

## **ILDEFONSO CERVANTES, PETITIONER, VS. FORMER NINTH DIVISION OF THE HONORABLE COURT OF APPEALS AND MOISES MADARCOS, RESPONDENTS.**

*G.R. NO. 146050. September 27, 2006*

Ponente: AZCUNA, J.

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### **AZCUNA, J.:**

This is a petition for certiorari<sup>[1]</sup> with prayer for a writ of preliminary injunction, seeking the nullification of the Decision rendered by the Court of Appeals on March 10, 1999, and its subsequent Resolutions, respectively dated July 6, 1999, March 17, 2000, and August 15, 2000, in CA-G.R. CV No. 37646 entitled "Ildefonso Cervantes v. Moises Madarcos."

The controversy is an offshoot of a civil case involving the cancellation of the Original Certificate of Title (O.C.T.) that had been issued to private respondent on the basis of a free patent granted by the Bureau of Lands. The validity of the certificate of title is being attacked on the ground of fraud.

The facts of the case are as follows:

Petitioner Ildefonso Cervantes began possessing and cultivating Lot No. 51, GSS-402, covering a total land area of 6.4730 hectares, in Barangay San Jose, Puerto Princesa City, Palawan in 1944.

On November 19, 1958, petitioner filed Free Patent Application No. 598 over the lot with the District Office of the Bureau of Lands of Puerto Princesa.

In 1975, petitioner's nephew, private respondent Moises Madarcos, started staying in his house. Sometime in 1976, private respondent informed petitioner that he knew somebody at the Bureau of Lands who can help him title his land. Thus, on September 2, 1976, petitioner, together with respondent, went to the District Office of the Bureau of Lands of Puerto Princesa. There, petitioner was introduced to Administrative Assistant Gerardo Jacinto, and he requested for an amendment of his free patent application with regard to the total land area covered by the application which should be 6.473 hectares instead of 5.670 hectares. Jacinto agreed to survey the lot and make the necessary corrections in the application. He likewise prepared an affidavit of posting which petitioner signed.

On September 3, 1976, petitioner executed an Affidavit of Quitclaim relinquishing all his rights and interests over a portion of the land, estimated to be around 1.5 hectares, in favor of private respondent, purportedly for the amount of P1,000.<sup>[2]</sup>

On the basis of the quitclaim, private respondent applied for a free patent over the aforesaid area on November 23, 1976. On April 5, 1977, a free patent covering an area of 14,860 square meters was granted to private respondent. On April 6, 1977, the corresponding O.C.T. No. G-286 was issued by the Registry of Deeds of Puerto Princesa City in the name of private respondent.

Meanwhile, on June 29, 1977, the Bureau of Lands granted petitioner's application for a free patent for which, on

September 5, 1977, O.C.T. No. G-298 was issued by the Registry of Deeds of Puerto Princesa City in favor of petitioner. The title, however, covered the entire land area of 6,4730 hectares under Free Patent Application No. 598, which necessarily included the portion that was previously awarded to private respondent.

Sometime in 1979, petitioner went to the Bureau of Lands and there, he allegedly discovered that O.C.T. No. G-286, covering an area of 14,860 square meters, had been issued in favor of private respondent.

Petitioner demanded from private respondent an explanation regarding the issuance of the free patent in his favor. On May 12, 1981, however, private respondent filed an ejectment case<sup>[3]</sup> against petitioner. According to petitioner, it was only thereafter or on July 10, 1981, that he realized that the document which private respondent made him sign hastily in the afternoon of September 3, 1976 at his house was an affidavit of quitclaim.

On May 18, 1987, petitioner filed with the Regional Trial Court of Palawan an action for the annulment or cancellation of O.C.T. No. G-286 on the ground of fraud. He claimed that private respondent and Gerardo Jacinto of the Bureau of Lands connived to dispossess him of his land. He added that he was intoxicated at that time, and because of the trust and confidence that he reposed in his nephew, he did not bother to read the contents of the document which later turned out to be an affidavit of quitclaim. He was made to believe that the document that he signed was for the purpose of expediting his free patent application.

Petitioner advanced the foregoing badges of fraud: a) private respondent took advantage of him because although he could sign his name, he had been largely unschooled as he only reached third grade in elementary; b) the affidavit of quitclaim was signed on the same date as the affidavit of posting; c) the affidavit of posting contained the original land area that he applied for; d) his application had been pending for nineteen (19) years before title was issued in his name covering the entire area of 6.4730 hectares, while private respondent received his title over a portion of the lot in question after merely five (5) months from the time that he applied for a free patent thereon; and, e) the total land area of 6.4730 which he applied for was not reduced as reflected in the free patent and the certificate of title issued to him despite the earlier issuance of title over a portion thereof in favor of private respondent.

Petitioner likewise averred that while ordinarily the certificate of title under the Torrens system may not be cancelled, it can still be subject to reconveyance if the land has not been transferred to a buyer in good faith.

Private respondent contended, on the other hand, that at the Bureau of Lands, Jacinto prepared the affidavit of quitclaim indicating petitioner's intention to transfer his rights over the portion of the lot in favor of private respondent for the amount of P1,000. After the contents of the affidavit were explained to them, petitioner signed the same in the presence of private respondent, Jacinto, Nestor Zumarraga who affixed his signature as witness thereto, and petitioner's older brother, Francisco Cervantes.

In addition, private respondent stated that the personnel from the Bureau of Lands conducted the investigation with regard to his free patent application, and finding no irregularity or fraud, an order of approval was issued in his favor. He further stated that petitioner filed the case as a last recourse to avoid the execution of the decision in the aforementioned ejectment case wherein the Supreme Court upheld his right of possession over the disputed lot. Hence, private respondent insists that petitioner's title, insofar as it includes the lot already awarded to him by virtue of O.C.T. No. G-286, is null and void.

On September 23, 1991, the Regional Trial Court rendered a Decision, the dispositive portion of which reads:

WHEREFORE, and in view of the foregoing considerations, judgment is hereby rendered in favor of the plaintiff and against defendant and further orders/declares:

- that OCT No. [G-]286 of the Registry of Deeds of the City of Puerto Princesa in the name of Moises

Madarcos is hereby declared null and void and no force and effect; hereby ordering the Register of Deeds of Puerto Princesa City to cancel the aforesaid certificate of title in the name of Moises Madarcos;

- that the defendant pay the plaintiff the amount of Thirty Thousand (P 30,000.00) Pesos as and for moral damages;
- that the defendant pay the plaintiff the sum of Five Thousand (P5,000.00) Pesos as litigation expenses; and,
- the defendant pay the costs.

SO ORDERED.[4]

Private respondent went to the Court of Appeals challenging the ruling of the trial court. On March 10, 1999, the Court of Appeals reversed the decision, thus:

WHEREFORE, in the light of the foregoing disquisition, the judgment appealed from is hereby REVERSED and SET ASIDE and a new one is rendered in favor of defendant-appellant upholding the validity of his Torrens Title. If O.C.T. No. [G-]286 had been cancelled, the Register of Deeds of Puerto Prin[c] esa City is hereby ordered to reinstate the same in the name of defendant-appellant. O.C.T. No. [G-] 298 in so far as it includes a portion of land covered by O.C.T. No. [G-]286 is declared void and of no effect.

SO ORDERED.[5]

Petitioner, through his new counsel, Atty. Paz Soledad Rodriguez-Cayetano, moved for a reconsideration of the above decision but the same was denied by the Court of Appeals in its resolution, dated July 6, 1999.

On February 2, 2000, petitioner filed a Motion to Set Aside Entry of Judgment with Prayer for a Temporary Restraining Order and Preliminary Injunction. He claimed that he did not receive notice of the Court of Appeals' resolution denying his motion for reconsideration because it was sent to his former counsel, Atty. Agustin Rocamora.

The Court of Appeals, in its resolution dated March 17, 2000, denied said motion on the ground that its decision, promulgated on March 10, 1999, had already become final and executory, thus:

The Decision of this Court already became final. Despite receipt by appellee's counsel of record, Atty. Rocamora, of a copy of the Decision and a copy of the denial of its Motion for Reconsideration, counsel failed to take an appeal from said Decision and Order of denial of its motion for reconsideration. Unfortunately, this rendered the questioned Decision final and executory. If he claims to have joined the government service, he should have withdrawn from the case and must have manifested in Court of this move [sic] purposely to give due notice.[6]

Petitioner filed a motion for reconsideration but it was denied by the Court of Appeals in its resolution, dated August 15, 2000.

Hence, this petition raising the following issues:[7]

I

WHETHER OR NOT THE HONORABLE RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DENIED THE MOTION TO SET ASIDE ENTRY OF JUDGMENT ON THE TECHNICAL GROUND THAT THE PETITIONER'S COUNSEL OF RECORD RECEIVED A COPY OF THE DENIAL OF THE MOTION FOR RECONSIDERATION BUT FAILED TO TAKE AN APPEAL THEREFROM.

II

WHETHER OR NOT THE HONORABLE RESPONDENT COURT OF APPEALS COMMITTED GRAVE

## ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION:

- WHEN IT REFUSED TO CONSIDER THE PREPONDERANCE OF EVIDENCE OF FRAUD IN PROCURING THE AFFIDAVIT OF QUITCLAIM; AND,
- WHEN IT HELD THAT THE PRESENT ACTION HAS PRESCRIBED.

A notice and copy of the Court of Appeals' resolution denying petitioner's motion for reconsideration of the court's decision were mailed to Atty. Agustin Rocamora's address on record, months after his unilateral withdrawal as petitioner's counsel and without formally informing the court. The rule is that when a party is represented by counsel, notice should be made upon the counsel of record at his given address appearing in the counsel's entry of appearance, to which notices of all kinds emanating from the court should be sent in the absence of a proper and adequate notice to the court of a change of address[8] or in this case, of a change of counsel. [9]

An attorney of record remains as such until he has been properly substituted[10] in accordance with Section 26, Rule 138 of the Rules of Court.[11] Without a valid and effective substitution, the court may not presume that the counsel of record had already been substituted by a second counsel merely from the filing of a formal written appearance by the latter. [12]

In other words, the rule is that notice sent to the counsel of record is binding upon the client and his neglect or failure to inform the former is inexcusable. Only when the application of this rule would result in serious or grave injustice should an exception thereto be applied.[13]

The Court believes that such an exception applies in this case so that the negligence of petitioner's counsels should exempt him from the application of the rule on notice.[14] Considering his advanced age and lack of education, his counsels' omission should not bind him, and thus, he is not deemed to have received the notice of the Court of Appeals' resolution. In effect, the challenged decision did not attain finality, such that petitioner's motion to set aside entry of judgment should have been granted by the Court of Appeals.

This liberal approach is taken to avoid a serious injustice. The trial court and the Court of Appeals differ in their findings as to the existence of fraud. Where the conclusions of the Court of Appeals contradict those of the trial court, this Court may scrutinize the evidence on record to determine which of these findings should be preferred as more conformable to the evidentiary facts.[15]

Upon a review of the records of the case, the Court upholds the findings of the trial court that fraud attended the award of private respondent's free patent which became the basis for the issuance of the latter's certificate of title over the disputed lot. Based on the evidence presented, the Court concurs with the declaration of the trial court as follows:

The position of the defendant that the execution of the affidavit with quitclaim was regularly and freely done; that there was nothing in the record to show any irregularity and arbitrariness on the part of the of the action taken thereon by the officers of the Bureau of Lands, Puerto Pincasa City, except the self-serving testimony of the plaintiff; and the presumption of regularity of business transaction of government functionaries has been complied with should be observed does not sit well [with] this Court.

In this connection, while the Court will ordinarily accord the presumption of regularity of business transaction of government functionaries, yet if there were facts and/or circumstances that show otherwise, [it] will not hesitate to sustain the contrary especially when to do so will promote and serve the ends of justice. In this particular case, as adverted to in the preceding, it has been shown or established to the satisfaction of the Court that the situation under which the affidavit of quitclaim has been executed was done so under questionable and suspicious circumstances. It matters not whether these evidence were testified to by only one witness. Suffice it

to say, the testimony given was clear, straightforward and devoid of artificiality. It was impressed with truth and candor, [and] the Court accepted the same as reflective of what truly happened. Such was the perception of the Court as it assessed the entire testimony of plaintiff. His assertions which led the Court to believe his testimony as trustworthy were supported by documentary evidence".

Thus, the following facts and circumstances attest to these: 1) the notice of application for free patent containing the affidavit of posting signed by plaintiff was signed on the same day as the alleged affidavit of quitclaim; [ 2) the free] patent covered the whole area of 6.4730 hectares which was not reduced in any manner whatsoever; 3) the application of plaintiff was made as early as November 10, 1958 whereas that of the defendant was made only on November 25, 1976; 3) when plaintiff finally received his title to the area applied for under OCT [No. G-]298 of the Registry of Deed of Puerto Princesa [City] on September 5, 1977, it still retained the whole area of 6.4730 hectares. The defendant received his title barely 5 months after he filed his application while plaintiff received his until after 19 years of waiting; 6) the parties were of blood relation and it is conceded that defendant was better educated than the plaintiff; 7) while defendant asserts that Francisco Cervantes who is an older brother was present when the affidavit of quitclaim was executed allegedly before Gerardo Jacinto of the Bureau of Lands, he was not required or even requested to sign the same which ordinarily would have been done in transactions of this nature considering his seniority as an elder of the family; 8) the defense witness Nestor Zumarraga although related to both parties was much closer to defendant as their wives are sisters.[16]

Generally, the assessment of the trial court on the credibility of witnesses and the probative value of their testimony are accorded respect. The trial court is in a better position than the appellate court to properly evaluate testimonial evidence since it had the unique opportunity to observe directly the witnesses' deportment and manner of testifying, and discern whether they were telling the truth. Thus, contrary to the Court of Appeals' conclusion, the inconsistencies that petitioner made in relation to his testimony with regard to the person who handed him the affidavit of quitclaim, and the date of his visit to the Bureau of Lands, are minor ones that do not detract from the veracity of the testimony and even bolster his credibility because it removes any suspicion that his testimony was contrived or rehearsed.[17] In this regard, as it does not appear that the trial court overlooked or misinterpreted some significant fact and circumstance which if properly appreciated can alter the outcome of the case, the Court sustains the trial court's findings.

In connection, and in relation to the issue of prescription, since the land in question was evidently obtained by private respondent through fraudulent machinations[18] by means of which a free patent and title were issued in his name, he is deemed to have held it in trust for the benefit of petitioner who was prejudiced by his actions. The Civil Code 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 remedy of reconveyance, which has its basis on Section 53 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, and the foregoing article of the Civil Code, is available to petitioner as alleged and prayed for in his pleading.

An action for reconveyance based on an implied trust prescribes in ten years from the issuance of the Torrens title over the property.[19] Here, private respondent's certificate of title was issued on April 6, 1977. Petitioner previously initiated a similar case, Civil Case No. 1505, against respondent on September 8, 1981 which had the effect of suspending the prescriptive period until it was dismissed by the Court of First Instance of Palawan on October 21, 1981. The present case was later on filed on May 18, 1987. Clearly, the present action is not barred by prescription.

WHEREFORE, the petition is GRANTED. The decision, dated March 10, 1999, and resolutions, respectively

dated, July 6, 1999, March 17, 2000 and August 15, 2000, of the Court of Appeals in CA-G.R. CV No. 37646 are REVERSED and SET ASIDE. Accordingly, the decision of the Regional Trial Court of Palawan, dated September 23, 1991, is hereby REINSTATED.

No costs.

**SO ORDERED.**

Puno, (Chairperson), Sandoval Gutierrez, Corona, and Garcia, JJ., concur.

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[1] Under Rule 65 of the Rules of Court.

[2] Rollo, pp. 7-8.

[3] The case, docketed as Civil Case No. 801 in the Municipal Trial Court of Puerto Princesa City, was decided in favor of herein private respondent, Moises Madarcos, and had become final and executory (CA Rollo, pp. 53-54).

[4] CA Rollo, pp. 31-32.

[5] CA Rollo, p. 79.

[6] CA Rollo, p. 116.

[7] Rollo, pp. 10-11.

[8] Cubar v. Mendoza, No. L-55035, February 23, 1983, 120 SCRA 768.

[9] The court cannot be expected to take judicial notice of the new address of a lawyer who has moved or to ascertain on its own whether or not the counsel of record has been changed and who the new counsel could possibly be or where he probably resides or holds office (Lee v. Romillo, Jr., G.R. No. L-60937, May 28, 1988, 161 SCRA 589).

[10] Ibasan v. Republic, No. L-48528, April 25, 1980, 97 SCRA 100.

[11] SEC. 26. Change of Attorneys. - An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.

A client may, at any time, dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract. For the payment of such compensation, the attorney shall have a lien upon all judgment for the payment of money, and execution issued in pursuant of such judgments rendered in the case wherein his services had been retained by the client. (As amended by Republic Act No. 636)

[12] Magpayo v. Court of Appeals, No. L-35966, November 19, 1974, 61 SCRA 115; GCP-Manny Transport Services, Inc. v. Principe, G.R. No. 141484, November 11, 2005, 474 SCRA 555.

[13] Villa Rhecar Bus v. Dela Cruz, G.R. No. 78936, January 17, 1988, 157 SCRA 13.

[14] Negligence of the counsel may exempt a client when such negligence was so great such that the party was prejudiced and prevented from fairly presenting his case (*People v. Manzanilla*, 43 Phil. 167 [1922] ).

[15] *Tijing v. Court of Appeals*, G.R. No. 125901, March 8, 2001, 354 SCRA 17.

[16] CA Rollo, pp. 30-31.

[17] *People v. Pacificador*, G.R. No. 126515, February 6, 2002, 376 SCRA 180.

[18] The Torrens System is intended to guarantee the integrity and conclusiveness of the certificate of registration but it cannot be used for the perpetuation of fraud against the real owner of the registered land (*Francisco v. Court of Appeals*, G.R. No. 130768, March 21, 2002, 379 SCRA 638); A certificate of title issued on the basis of a free patent that is procured through fraud or in violation of the law may be cancelled and indefeasibility of the title is no defense (*Apuyan v. Haldeman*, G.R. No. 129980, September 20, 2004, 438 SCRA 402).

[19] *Heirs of Tamak Pangawaran Patiwayan v. Martinez*, No. L-49027, June 10, 1986, 142 SCRA 252.

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