

**ROLANDO DE TUMOL, PETITIONER, VS. JULIANA DE TUMOL
ESGUERRA, THE DEPARTMENT OF AGRARIAN REFORM
ADJUDICATION BOARD AND THE HONORABLE COURT OF APPEALS,
RESPONDENTS.**

G.R. No. 150646. July 15, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Dionisio de Tumol, a farmer beneficiary of a landholding with a total area of about 2.7 hectares located in Aliaga, Nueva Ecija for which he was issued by the Department of Agrarian Reform (DAR) Certificate of Land Transfer (CLT) Nos. 0317975 and 0317976, died[1] on February 15, 1979, leaving as heirs his wife Monica Sta. Ana de Tumol (Monica Vda. de Tumol) and his four children, namely, herein respondent Juliana de Tumol Esguerra, Francisca, Alejandro, and herein petitioner Rolando.

On the request of petitioner, the DAR Region III Director, noting that petitioner's co-heirs executed a document waiving their rights and interests over the farmholding covered by the CLTs in his favor as successor thereof, ordered the cancellation of the CLTs issued to his father Dionisio de Tumol, by Order[2] of September 30, 1985.

The DAR accordingly issued on December 30, 1990 a Comprehensive Agrarian Reform Program (CARP) Beneficiary Certificate to petitioner.[3]

On November 11, 1992, the Department of Agrarian Reform Adjudication Board (DARAB), Region III, Cabanatuan City received a petition[4] dated November 5, 1992 of Monica Vda. de Tumol, represented by her daughter-herein respondent, against petitioner, docketed as DARAB Case No. 2057 NE'92, alleging:

x x x

That sometime in 1979, Dionisio de Tumol died leaving behind him the 2.7 hectares awarded to him pursuant to the laws on agrarian reform, and that the cultivation of which was continued by [Monica Vda. de Tumol], with the help of her son, the [petitioner] herein;

That without the knowledge and consent of [Monica Vda. de Tumol], [petitioner] Rolando de Tumol worked on with deceit, strategy, and with intent to gain to transfer in his name the ownership, possession and cultivation of the farmholding to the prejudice of his other co-heirs, the property being conjugal in nature;

x x x

That the matter was also brought before the BARC Chairman for settlement, but the disputes [are] still unresolved, that even the Chairman was reluctant to issue the certification required and the MARO of Aliaga, Nueva Ecija refused to provide the records of the late Dionisio de Tumol;

x x x

That as plain usurper, [petitioner] ha[s] no right whatsoever to security of tenure and cannot claim any benefit

under the principle of social justice. That because the [petitioner] is the youngest among the children, he is last in the priority of succession as provided for by law, the wife having the first priority to succeed;

x x x (Underscoring supplied)

and praying that an order be issued:

x x x

2. Declaring the status of [petitioner] as a mere intruder and usurper without any color or right;

3. By placing [Monica Vda. de Tumol] in possession;

x x x (Underscoring supplied)

During the pendency of the above-said petition-DARAB Case No. 2057 NE'92, petitioner and his mother submitted a November 7, 1992 "Kasunduan Pag-aayos o Kahilingan"[5] wherein they agreed to withdraw the petition.

In support of the kasunduan, Monica Vda. de Tumol submitted a December 3, 1992 "Sinumpaang Salaysay"[6] stating that the filing of the petition was not to her "tunay na kagustuhan" as she was merely made to sign it upon the representation that there was no "kabuluhan" and that at her age (80), she could no longer appear in court or walk a distance, hence, her request to "pawalan ng bisa ang demanda dahil hindi ko alam kung paano nangyari."

Finding the Sinumpaang Salaysay, which was subscribed and sworn to before the Municipal Mayor of Aliaga, Nueva Ecija to be in order, the Provincial Adjudicator, by Order[[7][[]]of December 9, 1992, granted the withdrawal of Monica Vda. de Tumol's petition.

Subsequently or on December 29, 1992, petitioner's sister-herein respondent filed with the DARAB Regional Office a petition[8] against petitioner, docketed as DARAB Case No. 2125 NE'92, the pertinent allegations of which read:

x x x

3. That, after the demise of the registered farmer beneficiary Dionisio de Tumol on February 15, 1979, respondent's mother Monica de Tumol permitted temporarily the herein [petitioner]to cultivate the said farmholding;

x x x

5. That, [petitioner] Rolando de Tumol, refused and still refusing to vacate the said farmholding and deliver the same to the [respondent] the proper person who has the right to succeed over the said farmholding;

6. That this case has been referred to the BARC of Brgy. Umangan, Aliaga, Nueva Ecija for several times but the BARC officials therein are very reluctant to entertain the complaint of the herein [respondent];

7. That, [respondent] being a compulsory heir and the eldest as among them and considering that the wife of the late farmer beneficiary Monica de Tumol is too old being 80 years of age or more [in] bringing this action, pursuant to Memorandum Circular No. 19, S[eries of] 1978 which provides in part [that] in the absence or due to permanent incapacity of the surviving spouse, priority shall be determined among the heirs according to age. (Emphasis and underscoring supplied)

Respondent thus prayed that judgment be rendered:

1. Ordering the [petitioner] to vacate the subject farmholding;

2. Declaring the [respondent] as the rightful successor over the same;
3. Placing the [respondent] in actual and physical possession of the said farmholding. (Underscoring supplied)

In support of her petition respondent submitted her Sinumpaang Salaysay[9] dated June 8, 1993 claiming that she and her other siblings had no knowledge of the "Transfer Action" filed by petitioner; and that she and her other siblings did not sign any document bearing on the transfer.

To the petition of respondent-DARAB Case No. 2125 NE'92, petitioner by Answer[10] dated June 23, 1993 raised the following defenses, among others, quoted verbatim:

x x x

5. That the [respondent] has no right to claim succession, because the surviving wife Monica Vda. de Tumol of the late tenant Dionisio de Tumol, is still living;

6. That this is the second case filed by the [respondent], wherein in the first case the [respondent] used her mother Monica Vda. de Tumol as the petitioner which she represents, and of which case is known as Monica Vda. de Tumol, represented by Juliana de Tumol Esquerra v. Rolando de Tumol, DARAB Case No. 2057;

7. That aforesaid DARAB Case No. 2057 filed by [respondent] against the [petitioner] was dismissed by PARAD Ernesto Tabara, x x x henceforth, it is proper that this case be dismissed on [the] ground of res judicata;

x x x

9. That Monica Vda. de Tumol the real party in interest had already executed an affidavit and documents to show that she has no interest in filing a case against the [petitioner], x x x so as manifested this case is an ill-desire by the [respondent] which has no right to own subject land;

x x x (Emphasis and underscoring supplied)

And petitioner submitted his Affidavit,[11] as well as those of his mother Monica Vda. De Tumol,[12] and one Francisco Magsakay[13] (Magsakay). Petitioner's Affidavit and that of his mother alleged that ownership of the property in question had been settled and that respondent had been given her share which she, however, sold to Magsakay. Magsakay's Affidavit confirmed the sale to him of respondent's share.

By Decision[14] of October 12, 1993, the Provincial Adjudicator ruled in favor of respondent, noting that, among other things, the estate of Dionisio de Tumol had not yet been settled and, therefore, his farmholding should be transferred and registered collectively in the names of all his heirs.

The Provincial Adjudicator thus ordered the Municipal Agrarian Reform Officer of Aliaga, Nueva Ecija "to generate an Emancipation Patent in the names of all the heirs of the deceased Dionisio de Tumol who shall divide equally the produce of the land after deducting the expenses in the cultivation thereof."

Before the DARAB to which petitioner appealed[15] the Provincial Adjudicator's decision, he assigned the following errors:

I

THE LOWER BOARD ERRED AND HAS NO AUTHORITY IN NULLIFYING THE DAR REGIONAL ORDER DATED [SEPTEMBER 30,] 1985 PLACING THE APPELLANT AS THE SUCCESSOR AND/OR FARMER BENEFICIARY, AND

II

THE LOWER BOARD ERRED IN NOT TAKING INTO CONSIDERATION THE AFFIDAVIT/TESTIMONY OF THE WIDOW MONICA DE TUMOL, CERTIFYING THAT IN FACT THE APPELLANT HAS ALREADY BEEN THE SUCCESSOR AND BENEFICIARY OF THE SUBJECT LAND.[16]

In the meantime or on February 20, 1997, Emancipation Patent Nos. 00716143, 00716144 and 00716145 were issued to petitioner by the DAR, pursuant to which Transfer Certificate of Title Nos. EP-00003, EP-00004 and 00015[17] were issued in his name.

By Decision[18] dated June 11, 1998, the DARAB affirmed with modification the Provincial Adjudicator's October 12, 1993 Decision.

Petitioner's Motion for Reconsideration having been denied by Resolution[19] of May 24, 2000, he filed a Petition for Review[20] before the Court of Appeals (CA) raising the following issue:

WHETHER OR NOT THE BOARD A QUO HAS GRAVELY ERRED IN CANCELLING THE EMANCIPATION PATENTS OF HEREIN PETITIONER AND ALLOCATING THE SUBJECT PROPERTY IN FAVOR OF RESPONDENT.[21]

Answering the issue in the affirmative, petitioner argued before the CA that, inter alia, the order for the cancellation of his emancipation patents has no legal basis, the action to cancel the same having prescribed after the lapse of three (3) years from 1985, following agrarian laws.

Without resolving the petition on the merits, the CA, by Resolution[22] of December 22, 2000, dismissed it on technical grounds, it noting a discrepancy between the registry receipts evidencing proof of mailing of copies of the petition upon respondents and the illegibility of the challenged DARAB Decision dated June 11, 1998 and Resolution dated May 24, 2000 as well as the other papers thereto attached, in breach of Sec. 6(c), Rule 43 of the 1997 Rules of Civil Procedure which requires the petition for review to be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers.

Petitioner's Motion for Reconsideration having been denied by the CA by Resolution[23] of September 18, 2001, copy of which he received on September 25, 2001,[24] he lodged the present petition for Certiorari before this Court on November 21, 2001, faulting the CA to have acted "with grave abuse of discretion amounting to lack of jurisdiction in dismissing his petition on simple technical grounds, and in denying his Motion for Reconsideration, given the fact that he is already the absolute owner of the disputed properties.[25]

Instead of filing a petition for review on certiorari under Rule 45, petitioner filed, as stated in the immediately preceding paragraph, the present petition for certiorari under Rule 65 on November 28, 2001. On this score alone, the petition is dismissible.

Respecting the finding by the CA of a "discrepancy between the registry receipts evidencing proof of mailing of the petition upon respondents," in light of petitioner's explanation therefor in his Motion for Reconsideration[26] of the CA Resolution of December 22, 2000, he may be given the benefit of the doubt.

As for the CA's observation about the "illegibility" of the challenged DARAB Decision and Resolution, a scrutiny of the CA Rollo shows that the copies, attached to petitioner's petition, of the challenged DARAB Decision and Resolution as well as the other attachments, except the three Transfer Certificates of Title, are legible alright but all are mere photocopies which are uncertified. Petitioner did not thus comply with the injunction of Section 69(c) of Rule 43 reading:

SECTION 6. Contents of petition.—The petition for review shall (a) state the full names of the parties to the

case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the records referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein. (Emphasis supplied).

On this score, petitioner's present petition is dismissible too.

Petitioner's procedural lapses notwithstanding, this Court shall give due course to his petition, in the interest of justice since substantive rights far outweigh the lapses, and treat it as one for review albeit it was filed late for the purpose.[27]

As basis of her claim to be the bona fide successor to her father, respondent, as the eldest child of Dionisio de Tumol, invokes Ministry of Agrarian Reform Memorandum Circular No. 19, Series of 1978[28] the pertinent provisions of which read:

Pursuant to the provisions of the Presidential Decree No. 27, and the Policy of the Government laid down in the Code of Agrarian Reforms to establish owner-cultivatorship and the economic family size farm as the basis of agricultural development of the country, the following rules and regulations shall be observed in the event of death of a tenant-beneficiary:

1. Succession to the farmholding covered by Operation Land Transfer, shall be governed by the pertinent provisions of the New Civil Code of the Philippines subject to the following limitations:

x x x

2. For the purpose of determining who among the heirs shall be the sole owner-cultivator, the following rules shall apply:

x x x

b. Where there are several heirs, and in the absence of extra-judicial settlement or waiver of rights in favor of one heir who shall be the sole owner and cultivator, the heirs shall within one month from death of the tenant-beneficiary be free to choose from among themselves one who shall have sole ownership and cultivation of the land, subject to Paragraph 1(b) and (c) hereof: Provided, however, That the surviving spouse shall be given first preference; otherwise, in the absence or due to the permanent incapacity of the surviving spouse, priority shall be determined among their heirs according to age.

x x x (Emphasis and underscoring supplied)

Following Article 1141 of the Civil Code which provides:

ARTICLE 1141. Real actions over immovables prescribe after thirty years.

This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription. (Emphasis and underscoring supplied),

real actions over immovable property, like respondent's petition to enforce her claim as successor to her father's farmholding, prescribe after 30 years.

Since respondent's cause of action accrued from her father's death in 1979, she had until 2009 to institute her claim as rightful successor to his father's farmholding.

In 1988, however, the Comprehensive Agrarian Reform Law (CARL) which provides suppletory application of the provisions of the CODE OF AGRARIAN REFORM not inconsistent with it, was passed. The relevant provision of said Code which is not inconsistent reads:

SECTION 38. Statute of Limitations.—An action to enforce any cause of action under this Code shall be barred if not commenced within three years after such cause of action accrued. (Emphasis and underscoring supplied)

Since respondent's petition before the DARAB Regional Office was filed on December 29, 1992, it is covered by the above-quoted CODE OF AGRARIAN REFORM provision on prescription. The 3-year prescriptive period should thus be reckoned, not from petitioner's and respondent's father's death in 1979, but from the time CARL took effect which was on June 15, 1988. Hence, respondent had until June 15, 1991 to file her case.

When respondent filed her petition-DARAB Case No. 2125 NE'92 before the DARAB Regional Office on December 29, 1992, although it was therein alleged that she had referred the case to the BARC, the acronym for Barangay Agrarian Reform Council which, by her claim, was reluctant to entertain it, there is no showing that the referral was made before June 15, 1991 when her cause of action was to prescribe. For purposes of determining therefore of whether respondent's said petition was filed within the period of prescription, its date of filing with the DARAB on December 29, 1992 is controlling.

When respondent filed on December 29, 1992 her petition, more than three years had elapsed from the effectivity of the CARL on June 15, 1988. Her petition should, therefore, have been dismissed on the ground of prescription.

At all events, several considerations weigh against the merits of respondent's claims.

First, respondent initially filed in November 1992 a petition in behalf of her mother whom she claimed was the rightful successor of her father. Her mother, however, moved for and the DARAB Regional Office granted the dismissal of the case on December 9, 1992. Twenty days later or on December 29, 1992, she filed her own petition-DARAB Case No. 2125 NE'92 now the subject of the present case, alleging that her mother was too old and incapacitated, hence, she (respondent) is the rightful successor.

Second, by asserting her rights 13 years after her father's death, estoppel by laches had set in.

Third, petitioner's claim that respondent had been given her share of her father's estate, a claim confirmed by their mother, but which share she sold to Francisco Magsakay who corroborated such sale to him, has not been controverted.

Lastly, the regularity in the performance of official duty is presumed in favor of the DAR Regional Director when he issued on September 30, 1985 the Order naming petitioner as the successor to his father's farmholding on the basis of documentary evidence showing that respondent and her other siblings had waived their rights and interests thereon, which Order had become final and executory, not to mention that such documentary evidence had not been repudiated or declared a forgery.

WHEREFORE, in light of the foregoing discussions, the petition is hereby GRANTED. DARAB Case No. 2301 (Regional Case No. 2125 NE'92), "Juliana de Tumol Esguerra v. Rolando de Tumol," is hereby DISMISSED with PREJUDICE.

No pronouncement as to costs.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Department of Agrarian Reform Adjudication Board (DARAB) Records at 50. The documents in the DARAB Records are arranged from the latest to the earliest and the pagination begins from page 389 and ends on page 1.

[2] Id. at 102-99.

[3] Id. at 98.

[4] Id. at 235-233.

[5] Exhibit "8", DARAB Records at 96.

[6] Exhibit "5," DARAB Records at 104.

[7] DARAB Records at 72.

[8] Id. at 3-1.

[9] Exhibit "B," DARAB Records at 52.

[10] DARAB Records at 66-65.

[11] Exhibit "2," DARAB Records at 107-106.

[12] Exhibit "1," DARAB Records at 109-108.

[13] Exhibit "4," DARAB Records at 105.

[14] DARAB Records at 141-140.

[15] Docketed as DARAB Case No. 2301.

[16] Id. at 242-241.

[17] Rollo at 27-29.

[18] Id. at 54-62.

[19] Id. at 68-72.

[20] Id. at 73-83.

[21] Id. at 78.

[22] Id. at 84-85.

[23] Id. at 95.

[24] Id. at 20.

[25] Ibid.

[26] Court of Appeals Rollo at 46-48.

[27] *Fabrigar v. People*, 422 SCRA 395, 402 (2004); *Nazareno v. Court of Appeals*, 378 SCRA 28, 36-37 (2002); *Government Service Insurance System v. Court of Appeals*, 266 SCRA 187, 198 (1997).

[28] Amended by DAR Administrative Order No. 14, Series of 1988.

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