

**MACARIO S. TANCUNTIAN, AS SUBSTITUTED BY HIS HEIR,
FRUCTUOSA TANCUNTIAN-ABRENICA AND CRISTINA D. CAYANG,
PETITIONERS, VS. CECILIO VICENTE T. GEMPESAW, JOFRE A.
SANIEL, FLORDELIS...**

G.R. No. 149097. October 18, 2004

Ponente: CORONA, J.

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CORONA, J.:

Before us is a petition for review under Rule 45[1] for the reversal of the decision[2] and resolution[3] of the Court of Appeals in CA-G.R. CV No. 57644,[4] which in turn affirmed the order of the Regional Trial Court (RTC), Branch 8, Davao City,[5] dismissing Civil Case No. 24505-96, an action for cancellation of title and damages for alleged lack of legal personality of petitioners.

Petitioners sued respondents before the RTC Davao City for cancellation of title and damages alleging that:

[P]laintiffs, Fausto Tancuntian, Macario Tancuntian and Cristina Cayang x x x are beneficial owners of that parcel of land, known and designated as Lots Nos. 968 and 953 of the Cadastral Survey of Davao, Cadastral Case No. 1, LRC Cadastral Record No. 317 both located at Matina Pangi, Davao City, which properties are covered by Original Certificate of Title Nos. 0-328 and 0-329 both issued by the Register of Deeds on November 9, 1976 which had not been cancelled nor revoked; x x x sometime in May 1994, the plaintiffs discovered that defendants applied for a free patent and fraudulently and anomalously secured titles on the portions of the same parcels of land (Lot Nos. 968 and 953) from the Bureau of Lands; x x x upon investigation by Special Investigator Angelita C. Corotan of the Department of Environment & Natural Resources, CENRO, Region XI, it was found out, among others, that --

‘In 1986, notwithstanding the existence of O.C.T. No. 328, O.C.T. No. 329 and O.C.T. No. 317, Lots 952, 953 and 968 are surveyed under public land consolidation subdivision survey Ccs-11-000-417 D in the name of Cecilio Gempesaw, et al., by Engr. Josefino Cacatian and was approved on 19 September 1986; Subsequent thereto, a public land subdivision survey, Csd 11-010895-D covering Lot 10038, Cad. 102, a portion of Lot 953 and Lot 968, Csd. 102 was also made by the Geodetic Engineer, Engr. Josefino V. Cacatian in the name of Lualhati Hilario, which was approved on July 16, 1991; Thereafter, several patents were issued under the said survey plan.’ (Underscoring Ours)

x x x x x x x x

[R]ecently in April 17, 1996, the defendant, Juanita Mascardo caused the subdivision of the property (OCT No. P-13245, Annex “G”) and thereafter unlawfully sold and transferred in favor of the defendants Jenelyn Tarongoy, Jocelyn Añora and Maryknoll Jacqueline N. Mendoza the other portions of the property; wherein, TCT No. T-264079 was issued in the name of Jenelyn M. Tarongoy, TCT No. T-264080 issued to Jocelyn M. Añora; TCT No. T-264081 to Maryknoll Jacqueline N. Mendoza, and the remaining TCT Nos. T-264075 to T-264078 retained in the name of defendant Mascardo; xxx the Bureau of Lands which caused the issuance of free patents and titles to the defendants on the same subject properties long covered by OCT Nos. 0-328 (Annex A) and 0-329 (Annex

B), has no more control nor jurisdiction over said properties which had long ceased to be part of the public domain and had already become the private properties of the plaintiffs herein; xxx the free patents and original certificates of title issued by the Register of Deeds in the names of the defendants on the subject property are patently null and void and should be cancelled, including the subsequent titles derived therefrom; x x x.[6] (Underscoring supplied)

Petitioners prayed for the issuance of a temporary restraining order and/or writ of preliminary injunction enjoining respondents from selling, alienating and disposing the subject properties or any portion thereof during the pendency of the case. They also sought the cancellation and nullification of all the titles of the subject properties in the names of respondents as well as the reconveyance thereof to petitioners, plus damages and attorney's fees.[7]

Private respondents filed an opposition[8] to the motion for the issuance of a writ of preliminary injunction on the ground that petitioners had neither the legal personality nor the authority to institute the proceedings for cancellation of title.

In their rejoinder to the opposition, petitioners clarified that they were not asking for the reversion of subject private land to the public domain, which would have required the participation of the Director of Lands or the Secretary of the Department of Environment and Natural Resources (DENR) through the Solicitor General. In essence, petitioners were seeking the quieting of their original titles that would ultimately lead to the cancellation of private respondents' unlawfully issued and void free patent titles on the same private land.[9]

On July 23, 1996, the RTC Branch 15 of the RTC of Davao City *motu proprio* dismissed the complaint because "only the Republic of the Philippines through the Solicitor General can file a case for cancellation of title on the ground of fraud in the processing and issuance of the said title (*Lee Hong Kok vs. David*, 48 SCRA 346; *Manonang vs. Consolacion*, 12 Phil. 342)."[10]

Petitioners filed motions for reconsideration of the said order[11] and inhibition of the presiding judge. On September 20, 1996, Judge Salvador Ibarreta, Jr. of Branch 8 of the Davao City RTC, to whom the case was re-raffled after Judge Quitain's inhibition, granted the motion for reconsideration and set aside the order of dismissal. In reinstating the complaint, Judge Ibarreta reasoned that "it was error for the court (Judge Quitain, Branch 15) to have dismissed the case without a prior motion to dismiss having been filed by private respondents." [12]

On October 8, 1996, private respondents Vicente Gempesaw, et al. filed their answer[13] to the complaint, while Jofre Saniel, another respondent, filed a motion to dismiss.[14] They principally invoked petitioner's lack of legal personality and authority to institute the action for cancellation of their titles.

Respondent Saniel asserted that since the action was for the cancellation of the original certificates of title issued to them through free patent, it was only the Government through the Solicitor General or his duly authorized representative who could institute the reversion proceeding under Section 101 of CA 141, (Public Land Act):

Section 101. All actions for the reversion to the Government of lands of the public domain or improvements therein shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the Republic of the Philippines.

Private respondent Saniel also cited the case of *Lee Hong Kok, et al. vs. David*, [15] where this Court held:

xxx Only the Government, represented by the Director of Lands, or the Secretary of Agriculture and Natural Resources, can bring an action to cancel a void certificate of title issued pursuant to a void patent. xxx. Whether the grant was in conformity with the law or not is a question which the government may raise, but

until it is raised by the government and set aside, the defendant cannot question it. The legality of the grant is a question between the grantee and the government.

Eventually, Judge Ibarreta issued an order on December 26, 1996 dismissing the complaint because:

Defendants' titles are Free Patent Titles issued by the Bureau of Lands upon application. Whether the grant was in conformity with the law or not is a question which only the government can raise, but until it is so raised by the government and set aside, the defendant cannot question it (Salazar vs. Court of Appeals, 87 Phil. 456). This Court cannot choose to deviate from the aforesaid rule and therefore is constrained to have this case dismissed. [16]

Petitioners appealed to the Court of Appeals raising a lone issue:

[W]hether plaintiffs-appellants should be sustained in their contention that they have the legal personality to institute the instant proceeding.[17]

Unfortunately for petitioners, the appellate court affirmed the trial court and held:

There is no dispute that the titles registered in the names of the defendants-appellees are free patent titles issued by the State through the Bureau of Lands. This fact is admitted in paragraph 3 of the plaintiff-appellants' complaint, and which free patent titles are all original certificates of titles. [See Annexes "C," "D," "E," "F," "G," "H," "I," and "I-1," Complaint]. While they denied that their action was one of reversion, plaintiffs-appellants deliberately overlooked the fact that the defendants-appellees' titles were derived from the patent in the name of the Republic of the Philippines.

The present action of a reversion proceedings, and not for quieting of titles as claimed by plaintiffs-appellants, they [plaintiffs-appellants] not being the grantor but the government of the Republic of the Philippines, the real party in interest is the Republic of the Philippines to whom the property would revert if it is ever established, after appropriate proceedings, that the free patent titles issued to the grantees are indeed vulnerable to annulment on the ground that the grantees failed to comply with the conditions imposed by the law (Annex "E," Ibid., p. 130). Thus, not being owners, much less grantors, plaintiffs-appellants cannot as for cancellation or reconveyance.

As a consequence of the above it is Our considered view, and so hold, that the court a quo properly dismissed the case for lack of legal personality of plaintiffs-appellants to maintain the present suit.

WHEREFORE, the order appealed from is hereby AFFIRMED.[18]

Undaunted, petitioners filed this petition.

Petitioners contend that the two courts below erred in dismissing the civil case for cancellation of respondents' titles with damages since they (petitioners) were the real parties in interest. Their position is that the suit they initially filed in the RTC of Davao City was not an action for reversion (wherein the real party in interest would have indeed been the Republic of the Philippines) but rather an action for cancellation of titles with damages, since the problem was "double titling." Petitioners thus pray for the cancellation of titles and free patents fraudulently secured by respondents over the same parcels of land which were already registered to them through OCTs which were still intact and in their names at the time of the issuance of respondents' allegedly void titles.

Petitioners insist that since the land in question was already private land at the time it was issued a free patent by the Bureau of Lands, the inclusion of the Republic of the Philippines as the real party in interest was unnecessary.

All told, the crux of the controversy before us is: what is the nature of the present case and who is the real party in interest? The resolution of this issue in turn hinges on the determination of the nature of the land in dispute, that is, whether it was already private land or still public land at the time the free patents (and the second set of OCTs)

were issued by the Bureau of Lands.

We grant the petition.

This legal dispute does not involve an action for the reversion of land to the public domain but one for the cancellation of null and void free patents over private land. We have already distinguished these two causes of action in *Heirs of Ambrocio Kionisala vs. Heirs of Honorio Dacut*:^[19]

An ordinary civil action for declaration of nullity of free patents and certificates of title is not the same as an action for reversion (*Heirs of Marciano Nagano v. Court of Appeals*, G.R. No. 123231, 17 November 1997, 282 SCRA 43, 49-51). The difference between them lies in the allegations as to the character of ownership of the realty whose title is sought to be nullified. In an action for reversion, the pertinent allegations in the complaint would admit State ownership of the disputed land. Hence in *Gabila v. Barriga* (No. L-28917, 30 September 1971, 41 SCRA 131, 135) where the plaintiff in his complaint admits that he has no right to demand the cancellation or amendment of the defendant's title because even if the title were canceled or amended the ownership of the land embraced therein or of the portion affected by the amendment would revert to the public domain, we ruled that the action was for reversion and that the only person or entity entitled to relief would be the Director of Lands.

On the other hand, a cause of action for declaration of nullity of free patent and certificate of title would require allegations of the plaintiff's ownership of the contested lot prior to the issuance of such free patent and certificate of title as well as the defendant's fraud or mistake; as the case may be, in successfully obtaining these documents of title over the parcel of land claimed by plaintiff. In such a case, the nullity arises strictly not from the fraud or deceit but from the fact that the land is beyond the jurisdiction of the Bureau of Lands to bestow and whatever patent or certificate of title obtained therefor is consequently void ab initio (*Ramirez v. Court of Appeals*, No. L-28591, 31 October 1969, 30 SCRA 297, 301). The real party in interest is not the State but the plaintiff who alleges a pre-existing right of ownership over the parcel of land in question even before the grant of title to the defendant. In *Heirs of Marciano Nagano v. Court of Appeals*, (No. L-28917, 30 September 1971, 41 SCRA 131, 135) we ruled —

x x x from the allegations in the complaint x x x private respondents claim ownership of the 2,250 square meter portion for having possessed it in the concept of an owner, openly, peacefully, publicly, continuously and adversely since 1920. This claim is an assertion that the lot is private land x x x Consequently, merely on the basis of the allegations in the complaint, the lot in question is apparently beyond the jurisdiction of the Director of Bureau of Lands and could not be the subject of a Free Patent. Hence, the dismissal of private respondents' complaint was premature and trial on the merits should have been conducted to thresh out evidentiary matters. It would have been entirely different if the action were clearly for reversion, in which case, it would have to be instituted by the Solicitor General pursuant to Section 101 of C.A. No. 141 x x x

It is obvious that private respondents allege in their complaint all the facts necessary to seek the nullification of the free patents as well as the certificates of title covering Lot 1015 and Lot 1017. Clearly, they are the real parties in interest in light of their allegations that they have always been the owners and possessors of the two (2) parcels of land even prior to the issuance of the documents of title in petitioners' favor, hence the latter could only have committed fraud in securing them x x x. (Underscoring Supplied)

In the same manner, petitioners in this case claim continuing ownership over the subject parcels of land since 1976, as evidenced by OCT No. 0-328 and 0-329 in their names. This can only mean, according to petitioners, that the free patents and OCTs issued to respondents in 1990 and 1991 were null and void because the land was their private property, and as such, could not have been validly disposed of by the Government. Conformably with our ruling in *Heirs of Ambrocio Kionisala*, petitioners are therefore the real party in interest in this case.

Furthermore, Rule 3, Section 2 of the 1997 Rules of Civil Procedure states:

Section 2. Parties in interest - A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be presented or defended in the name of the real party in interest.

Since, petitioners are the real parties in interest under the rules, then they have the legal personality to sue respondents. The land subject of the controversy is titled either in their names or that of their predecessors-in-interest. They stand to be benefited or injured by whatever decision the court may decree. Hence, they are entitled to the opportunity to defend their titles and present their side of the controversy since their titles date even earlier than those of the patent holders-respondents.

The jurisdiction of the Director of Lands is limited to public land and does not extend to land already privately owned. A free patent which purports to convey land to which the Government no longer has title at the time of its issuance does not vest any title in the patentee as against the registered owner.[20]

Lee Hong Kok, cited by respondents, is not in point since the nature of the land involved there was different. The subject matter of Lee Hong Kok was reclaimed land which was correctly categorized as public land; the land involved in this case is private land.

In sum, we rule that petitioners have the legal personality to institute Civil Case No. 24505-988 and see it through its proper conclusion. Petitioners should prove during the trial on the merits that Lot Nos. 968 and 953 are in fact registered in their names and that they are, indeed, the owners thereof.

WHEREFORE, the petition is hereby GRANTED. Let this case be REMANDED to the Regional Trial Court of Davao City, Branch 8, for trial and resolution on the merits as expeditiously as possible.

SO ORDERED.

Panganiban, J., (Chairman), Sandoval-Gutierrez, and Garcia, JJ., concur.
Carpio Morales, J., on leave.

[1] Petition dated August 8, 2001, Rollo, p. 4.

[2] Dated November 8, 2000, penned by Justice Buenaventura J. Guerrero and concurred in by Justices Jose L. Sabio, Jr. and Eliezer R. de los Santos, Rollo, p. 26.

[3] Dated June 20, 2001, penned by Justice Buenaventura J. Guerrero and concurred in by Justices Jose L. Sabio, Jr. and Eliezer R. de los Santos, Rollo, p. 33.

[4] Entitled Fausto Tancuntian et al. versus Cecilio Vicente T. Gempesaw et al.

[5] Penned by Judge Jesus V. Quitain dated December 26, 1996.

[6] Rollo, pp. 34-37.

[7] Id., pp. 36-39.

[8] Id., pp. 55-58.

[9] Id., pp. 59-62.

[10] Id., p. 71; Penned by Judge Jesus V. Quitain.

[11] Id., pp. 66-69.

[12] *Id.*, p. 87.

[13] *Id.*, pp. 88-94.

[14] *Id.*, pp. 95-101.

[15] 150-C Phil. 542 (1972).

[16] *Rollo*, p. 155.

[17] *Id.*, p. 30.

[18] *Id.*, pp. 31-32.

[19] 428 Phil. 249 (2002).

[20] *Agne vs. Director of Lands*, G.R. No. 40399, February 6, 1990, 181 SCRA 803.

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