the complaint.

There is no evidence on record that shows that the heirs of Gani Moro subsequently reacquired the land. Nothing shows that Andaang Gani was the occupant of the land when he applied for homestead patent, or that he occupied the land and introduced improvements thereon in the interim before the approval of his application. Hence, Hadji Munib, et al. insist that Andaang did not comply with the requirements of CA 141.

#### Review of Certificate of Title on Ground of Fraud

Section 122 of Act No. 496 ("Act 496"),[26] provides:

SEC. 122. Whenever public lands in the Philippine Islands belonging to the Government of the (United States or to the Government of the) Philippine Islands are alienated, granted, or conveyed to persons or to public or private corporations, the same shall be brought forthwith under the operation of this Act and shall become registered lands. It shall be the duty of the official issuing the instrument of alienation, grant, or conveyance in behalf of the Government to cause such instrument before its delivery to the grantee, to be filed with the register of deeds for the province where the land lies and to be there registered like other deeds and conveyances, whereupon a certificate shall be entered as in other cases of registered land, and an owner's duplicate certificate issued to the grantee. The deed, grant, or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land, but shall operate only as a contract between the Government and the grantee and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the land, and in all cases under this Act registration shall be made in the office of the register of deeds for the province where the land lies. The fees for registration shall be paid by the grantee. After due registration and issue of the certificate and owner's duplicate, such land shall be registered land for all purposes under this Act.

Upon its registration, the land in dispute falls under the operation of Act 496 and becomes registered land. A homestead patent, once registered, becomes as indefeasible as a Torrens title.[27]

A person deprived of the land, estate, or interest therein by virtue of a decree of registration may avail of the remedy provided under Section 38 of Act 496. Thus:

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 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 the 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 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 hereinbefore 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. (Emphasis supplied)

The fraud contemplated in Section 38 of Act 496 refers to extrinsic or collateral fraud. In *Libudan v. Gil*,<sup>[28]</sup> the Court explained the scope of extrinsic or collateral fraud as follows:

x x x (T)he action to annul a judgment, upon the ground of fraud, would be unavailing unless the fraud be extrinsic or collateral and the facts upon which it is based have not been controverted or resolved in the case where the judgment sought to be annulled was rendered. Extrinsic or collateral fraud, as distinguished from intrinsic fraud, connotes any fraudulent scheme executed by a prevailing litigant "outside the trial of a case against the defeated party, or his agents, attorneys or witnesses, whereby said defeated party is prevented from presenting fully and fairly his side of the case." But intrinsic fraud takes the form of "acts of a party in a litigation during the trial, such as the use of forged instruments or perjured testimony, which did not affect the presentation of the case, but did prevent a fair and just determination of the case."

Thus, relief is granted to a party deprived of his interest in land where the fraud consists in a deliberate misrepresentation that the lots are not contested when in fact they are; or in applying for and obtaining adjudication and registration in the name of a co-owner of land which he knows had not been allotted to him in the partition; or in intentionally concealing facts, and conniving with the land inspector to include in the survey plan the bed of a navigable stream; or in willfully misrepresenting that there are no other claims; or in deliberately failing to notify the party entitled to notice; or in inducing him not to oppose an application; or in misrepresenting about the identity of the lot to the true owner by the applicant causing the former to withdraw his application. In all these examples the overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court or from presenting his case. The fraud, therefore, is one that affects and goes into the jurisdiction of the court.

x x x

We have repeatedly held that relief on the ground of fraud will not be granted where the alleged fraud goes into the merits of the case, is intrinsic and not collateral, and has been controverted and decided. Thus we have underscored the denial of relief where it appears that the fraud consisted in the presentation at the trial of a supposed forged document, or a false and perjured testimony, or in basing the judgment on a fraudulent compromise agreement, or in the alleged fraudulent acts or omissions of the counsel which prevented the petitioner from properly presenting the case.

The fraud being attributed to Andaang is not extrinsic and collateral. In *Libudan*, the Court ruled that the allegation that neither the applicant nor his alleged successor-in-interest has ever been in actual possession of the property in question since time immemorial does not constitute extrinsic fraud.

Granting that Andaang committed extrinsic and collateral fraud, Hadji Munib, et al. failed to avail of the remedy provided under Section 38 of Act 496 within the prescribed period.

In *Nelayan, et al. v. Nelayan, et al.*,<sup>[29]</sup> this Court ruled that in the case of public land grants (patents), the one-year period under Section 38 is counted from the issuance of the patent by the government.

The Letters of Patent was issued on 17 February 1955. The brothers and sisters of Saupi Moro filed Civil Case No. 41 for annulment of title only in July 1956, more than a year after the issuance of the Letters of Patent. There is no evidence that Saupi Moro's children, who are his compulsory heirs, intervened in the case. Insih's children who claim to have succeeded to the rights of their mother also failed to intervene in the case. Hadji Munib, et al. did not do anything to protect their interest, not even after the records of Civil Case No. 41 were burned. Instead of availing of the remedy under Section 38 of Act 496, Hadji Munib, et al. filed an action for partition on 23

February 1993, which must fail because a Torrens title is not susceptible to collateral attack. Thus:

"It is a rule in this jurisdiction that once a public land has been brought under the Land Registration Act, the Torrens title issued thereto is indefeasible. It is entitled to the same regard as one issued in a judicial proceeding. The Torrens title is not susceptible to collateral attack. The decree (or order of the Director of Lands for the issuance of the patent in the case of a homestead) may be reviewed under Sec. 38 of the Land Registration Act by filing the appropriate petition within one year from the issuance of the said decree or from the issuance of the order for the issuance of the patent. Or an appeal may be taken to the appellate court within the reglementary period from the decision of the Court; and in the case of the homestead, the administrative remedies may be pursued. These are the methods of direct attack." [30]

#### The Proper Party to Bring the Action

In any event, Hadji Munib, et al. are not the proper parties to file an action for reconveyance of the land in dispute.

Even in Civil Case No. 41, the plaintiffs there did not claim that the land was privately owned and thus not proper subject for homestead application. They only alleged continuous possession of the land. Even in their Memorandum filed before this Court, Hadji Munib, et al. only alleged that Andaang Gani violated the provisions of CA 141 and that he was never in actual possession and occupation of the land in dispute. Hadji Munib, et al. also acknowledged that Civil Case No. 31 only confirmed Saupi Moro's physical possession of the land. Indeed, Civil Case No. 31, being a case for illegal detainer, did not settle the issue of ownership of the land. The trial court dismissed the complaint in that case only because the plaintiffs failed to establish their right to recover possession of the land. Any determination of ownership made in the illegal detainer case is not conclusive.

Evidently, the land was not privately owned by Gani Moro from whom Saupi Moro "acquired" it. The land in dispute was part of the public domain before the issuance of OCT No. P-793. If it were otherwise, there would be no need for Gani Moro's son, Andaang, to file a homestead application.

The rule on this matter is clear:

All lands that were not acquired from the Government, either by purchase or by grant, belong to the public domain. An exception to the rule would be any land that should have been in the possession of an occupant and of his predecessors in interest since time immemorial, for such possession would justify presumption that the land had never been part of the public domain or that it had been a private property even before the Spanish conquest. [31]

Hadji Munib, et al.'s action for partition effectively seeks to cancel the homestead patent and the corresponding certificate of title. However, even if the homestead patent and the certificate of title are cancelled, Hadji Munib, et al. will not acquire the land in the concept of an owner. The land will revert to the government and will again form part of the public domain.

Section 101 of CA 141 provides that actions for reversion of public lands fraudulently awarded must be instituted by the Solicitor General and in the name of the Republic of the Philippines. [32] Thus:

A certificate of title issued pursuant to a homestead patent partakes of the nature of a certificate issued in a judicial proceeding, as long as the land disposed of is really a part of the disposable land of the public domain and becomes indefeasible and incontrovertible after one year from issuance. x x x. The only instance when a certificate of title covering a tract of land, formerly a part of the patrimonial property of the State, could be cancelled, is for failure on the part of the grantee to comply with the conditions imposed by law, and in such case the proper party to bring the action would be the Government to which the property would revert. [33]

Considering the foregoing, Hadji Munib, et al. have no personality to file an action to recover possession of the land in dispute. Further, they failed to timely avail of whatever remedy available to them to protect whatever interest they had over the land.

WHEREFORE, the Decision of the Shari'a District Court, Third Shari'a Judicial District, Zamboanga City in Civil Case No. 13-3, is SET ASIDE, and another one is entered DISMISSING the complaint in Civil Case No. 13-3.

**SO ORDERED.**

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Acting Presiding Judge Bensaudi I. Arabani, Sr. Rollo, pp. 20-38.

[3] Ibid., p. 40.

[4] Later substituted by her heirs, Ammad, Jain, Hadja Huda, Hadja Murwa, Totoh, Jarah, Talib and Mad Jayyari, represented by their father Jayyari Pawaki. Records, p. 168.

[5] The year is 1954 in the Decision of the Shari'a District Court, (Rollo, p. 21) while 1945 in the Complaint, (Records, p. 2).

[6] Rollo, pp. 34-38.

[7] Ibid., pp. 86-87 (p. 87 is marked in the Rollo as p. 88).

[8] See *Ocampo v. Ocampo*, G.R. No. 150707, 14 April 2004, 427 SCRA 545.

[9] Rollo, p. 110.

[10] Ibid., p. 112.

[11] Records, p. 83.

[12] Rollo, p. 114.

[13] Ibid., p. 115.

[14] Ibid., p. 116.

[15] Andaang Gani, Porencia Gani and Maning Gani.

[16] Now Unlawful Detainer.

[17] Referred to in that case as Saupe Moro.

[18] Through Municipal Judge Doroteo De Guzman.

[19] Records, pp. 75-76.

[20] Janjalawi Moro, Haddi Moro, Sauti Moro, Amina Mora and Hatija Mora.

[21] Despite the supposed donation of the land to Insih Garingan.

[22] Records, p. 301.

[23] Ibid., p. 308.

[24] The Public Land Act.

[25] Supra note 15.

[26] The Land Registration Act.

[27] Republic of the Philippines v. Abacite, et al., 111 Phil. 703 (1961).

[28] 150-A Phil. 362 (1972).

[29] 109 Phil. 183 (1960), citing Dawaling Sumail v. Judge of the Court of First Instance of Cotabato, et al., 96 Phil. 946 (1955).

[30] Lopez v. Padilla, 150-A Phil. 391(1972).

[31] Oh Cho v. Director of Lands, 75 Phil. 890 (1946); Nelayan, et al. v. Nelayan, et al., supra note 29.

[32] The Director of Lands v. De Luna, et al., 110 Phil 28 (1960).

[33] Lucas v. Durian, 102 Phil. 1157 (1957).

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