

**CYNTHIA CRUZ KHEMANI AND SHANKER N. KHEMANI,  
PETITIONERS, VS. THE HEIRS OF ANASTACIO TRINIDAD,  
REPRESENTED BY NAPOLEON AND ROLANDO TRINIDAD,  
RESPONDENTS.**

*G.R. NO. 147340. December 13, 2007*

Ponente: YNARES-SANTIAGO, J.

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**YNARES-SANTIAGO, J.:**

This petition for review on certiorari[1] assails the July 31, 2000 Decision[2] of the Court of Appeals in CA-G.R. SP No. 55581, which affirmed the May 24, 1999 Order[3] of the Regional Trial Court, Branch 24, Koronadal, South Cotabato in Civil Case No. 1122, entitled “Heirs of Anastacio and Francisca Trinidad, et al. v. Heirs of Jose Peña, et al.” Also assailed is the January 8, 2001 Resolution[4] denying the motion for reconsideration.

The factual antecedents are as follows:

Petitioner Cynthia Cruz Khemani is the registered owner of Lot No. 107, Ts-1032 (Lot No. 107), which is covered by Transfer Certificate of Title (TCT) No. 58976 issued on March 10, 1994.[5] Khemani purchased the lot from the heirs of Jose B. Peña (the Peña Heirs) on February 17, 1994. Shanker N. Khemani is her brother-in-law and duly authorized representative.

Subject of the instant case is a 340 square meter portion (the Disputed Property) of Lot No. 107 over which respondents Heirs of Anastacio Trinidad, represented by Napoleon and Rolando Trinidad, are claiming ownership. Respondents allege that they and their predecessors-in-interest, Spouses Anastacio and Francisca Trinidad, have openly, peacefully, publicly and adversely possessed the Disputed Property in the concept of owner since 1950.

Lot No. 107 and Lot Nos. 108 and 109, constitute Lot No. 355 which was part of the public domain. On July 10, 1950, Lot No. 355 with an original area of 1,500 square meters was awarded to Jesus M. Larrabaster by the National Land Settlement Administration (NLSA) who subsequently sold his rights and interests over the said property to Jose B. Peña (Peña) on June 29, 1956.

Thereafter, the original area of Lot No. 355 which was 1,500 square meters increased to 3,616.93 square meters due to accretion. Peña then requested the Bureau of Lands (BOL) to adjust the area of the lot awarded to him but the BOL denied the request on the ground that the accretion belonged to the government.

Aggrieved, Peña appealed to the Office of the President. The BOL recommended that Lot No. 355 be subdivided into three parts, to wit, Lot Nos. 107, 108 and 109, and that Lot No. 108 with an area of 1,500 square meters, be awarded to Peña, instead of the whole of Lot No. 355. Meanwhile, Lot Nos. 107 and 109 would be allocated to Basilio Mendoza (Mendoza) and Arturo Roxas, respectively.

The Office of the President initially adopted the recommendation of the BOL. Upon reconsideration, however, it

modified its decision and held that the entire area of Lot No. 355, including the accretion, belonged to Peña and not to the government. Thus, Lot Nos. 107, 108, and 109 were awarded to him.

On January 27, 1970, Mendoza filed a special civil action for certiorari against the Assistant Executive Secretary for Legal Affairs of the Office of the President, the BOL, the Director of Lands, and Peña before Branch 24 of the Court of First Instance of South Cotabato, which was docketed as Civil Case No. 98. Claiming that he was denied due process, Mendoza assailed the decision of the Office of the President awarding the entire area of Lot No. 355 to Peña. He asserted ownership over Lot No. 107 on the strength of a Miscellaneous Sales Application he allegedly filed with the BOL on November 6, 1962.

On May 10, 1985, the trial court rendered a decision dismissing Mendoza's petition for certiorari but the same was reversed by the Court of Appeals on appeal. Hence, Mendoza filed a petition for review on certiorari before the Supreme Court.

In the case of Assistant Executive Secretary for Legal Affairs of the Office of the President v. Court of Appeals[6] which was decided on January 9, 1989, the Supreme Court rejected Mendoza's claim over Lot No. 107 and found the Miscellaneous Sales Application without legal force and effect since the object thereof was no longer public land. Thus, Peña's right of ownership over the entire area of Lot No. 355, which consists of Lot Nos. 107, 108 and 109, was affirmed.

On September 20, 1993, the Peña Heirs were awarded a patent by the Department of Environment and Natural Resources (DENR), and on September 21, 1993, Original Certificate of Title No. P-33658[7] covering Lot No. 107 was issued in their name.

On January 27, 1994, respondents filed with the Regional Trial Court, Branch 24, Koronadal, South Cotabato a verified complaint[8] against the Peña Heirs,[9] the DENR Region IX Office, and the BOL for "Review of Decree of Registration and/or Reconveyance with Prayer for Issuance of Writ of Preliminary Prohibitory Injunction and Temporary Restraining Order," which was docketed as Civil Case No. 1122. Respondents filed the complaint on the strength of their own and their predecessors' open, peaceful, public and adverse possession of the Disputed Property in the concept of owner since 1950.

Respondents also claimed that on July 16, 1976, their predecessor-in-interest, Anastacio, applied for a Miscellaneous Sales Application over the Disputed Property which was designated as a portion of Lot No. 107, Ts-1032.[10] On March 2, 1979, the BOL allegedly issued Certification No. 3445 certifying that the Disputed Property was awarded to Anastacio and that the transfer had been duly investigated and approved per Board Resolution No. 133, Series of 1979.

Instead of an answer, the Peña Heirs filed a Motion to Dismiss[11] alleging that the Regional Trial Court lacks jurisdiction over the nature of the action or the suit; that respondents have no legal capacity to sue as only the government may seek nullification of the land grant in their favor; and that the cause of action is barred by prior judgment or the statute of limitations. They asserted that the issue of ownership over the Disputed Property has long been settled in the Assistant Executive Secretary case. Further, they argued that respondents' predecessor-in-interest, Anastacio, was a mere squatter who had been allowed by Mendoza to occupy a portion of Lot No. 107 sometime in 1960.

In respondents' Comment/Opposition,[12] they claimed that the Disputed Property had long ceased to be public land by virtue of their open, public, continuous, adverse and exclusive possession in the concept of owner for more than 40 years, and that they were never parties in the Assistant Executive Secretary case involving Mendoza.

On September 3, 1997, Judge Rodolfo C. Soledad (Judge Soledad) granted petitioner's motion to dismiss and held that respondents are bound by the ruling of this Court in the Assistant Executive Secretary case.[13]

Respondents filed a motion for reconsideration[14] alleging that res judicata does not apply and that their action is not barred by the Assistant Executive Secretary case. They argued that neither they, nor Anastacio, were parties in the said case and that there is no identity of causes of action.

In 1998, Judge Soledad died without resolving the motion for reconsideration filed by respondents. Judge Francisco S. Ampig (Judge Ampig) was designated Acting Judge. On May 24, 1999, Judge Ampig granted the motion for reconsideration, reinstated Civil Case No. 1122, and directed the Peña Heirs to file an answer.

The Peña Heirs, together with herein petitioner as the new owner of Lot No. 107, filed a petition for certiorari[15] before the Court of Appeals which was docketed as CA-G.R. SP No. 55581.

On July 31, 2000, the Court of Appeals rendered the assailed decision dismissing the petition. It ruled that a petition for certiorari is not the proper remedy against an order denying a motion to dismiss. Further, it held that there is no res judicata. Thus:

Moreover, petitioners have plain, speedy and adequate remedy in the ordinary course of law. The remedy against an adverse interlocutory order, such as the assailed orders, is not certiorari but to continue with the case in due course and, when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law. x x x

With the denial of the motion to dismiss and reinstatement of the case, petitioners will still answer the complaint. Upon joinder of issues, the parties will enter into trial, after which, the lower court will render a verdict. And if adverse to them, petitioners may appeal the decision together with the assailed orders. The case at bench does not fall under any of the exceptional circumstances where the extraordinary writ of certiorari may be resorted to despite availability of appeal.

x x x x

Private respondents are not parties in the first action. Neither are they the successors-in-interest of any of the parties therein. The first action is in personam. The final judgment in said action is only binding and conclusive upon the parties therein and their successors-in-interest.

x x x x

Mendoza, the petitioner in the first action, laid claim in Lot 107 on the basis of his possession thereof and Miscellaneous Sales Application. On the other hand, private respondents' interest in the contested property is anchored on their own possession and Miscellaneous Sales Application. In other words, private respondents are not asserting rights under Mendoza. Consequently, they have no community of interests in the contested property; in fact, their interests are antagonistic to each other.

On the other hand, "the test often used in determining whether causes of action are identical is to ascertain whether the same evidence which is necessary to sustain the second action would have been sufficient to authorize recovery in the first, even if the forms or nature of the two actions be different" (Carlet vs. Court of Appeals, 275 SCRA 97). Considering that the foundation of private respondents' action is different from that of Mendoza, the evidence necessary to sustain the latter's claim in the first action would be separate and distinct from that required to establish private respondents' cause of action.

Since not all requisites of res judicata are present, respondent judge acted rightly in issuing the assailed orders. In short, he committed no abuse of discretion.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.[16]

The motion for reconsideration of the foregoing decision was denied hence, this petition.

Petitioner claims that the case of Assistant Executive Secretary bars the filing of Civil Case No. 1122, and that a petition for certiorari under Rule 65 of the Rules of Court is the proper remedy in assailing the order of the Regional Trial Court denying the motion to dismiss.

Respondents argue that they have been in open, peaceful, public and adverse possession of the Disputed Property in the concept of owner since 1950; that the patent and original certificate of title were fraudulently issued in favor of the Peña Heirs; and that their action for review of decree of registration and/or reconveyance is not barred by the Court's ruling in Assistant Executive Secretary.

The issues for resolution are as follows: 1) whether a petition for certiorari under Rule 65 is the proper remedy in assailing an order denying a motion to dismiss; and 2) whether Judge Ampig committed grave abuse of discretion in denying petitioner's motion to dismiss and reinstating Civil Case No. 1122.

The petition lacks merit.

It has long been settled that an order denying a motion to dismiss is an interlocutory order. It neither terminates nor finally disposes of a case, as it leaves something to be done by the court before the case is finally decided on the merits. As such, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for certiorari.[17]

However, there are exceptions to the general rule. In *Velarde v. Lopez, Jr.*, [18] the Court held that resort to a special civil action for certiorari is allowed when the ground for the motion to dismiss is improper venue, lack of jurisdiction, or *res judicata* as in the case at bar.[19] Thus, petitioner did not commit a procedural error in filing a petition for certiorari before the Court of Appeals.

Nevertheless, as to the substantive issue raised herein, the petition must fail. We find that Judge Ampig did not commit grave abuse of discretion in denying petitioner's motion to dismiss and reinstating Civil Case No. 1122.

In *Oropeza Marketing Corp. v. Allied Banking Corp.*, [20] we held that *res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[21]

A case is barred by prior judgment or *res judicata* when the following requisites concur: (1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; and (4) there is – between the first and the second actions – identity of parties, subject matter, and causes of action.[22]

In this case, it is not disputed that the first three elements are present. Likewise, there is no controversy regarding the identity of the subject matter. The question, therefore, is whether there is identity of parties and causes of action. We find that there is none.

Civil Case No. 98 was a special civil action for certiorari filed by Mendoza against the Assistant Executive Secretary for Legal Affairs of the Office of the President, the BOL, the Director of Lands, and Peña. On the other hand, Civil Case No. 1122 is an action for review of decree of registration and/or reconveyance. The parties are respondents Trinidad, the Peña Heirs, the DENR Region IX Office, and the BOL.

Mendoza's action in Civil Case No. 98 was based on alleged grave abuse of discretion of the Office of the President in awarding the entire area of Lot No. 355 to Peña. He claimed ownership over Lot No. 7 and in support thereof, presented the Miscellaneous Sales Application he filed with the BOL on November 6, 1962. Meanwhile, respondents' action in Civil Case No. 1122 was based on their continued possession of the Disputed Property in the concept of owner for over 40 years, and the alleged fraudulent issuance of a patent and certificate of title to the Peña Heirs.

True, *res judicata* does not require absolute but only substantial identity of parties. However, there is substantial identity only when the "additional" party acts in the same capacity or is in privity with the parties in the former action.[23] This is not so in the present case. It must be emphasized that respondents are not asserting rights under Mendoza. Indeed, the records will show that the parties in the two cases have their own rights and interests in relation to the subject matter in litigation.

Moreover, as correctly found by the Court of Appeals, the basis of respondents' action was different from that of Mendoza; the evidence necessary to sustain the latter's claim is separate and distinct from that required to establish respondents' cause of action.[24] While Mendoza relied on the Miscellaneous Sales Application as evidence to support his claim, herein respondents would have to present proof of their alleged continuous possession of the Disputed Property as well as fraud in the issuance of the patent and title in favor of the Peña Heirs. In *Morato v. Court of Appeals*,[25] we held that the test of identity of causes of action lies not in the form of action but in whether the same facts or evidence would support and establish the former and present causes of action.[26]

Thus, *res judicata* does not apply in the instant case there being no identity of parties and causes of action. Nevertheless, the public policy underlying the principle of *res judicata* must be considered together with the policy that a party shall not be deprived of a fair adversary proceeding wherein to present his case.[27] It bears stressing that respondents' action for review of decree of registration is sanctioned under Section 32 of Presidential Decree No. 1529,[28] which provides that a person deprived of his land through actual fraud may institute an action to reopen or review a decree of registration within one year from entry of such decree. It states:

Section 32. Review of decree of registration; Innocent purchaser for value. The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.

The Court has repeatedly applied the foregoing provision of law to a patent issued by the Director of Lands, approved by the Secretary of Natural Resources, under the signature of the President of the Philippines. The date of the issuance of the patent corresponds to the date of the issuance of the decree in ordinary cases.[29]

In this case, the patent was issued in favor of the Peña Heirs on September 20, 1993. Respondents filed Civil Case No. 1122 for "Review of Decree of Registration and/or Reconveyance with Prayer for Issuance of Writ of Preliminary Prohibitory Injunction and Temporary Restraining Order" on January 27, 1994, or well within the prescribed one-year period. Likewise, records show that TCT No. 58976 under petitioner's name bears a Notice of Lis Pendens.[30] Thus, it cannot be said that petitioner is an innocent purchaser for value as she was well aware

of respondents' claim over the Disputed Property.

Further, even assuming arguendo that respondents filed their action after one year, they may still be entitled to relief. An aggrieved party may file an action for reconveyance based on implied or constructive trust, which prescribes in ten years from the date of the issuance of the certificate of title over the property provided that the property has not been acquired by an innocent purchaser for value.[31]

Respondents clearly asserted in their complaint that they and their predecessors-in-interest have long been the owners of the Disputed Property and that they were fraudulently deprived of ownership thereof when the Peña Heirs obtained a patent and certificate of title in their favor. These allegations certainly measure up to the requisite statement of facts to constitute an action for reconveyance.[32]

A final note. It appears from the records that after our ruling in the Assistant Executive Secretary case in 1989, the BOL issued a Patent on September 20, 1993 in favor of the Peña Heirs which became the basis for the issuance of OCT No. P-33658 covering Lot No. 107. However, as held in the Assistant Executive Secretary case, Lot No. 107 – as accretions to the original lot (Lot No. 355) awarded to Larrabaster on July 10, 1950 – “no longer belonged to the Government[,] the subdivision thereof by the Bureau of Lands into three lots (Lot No. 107, Lot No. 108 and Lot No. 109), as well as the allocation of said lots to two other individuals, was beyond the scope of its authority.”

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