

KENNETH O. NADELA, PETITIONER, VS. THE CITY OF CEBU AND METRO CEBU DEVELOPMENT PROJECT, RESPONDENTS.

G.R. No. 149627. September 18, 2003

Ponente: AZCUNA, J.

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AZCUNA, J.:

Before us is a petition for review on certiorari of the Decision of the Court of Appeals promulgated on April 30, 2001 in CA-G.R. CV No. 61910, which affirmed the Order of the Regional Trial Court of Cebu City, Branch 12, dated March 12, 1998,[1] dismissing the action of petitioner Kenneth O. Nadela for recovery of ownership and possession of a parcel of land with damages against respondents City of Cebu and Metro Cebu Development Project (MCDP).

On March 4, 1997, herein petitioner, Kenneth O. Nadela, filed an action before the Regional Trial Court of Cebu City, Branch 12, for recovery of ownership and possession of a parcel of land with damages and a prayer for the issuance of a temporary restraining order and/or preliminary injunction against respondents.

In his Amended Complaint,[2] petitioner alleged, thus:

- For more than thirty (30) years, he and his predecessors-in-interest have been in actual, adverse, peaceful and continuous possession in the concept of owner of an unregistered parcel of land described as:

A parcel of agricultural land known as Lot No. Psu-07-006450, situated at Barangay Inayawan, Cebu City, Philippines, and bounded:

North - Public Land;

East -- Public Land;

South -- Psu-07-006451 (Heirs of Alipio Bacalso);

West -- Public Land and Property of Felicisimo Rallon.

With an assessed value of SIX THOUSAND (P6,000) PESOS.[3]

- He merely tolerated respondents' act of dumping garbage on his property believing that it will not be prejudicial to his interest. However, sometime in the month of January 1997, respondents, without his consent, dumped thereon not just garbage but also other filling materials. Respondents likewise conducted some earthwork for the purpose of forcibly wresting from him the ownership and possession of said property.

- In utter disregard of his rights, respondent MCDP blocked the approval of the survey plan of the subject property. Consequently, the Bureau of Lands (now the Lands Management Services), Department of Environment and Natural Resources, Region VII, deferred action on the said plan.

- Since the month of January 1997, respondent MCDP placed and stationed some security guards in the subject property, thereby preventing him from entering and exercising his right of ownership and possession over the property.

- Said unlawful acts of respondents will not only cause irreparable injury but will also work injustice to him, and complicate, aggravate and multiply the issues in this case.

Petitioner prayed that pending hearing of the case on the merits, and after the parties shall have been heard, the court issue a writ of preliminary injunction, directing the respondents to desist and refrain from conducting any earthwork, introducing any improvement, or placing any guard on the property. Thereafter, petitioner prayed that judgment be rendered (1) declaring him as the true and lawful owner of the subject property; (2) ordering the respondents and all persons acting in their behalf, control or direction, and/or who derived their right of possession from the respondents, to vacate the subject property; (3) ordering the respondents to pay the sum of P500,000 as actual damages plus the sum of P50,000 a month until petitioner's possession of the subject property shall have been restored, P100,000 as attorney's fees and costs of suit.

Respondent City of Cebu filed a Motion to Dismiss[4] on the ground that petitioner has no cause of action since (1) the suit is against the State and there is no allegation that it has given its consent; and (2) the Complaint itself shows that the case is premature since petitioner admitted that he is in possession in the concept of owner of an unregistered parcel of land.

Respondent MCDP, represented by the Solicitor General, also filed a Motion to Dismiss[5] on the following grounds: (1) the Complaint states no cause of action as the land involved is a public land and thus belongs to the State, petitioner being a mere claimant thereof; (2) petitioner failed to exhaust available administrative remedies; and (3) petitioner's suit is barred under the doctrine of state immunity from suit.

Petitioner filed an Opposition[6] to respondents' respective motion to dismiss asserting that the property in litigation is a private agricultural land and that neither the doctrine of state immunity from suit nor the general rule of exhaustion of administrative remedies applies in this case. Petitioner brought to the attention of the trial court the following facts:

- (1) That pursuant to Land Classification Map No. 222, Project No. 5, Certified on November 20, 1912, the property in litigation (Lot No. PSU-07-006450, situated at Barangay Inayawan, Pardo, Cebu City) had long been classified as alienable and disposable land;
- (2) That the said lot is a portion of a parcel of land originally owned by Alipio O. Bacalso, whose possession of the same commenced way back in 1962, as evidenced by a tax declaration issued in his name;
- (3) That on April 22, 1989, spouses Alipio Bacalso and Eleuteria Bacalso assigned their property situated at Barangay Inayawan, Pardo, Cebu City, to Nadela Agro-Industrial Development Corporation;
- (4) That in 1993, the same property was declared for taxation purposes in the name of Nadela Agro-Industrial Development Corporation;
- (5) That on May 4, 1995, Nadela Agro-Industrial Development Corporation assigned the property in litigation to the plaintiff; and
- (6) That for more than thirty (30) years, plaintiff and his predecessors-in-interest paid realty taxes for the property in litigation.[7]

Respondents filed their respective Reply[8] to petitioner's Opposition.

On September 19, 1997, Acting Presiding Judge Victorino U. Montecillo issued an Order[9] granting petitioner's application for a writ of injunction.

Respondents City of Cebu and MCDP filed their respective Motion for Reconsideration[10] of said Order. Petitioner filed a Comment and Opposition[11] to the motion for reconsideration of respondent MCDP, which in

turn filed a Reply.[12] Petitioner filed a Rejoinder[13] to said Reply.

On January 23, 1998, Presiding Judge Aproniano B. Taypin issued an Order[14] setting aside the Order of the Court dated September 19, 1997, which granted the application for a writ of injunction. The trial court ruled that the project undertaken by respondent MCDP falls within the definition of "infrastructure project" and pursuant to Presidential Decree No. 1818, courts are prohibited from issuing writs of injunction to stop any person, entity or government official from proceeding with or continuing the implementation of any such infrastructure project. The trial court further ordered that the case be tried on the merits.

Respondent City of Cebu filed a Motion for Reconsideration of the Order denying the Motion to Dismiss[15] reiterating therein that the Complaint states no cause of action and is premature as the lot in question is admittedly an unregistered parcel of land; hence, it is still a part of the public domain and owned by the State.

On March 12, 1998, the trial court issued an Order,[16] thus:

ORDER

This is a motion for reconsideration of an Order denying the motion to dismiss filed by the herein defendant, City of Cebu. A copy of said motion was duly furnished to the herein plaintiff thru its counsels on record.

The instant case involved an unregistered parcel of land, henceforth, a part of the public domain and owned by the state. The Tax Declarations presented by the plaintiff are not considered conclusive evidence of ownership, as has been held in the case of *Rivera vs. Court of Appeals*, 244 SCRA 218. Moreover, the subject property being unclassified, whatever possession the applicant may have had and however long cannot ripen into private ownership. (*Director of lands vs. Intermediate Appellate Court*, 219 SCRA 339).

Finally, under the Regalian Doctrine, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State (*Director of Lands v. Intermediate Appellate Court*, 219 SCRA 339).

Wherefore, in consideration of all the foregoing, the instant case is hereby dismissed.

SO ORDERED.

Petitioner filed a motion for reconsideration, which was denied by the trial court for being unmeritorious.[17]

Petitioner thereafter appealed to the Court of Appeals alleging that (1) the trial court erred in dismissing Civil Case No. Ceb-19990 without conducting a hearing of the case on the merits; and (2) the trial court acted with grave abuse of discretion and denied him due process when it denied his motion for reconsideration of the order of dismissal.[18]

On April 30, 2001, the Court of Appeals rendered a decision against petitioner, the dispositive portion of which reads:

WHEREFORE, premises considered, the present appeal is hereby dismissed and the appealed Order dated March 12, 1998 in Civil Case No. CEB-19990 is hereby AFFIRMED.[19]

The Court of Appeals ruled that the trial court did not err in ordering the dismissal of the Complaint based on the following:

(1) Petitioner's allegations in the Amended Complaint that the disputed property is still an unregistered parcel of land and that he has a pending application for a survey plan with the Lands Management Bureau of the Department of Environment and Natural Resources, which the appellate court misstated as a pending application for a judicial confirmation of title, are admissions of the State's ownership of the property.

(2) Granting that petitioner has been in possession in the concept of owner of the subject property for more than 30 years, still petitioner cannot be deemed to have acquired a grant by operation of law because his possession thereof did not commence since June 12, 1945 as required by Section 48 (b) of the Public Land Act as amended by Presidential Decree No. 1073, considering that the earliest tax declaration he submitted during the hearing on the application for a writ of preliminary injunction was only for the year 1962.

The Court of Appeals also held that in denying petitioner's motion for reconsideration of the order of dismissal of the case, the trial court was of the honest opinion, after evaluating the grounds of said motion, that the same was not meritorious.[20] Hence, the appellate court ruled that the trial court did not act with grave abuse of discretion as there was no capricious or whimsical exercise of judgment tantamount to lack of jurisdiction in the issuance of said order.[21]

Petitioner filed a motion for reconsideration, which was denied by the Court of Appeals for lack of merit.[22]

Hence, this appeal.

Petitioner contends that the Court of Appeals erred, thus:

- THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN AFFIRMING THE REGIONAL TRIAL COURT OF CEBU CITY (BRANCH 12) GRANTING THE MOTION TO DISMISS ON THE GROUND OF NO CAUSE OF ACTION.
- THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN FAILING TO RECOGNIZE PETITIONER'S CONSTITUTIONAL RIGHT TO PROPERTY WITHOUT DUE PROCESS AND JUST COMPENSATION.
- THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN FAILING TO RECOGNIZE PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS BY NOT ALLOWING THE LATTER TO PRESENT HIS EVIDENCE-IN-CHIEF IN A TRIAL ON THE MERITS BY REMANDING THE INSTANT CASE TO THE REGIONAL TRIAL COURT FOR FURTHER PROCEEDING. [23]

The Court's Ruling

Petitioner contends that the Court of Appeals erred in affirming the Order of the trial court which granted the motion to dismiss of respondents on the ground that the Complaint states no cause of action. In essence, petitioner asserts in his assigned errors that the allegations in his Amended Complaint are sufficient to establish his cause of action, and said allegations were hypothetically admitted by respondents when they filed a motion to dismiss. Petitioner prays that he be given an opportunity to prove ownership over the subject property in a trial on the merits.

The contention is untenable.

The test of the sufficiency of the facts to constitute a cause of action is whether admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer of the complaint.[24] In answering the query, only the facts asserted in the complaint must be taken into account without modification although with reasonable inferences therefrom.[25] Nevertheless, in *Tan v. Director of Forestry*[26] and *Santiago v. Pioneer Savings and Loan Bank*,[27] evidence submitted by the parties during a hearing in an application for a writ of preliminary injunction was considered by the court in resolving the motion to dismiss. In *Llanto v. Ali Dimaporo*,[28] this Court held that the trial court can properly dismiss a complaint on a motion to dismiss due to lack of cause of action even without a hearing, by taking into consideration the discussion in said motion and the opposition thereto. In *Marcopper Mining Corporation v. Garcia*,[29] this Court ruled that the trial court did not err in considering other pleadings, aside from the complaint, in deciding whether or not the complaint should be

dismissed for lack of cause of action.

A cause of action exists if the following elements are present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[30]

From the allegations in the Complaint, petitioner claims ownership of the subject property for having possessed it in the concept of an owner openly, adversely, peacefully and exclusively for more than 30 years. Petitioner did not allege in his Complaint the actual date when his ownership of the subject property accrued. However, in his Opposition[31] to respondents' motion to dismiss, petitioner brought to the attention of the trial court the fact that "the said lot is a portion of a parcel of land originally owned by Alipio O. Bacalso, whose possession of the same commenced way back in 1962, as evidenced by a tax declaration issued in his name." (Emphasis supplied.)

Petitioner's claim is an assertion that the subject property is private land, or that even assuming it was part of the public domain, petitioner had already acquired imperfect title thereto under Section 48 (b) of Commonwealth Act No. 141, otherwise known as the Public Land Act, as amended by Republic Act No. 1942.[32] Said section provides:

SEC. 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate therefor, under the Land Registration Act, to wit:

xxx xxx xxx

(b) Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

Said Section 48(b) was amended by Presidential Decree No. 1073, approved on January 25, 1977, thus:

SEC. 4. The provisions of Section 48(b) and Section 48(c), Chapter VIII, of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest, under a bona fide claim of acquisition of ownership, since June 12, 1945.

In *Heirs of Marciano Nagano v. Court of Appeals*,[33] we ruled that under Section 48, a subject lot is, for all intents and purposes, segregated from the public domain, because the beneficiary is "conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter."

In *Director of Lands v. Bengzon*,[34] we also ruled:

We cannot subscribe to the view of petitioner that it is only after a possessor has been issued a certificate of title that the land can be considered private land. In interpreting the provisions of Section 48 (b) of Commonwealth Act No. [141], this Court said in *Herico vs. Dar*, ". . . when the conditions as specified in the foregoing provision are complied with, the possessor is deemed to have acquired, by operation of law, a right

to a grant, a government grant, without the necessity of a certificate of title being issued. The land, therefore, ceases to be of the public domain, and beyond the authority of the Director of Lands to dispose of. The application for confirmation is a mere formality, the lack of which does not affect the legal sufficiency of the title as would be evidenced by the patent and the Torrens title to be issued upon the strength of said patent.

In *Suzi v. Razon and Director of Lands*,^[35] we ruled that "if, as above stated, the land, the possession of which is in dispute, had already become, by operation of law private property of the plaintiff, there lacking only the judicial sanction of his title, [plaintiff] has the right to bring an action to recover the possession thereof." One claiming "private rights" must prove that he has complied with Commonwealth Act No. 141, as amended.^[36]

Notably, the Court of Appeals knew that petitioner was claiming ownership over the subject property under Section 48 (b) of the Public Land Act. However, it correctly affirmed the dismissal of the case as it properly considered the evidence submitted by petitioner during the hearing of the application for a writ of preliminary injunction.^[37] The Court of Appeals held:

In view of the required length of possession, even if We hypothetically admit the truth of appellant's allegation in his complaint that he had been for more than thirty (30) years been in "open, continuous, exclusive and notorious possession in concept of owner" of the subject land, still he cannot be deemed to have acquired a grant, or a right to a grant, by operation of law, considering his possession thereof did not commence "since June 12, 1945 or earlier" as required by Sec. 48 (b) and (c), as amended by P.D. No. 1073. Among the documentary evidence submitted by appellant during the hearing on the application for a writ of preliminary injunction are tax declarations in his name and that of his predecessor-in-interest Alipio Bacalso, the oldest being for the year 1962. Appellant, therefore, has not acquired ownership and title under the law, over the property subject of litigation, which remained part of the public domain, exclusively belonging to the State. The trial court thus did not err in ordering the dismissal of the complaint upon the ground of failure to state a cause of action.^[38]

Petitioner, therefore, clearly relies on Tax Declaration No. 117609^[39] for the year 1962,^[40] the earliest tax declaration presented during the hearing on the application for a writ of preliminary injunction, which appears to be the evidence mentioned in petitioner's Opposition^[41] to respondents' motion to dismiss wherein petitioner brought to the attention of the trial court the fact that the subject property "is a portion of a parcel of land originally owned by Alipio O. Bacalso, whose possession of the same commenced way back in 1962, as evidenced by a tax declaration issued in his name" (emphasis supplied).

Considering appellant's allegation in his Opposition that his predecessor-in-interest, Alipio O. Bacalso, necessarily the first and earliest, in view of the words "originally owned," commenced possession of the subject property only in 1962, and his submission of tax declarations, the earliest of which was for the year 1962,^[42] during the hearing on the application for a writ of preliminary injunction, petitioner cannot be presumed to have performed all the conditions essential to a Government grant inasmuch as his possession of the subject property did not commence since June 12, 1945 or earlier, as required by Section 48 (b) of Commonwealth Act No. 141, as amended by Presidential Decree No. 1073. Hence, the Court of Appeals did not err in affirming the Order of the trial court dismissing the Complaint on the ground of failure to state a cause of action.

WHEREFORE, in view of the foregoing, the instant petition is DENIED for lack of merit. The questioned Decision of the Court of Appeals in CA-G.R. CV No. 61910 is hereby AFFIRMED. Costs against the petitioner.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Ynares-Santiago, and Carpio, JJ., concur.

- [1] In Civil Case No. CEB-19990.
- [2] CA Rollo, pp. 39-42.
- [3] CA Rollo, p. 40.
- [4] CA Rollo, p. 63-66.
- [5] CA Rollo, p. 67-72.
- [6] CA Rollo, p. 74.
- [7] CA Rollo, p. 75.
- [8] CA Rollo, pp. 82, 84.
- [9] CA Rollo, p. 93.
- [10] CA Rollo, pp. 96, 114.
- [11] CA Rollo, p. 126.
- [12] CA Rollo, p. 129.
- [13] CA Rollo, p. 135.
- [14] CA Rollo, p. 142.
- [15] CA Rollo, p. 144.
- [16] CA Rollo, p. 148.
- [17] CA Rollo, p. 161.
- [18] CA Rollo, pp. 71-72.
- [19] Rollo, p. 74.
- [20] Ibid.
- [21] Ibid.
- [22] Rollo, p. 86.
- [23] Rollo, pp. 41-42.
- [24] Heirs of Kionisala v. Heirs of Honorio Dacut, G.R. No. 147379, February 27, 2002.
- [25] Ibid.

[26] 125 SCRA 302 (1983).

[27] 157 SCRA 100 (1988).

[28] 16 SCRA 601 (1966).

[29] 143 SCRA 178 (1986).

[30] Vergara v. Court of Appeals, 319 SCRA 323, 327 (1999), citing Parañaque King Enterprises, Inc. v. Court of Appeals, 269 SCRA 727, 739 (1997).

[31] CA Rollo, p. 74.

[32] Heirs of Marciano Nagaño v. Court of Appeals, 282 SCRA 43, 49-50 (1997).

[33] Ibid.

[34] 152 SCRA 369, 376-377 (1987).

[35] 48 Phil. 424, 428 (1925).

[36] Public Estates Authority v. Court of Appeals, 345 SCRA 96, 102 (2000).

[37] See Santiago v. Pioneer Savings and Loan Bank, *supra*, note 28, at 104-105; Tan v. Director of Forestry, *supra*, note 27, at 317.

[38] Rollo, pp. 72-73.

[39] Exhibit "A," Records, p. 62.

[40] Exhibit "A-2," Records, p. 62.

[41] CA Rollo, p. 74.

[42] Exhibit "A-2," Records, p. 62.

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