

**ENGR. GABRIEL V. LEYSON, DR. JOSEFINA L. POBLETE, FE LEYSON
QUA, CARIDAD V. LEYSON AND ESPERANZA V. LEYSON,
PETITIONERS, VS. NACIANSINO BONTUYAN AND MAURECIA B.
BONTUYAN, RESPON...**

G.R. NO. 156357. February 18, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA), as well as its Resolution in CA-G.R. CV No. 64471 denying the motion for reconsideration of the said decision.

The Antecedents

Calixto Gabud was the owner of a parcel of land located in Barangay Adlawon, Mabolo, Cebu City, which was declared for taxation purposes under Tax Declaration (T.D.) No. 03276-R in 1945[2] with the following boundaries:

North Calixto Gabud East Marcelo Cosido

South Pedro Bontuyan West Asuncion Adulfo.[3]

Because of the construction of a provincial road, the property was divided into two parcels of land covered by T.D. No. 03276-R and T.D. No. 01979-R. On February 14, 1948, Gabud executed a Deed of Absolute Sale[4] over the property covered by T.D. No. 03276-R, as well as the other lot covered by T.D. No. 01979-R, in favor of Protacio Tabal, married to Leodegaria Bontuyan. On the basis of the said deed, T.D. No. 03276-R was cancelled by T.D. No. 13615-R in the name of Protacio Tabal effective 1949.[5] On January 5, 1959, Tabal executed a Deed of Sale[6] over the property covered by T.D. No. 13615-R in favor of Simeon Noval, married to Vivencia Bontuyan, daughter of Gregorio Bontuyan, for P800.00. T.D. No. 13615-R was cancelled by T.D. No. 100356 in the names of the spouses Noval.[7] Gregorio Bontuyan received a copy of the said tax declaration in behalf of the spouses Noval.[8] The latter tax declaration was then cancelled by T.D. No. 008876 under the same names effective 1967.[9]

Subsequently, the property was surveyed by Cadastral Land Surveyor Mauro U. Gabriel on January 22, 1964. The plan survey was approved on September 30, 1966.[10] The property covered by T.D. No. 008876 was identified as Lot No. 17150 of Cebu Cadastre No. 12, while the property covered by T.D. No. 01979-R was identified as Lot No. 13272. On May 22, 1968, the spouses Noval executed a Deed of Absolute Sale[11] over the two lots covered by T.D. No. 008876 in favor of Lourdes V. Leyson for P4,000.00. Lourdes Leyson took possession of the property and had it fenced. Despite the said sale, T.D. No. 008876 was cancelled by T.D. No. 21267 effective 1974.[12] Thereafter, T.D. No. 21267 was cancelled by T.D. No. 23821[13] which, in turn, was cancelled by T.D. No. 01-17455 effective 1980.[14] In 1989, the latter was cancelled by a new tax declaration, T.D. No.

01-001-00646. All these tax declarations were in the names of the spouses Noval.[15]

Meanwhile, Lourdes Leyson paid for the realty taxes over the property. However, the tax declaration issued thereon continued to be under the names of the spouses Noval.[16]

Despite his knowledge that the property had been purchased by his son-in-law and daughter, the spouses Noval, Gregorio Bontuyan, who was then 91 years old, filed an application with the Bureau of Lands for a free patent over Lot No. 17150 on December 4, 1968. He alleged therein that the property was public land and was neither claimed nor occupied by any person,[17] and that he first entered upon and began cultivating the same in 1918. Thus, on November 19, 1971, Free Patent No. 510463 was issued over Lot No. 17150 in his favor, on the basis of which Original Certificate of Title (OCT) No. 0-1619 was issued to and under his name on March 21, 1974.[18] Another parcel of land, Lot No. 13272, was also registered under the name of Gregorio Bontuyan under OCT No. 0-1618. He then declared Lot No. 17150 for taxation purposes under T.D. No. 13596 effective 1974.[19] On February 20, 1976, Gregorio Bontuyan executed a Deed of Absolute Sale[20] over Lot No. 17150 in favor of his son, Naciansino Bontuyan.

On April 28, 1980, Gregorio Bontuyan, then 103 years old, executed another Deed of Absolute Sale[21] over Lot Nos. 13272 and 17150, covered by OCT No. 0-1618 and OCT No. 0-1619, respectively, in favor of Naciansino Bontuyan for P3,000.00. On the basis of the said deed, OCT No. 0-1619 was cancelled by TCT No. 1392 in the name of Naciansino Bontuyan on December 2, 1980.[22] Gregorio Bontuyan died intestate on April 12, 1981.[23]

On March 30, 1981, the spouses Bontuyan executed a Real Estate Mortgage over Lot No. 17150 covered by OCT No. 0-1619 in favor of the Development Bank of the Philippines (DBP) as security for a loan of P11,200.00.[24] Naciansino Bontuyan had earlier executed an affidavit that the property was not tenanted. Shortly thereafter, the spouses Bontuyan left the Philippines and resided in the United States. Meanwhile, Lourdes Leyson died intestate.

The spouses Bontuyan returned to the Philippines in 1988 to redeem the property from DBP only to discover that there were tenants living on the property installed by Engineer Gabriel Leyson, one of the late Lourdes Leyson's children. Despite being informed that the said spouses owned the property, the tenants refused to vacate the same. The tenants also refused to deliver to the spouses the produce from the property. The spouses Bontuyan redeemed the property from DBP on September 22, 1989.

On February 12, 1993, Jose Bontuyan, Nieves Atilano, Pacifico Bontuyan, Vivencia Noval and Naciansino Bontuyan, the surviving heirs of Gregorio Bontuyan, executed an Extrajudicial Settlement[25] of the latter's estate and adjudicated Lot No. 13272 in favor of Naciansino. Based on the said deed, T.D. No. 01-001-00877 was issued to and under the name of Naciansino over the said property starting 1994.

On June 24, 1993, Naciansino Bontuyan, through counsel, wrote Engr. Gabriel Leyson, demanding that he be furnished with all the documents evidencing his ownership over the two lots, Lots Nos. 17150 and 13272.[26] Engr. Leyson ignored the letter.

The spouses Bontuyan, thereafter, filed a complaint against Engr. Leyson in the Regional Trial Court (RTC) of Cebu City for quieting of title and damages. They alleged that they were the lawful owners of the two lots and when they discovered, upon their return from the United States, that the property was occupied and cultivated by the tenants of Engr. Leyson, they demanded the production of documents evidencing the latter's ownership of the property, which was ignored.

The spouses Bontuyan prayed that, after due proceedings, judgment be rendered in their favor, thus:

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court to render judgment against the defendant and in favor of the plaintiffs, to wit:

- (a) Confirming the ownership of the plaintiffs on the lots in question;
- (b) Ordering defendant to pay the plaintiffs the amount of Twenty Thousand Pesos (P20,000.00) as the share of the plaintiffs of the produce of the lots in question;
- (c) Ordering defendant to pay plaintiffs the sum of P50,000.00 as reimbursement of attorney's fees and the further sum of P500.00 as appearance fee every time the case is called for trial;
- (d) Ordering the defendant to pay plaintiffs the sum of P50,000.00 as moral damages and exemplary damages may be fixed by the court;
- (e) Ordering defendant to pay plaintiffs the sum of P5,000.00 as actual expenses for the preparation and filing of the complaint;
- (f) Ordering defendant to pay the costs; and
- (g) Granting to plaintiffs such other reliefs and remedies just and equitable in the premises.[27]

In his answer to the complaint, Engr. Leyson averred, by way of affirmative defenses, that the two lots were but portions of a parcel of land owned by Calixto Gabud, covered by T.D. No. 03276-R, and was subdivided into two parcels of land because of the construction of a provincial road on the property; Gabud later sold the two lots to Protacio Tabal, who sold the same to Simeon Noval, married to Vivencia Bontuyan, one of the children of Gregorio Bontuyan; Simeon Noval later sold the property to Lourdes Leyson on May 22, 1968 who, forthwith, took possession thereof as owner; and Gregorio Bontuyan was issued a free patent over the property through fraud. Engr. Leyson concluded that the said patent, as well as OCT No. 0-1619 and TCT No. 1392, were null and void and that the plaintiffs acquired no title over the property.

Engr. Leyson interposed a counterclaim against the spouses Bontuyan and repleaded as an integral part thereof all the material allegations in his affirmative defense. He prayed that, after due proceedings, judgment be rendered in his favor, thus:

- a) Dismissing Plaintiffs' complaint for failure to include indispensable parties;
- b) Declaring the Defendant and his four (4) sisters, namely, Dr. Josefina L. Poblete, Mrs. Fe L. Qua, Esperanza Leyson and Caridad Leyson as the true and legal owners and possessors of the parcels of land in issue;
- c) Declaring OCT No. 0-1619 in the name of Gregorio Bontuyan and TCT No. 1392 in the name of Naciansino Bontuyan null and void and to order the Register of Deeds to cancel the same and issue new ones in favor of the Defendant Gabriel V. Leyson and his four (4) sisters, namely: Dr. Josefina L. Poblete, Mrs. Fe L. Qua, Esperanza V. Leyson and Caridad V. Leyson;
- d) And on the Counterclaim, to order Plaintiffs to pay the Defendant the following sums:
 - d-1) P50,000.00 as attorney's fees and appearance fee of P1,000.00 per hearing;
 - d-2) P500,000.00 as moral damages;
 - d-3) P20,000.00 as exemplary damages;
 - d-4) P10,000.00 as expenses of litigation.

Defendant further prays for such other reliefs just and equitable in the premises.[28]

In due course, the other children of Lourdes Leyson, namely, Dr. Josefina L. Poblete, Fe Leyson Qua, Caridad V. Leyson and Esperanza V. Leyson, were allowed to intervene as defendants. They filed their answer-in-intervention wherein they adopted, in their counterclaim, paragraphs 7 to 26 of the answer of their

brother, Engr. Leyson, the original defendant. They prayed that, after due hearing, judgment be rendered in their favor as follows:

Wherefore, this Honorable Court is prayed to render judgment in favor of the Defendant and the Defendants-in-Intervention and against the Plaintiffs as follows:

- a) Promissory Plaintiffs' complaint for failure to include indispensable parties and for lack of cause of action;
- b) Declaring the Defendant and his four (4) sisters, namely: Dr. Josefina L. Poblete; Mrs. Fe L. Qua, Esperanza Leyson and Caridad Leyson as the true and legal owners and possessors of the parcels of land in issue;
- c) Declaring OCT No. 0-1619 in the name of Gregorio Bontuyan and TCT No. 1392 in the name of Naciansino Bontuyan null and void and to order the Register of Deeds to cancel the same and issue new ones in favor of the Defendant Gabriel V. Leyson and his four (4) sisters, namely: Dr. Josefina L. Poblete, Mrs. Fe L. Qua, Esperanza V. Leyson and Caridad V. Leyson;
- d) On the Counterclaim, Plaintiffs should pay the Defendants the following sums:
 - d-1) P50,000.00 as attorney's fees and appearance fee of P1,000.00 per hearing;
 - d-2) P500,000.00 as moral damages to each Intervenor;
 - d-3) P50,000.00 as exemplary damages;
 - d-4) P15,000.00 as expenses of litigation.

Defendant further prays for such other reliefs just and equitable in the premises.[29]

In their reply, the spouses Bontuyan averred that the counterclaim of the defendants for the nullity of TCT No. 1392 and the reconveyance of the property was barred by laches and prescription.

On January 21, 1999, the trial court rendered judgment in favor of the Leyson heirs and against the spouses Bontuyan. The fallo of the decision reads:

WHEREFORE, foregoing considered judgment is hereby rendered dismissing plaintiff's complaint for dearth of evidence declaring the defendant and the intervenors as the true and legal owners and possessors of the subject parcels of land; declaring OCT No. 0-1619 in the name of Gregorio Bontuyan and TCT No. 1392 in the name of Naciansino Bontuyan null and void; ordering the Register of Deeds to cancel OCT No. 0-1619 and TCT No. 1392 and issue new ones in favor of defendant Gabriel Leyson and intervenors Josefina Poblete, Fe Qua, Esperanza Leyson and Caridad Leyson; ordering plaintiff to pay defendant and intervenors the following:

- a) P50,000.00
attorney's fees;
- b) 1,000.00
per appearance;
- c) 100,000.00
moral damages for defendant and intervenors;
- d) 10,000.00
exemplary damages; and
- e) 10,000.00

litigation expenses.

SO ORDERED.[30]

The trial court held that Simeon Noval had sold the lots to Lourdes Leyson on May 22, 1968, who thus acquired title over the property.

The spouses Bontuyan appealed the decision to the CA which affirmed, with modification, the decision of the RTC. The appellate court held that the Leyson heirs were the owners of Lot No. 13273, while the spouses Bontuyan were the owners of Lot No. 17150. The CA ruled that the answer of the Leyson heirs to the complaint constituted a collateral attack of OCT No. 0-1619 which was proscribed by law. The Leyson heirs filed a motion for reconsideration of the decision insofar as Lot No. 17150 was concerned, contending that their counterclaim for the nullification of OCT No. 0-1619 contained in their answer constituted a direct attack on the said title. The CA denied the motion.

The Leyson heirs then filed a petition for review with this Court and made the following assignments of error:

First Assignment of Error

THE HONORABLE COURT OF APPEALS COMMITTED ERROR WHEN IT RULED THAT THE NULLITY OR THE VALIDITY OF OCT NO. 0-1619 CANNOT BE RULED UPON IN THESE PROCEEDINGS BROUGHT BY THE RESPONDENTS FOR THE QUIETING OF THEIR TITLE.

Second Assignment of Error

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT PETITIONERS' ANSWER WITH COUNTERCLAIM, PRAYING FOR THE CANCELLATION OF PLAINTIFFS' TORRENS CERTIFICATE IS A MERE COLLATERAL ATTACK ON THE TITLE.[31]

Third Assignment of Error

THE APPELLATE COURT GRAVELY ERRED WHEN IT MODIFIED THE DECISION OF THE REGIONAL TRIAL COURT DATED JANUARY 21, 1999 BY RULING THAT PETITIONERS ARE DECLARED THE OWNERS OF LOT 13273 BUT RESPONDENTS ARE DECLARED THE OWNERS OF LOT 17150 UNDER OCT NO. 0-1619 AND PRESENTLY COVERED BY TCT NO. 1392 IN THE NAME OF NACIANSINO BONTUYAN, DESPITE THE APPELLATE COURT'S AFFIRMING THE FINDINGS OF THE TRIAL COURT THAT FRAUD WAS COMMITTED BY GREGORIO BONTUYAN (RESPONDENTS' PREDECESSOR-IN-INTEREST) IN ACQUIRING TITLE OVER THE SUBJECT PROPERTIES.[32]

Fourth Assignment of Error

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT RECONVEYANCE OF TITLE OF LOT 17150 COVERED BY OCT NO. 0-1619 AND PRESENTLY COVERED BY TCT NO. 1392, IN FAVOR OF PETITIONERS HAD PRESCRIBED.[33]

Fifth Assignment of Error

THE APPELLATE COURT GRAVELY ERRED IN NOT GRANTING ATTORNEY'S FEES AND APPEARANCE FEES DESPITE RESPONDENTS' FRAUD IN ACQUIRING TITLE OVER THE SUBJECT PROPERTIES.[34]

On the first two assignments of errors, the petitioners aver that the counterclaim in their answer to the complaint constituted a direct attack of the validity of OCT No. 0-1619. They maintain that the appellate court's reliance on the ruling of this Court in *Cimafrancia v. Intermediate Appellate Court*[35] was misplaced. They assert that what

is controlling is the ruling in *Pro Line Sports Center, Inc. v. Court of Appeals*[36] wherein this Court held that the counterclaim of the petitioners therein constituted a direct attack on a certificate of title. The petitioners, likewise, cited Section 55 of Act No. 496, as amended, to buttress their stance. They plead that their answer to the complaint should be liberally construed so as to afford them substantial justice.

On the other hand, the respondents assert that the decision of the CA is correct. They claim that Lot No. 17150 was still public land when Lourdes Leyson purchased the same from Simeon Noval, and that the property became private land only when Free Patent No. 510463 was issued to and under the name of Gregorio Bontuyan.

We agree with the contention of the petitioners that the CA erred in not nullifying OCT No. 0-1619 and TCT No. 1392 and ordering the respondents to reconvey the property covered by the said title to the petitioners.

The respondents, as plaintiffs in the court a quo, were burdened to prove their claim in their complaint that Gregorio Bontuyan was the owner of Lot No. 17150 and that they acquired the property in good faith and for valuable consideration from him.[37] However, the respondents failed to discharge this burden. The evidence on record shows that Calixto Gabud sold the property to Protacio Tabal on February 14, 1948,[38] and that the latter sold the property to Simeon Noval on January 5, 1959.[39] Simeon Noval then sold the property to Lourdes Leyson on May 22, 1968.[40] The respondents failed to adduce any evidence to prove that Lourdes Leyson, or even Simeon Noval, sold the property to Gregorio Bontuyan, or to any of the respondents for that matter. Since Gregorio Bontuyan was not the owner of the property, he could not have sold the same to his son Naciansino Bontuyan and the latter's wife, the respondents herein. As the Latin adage goes: *NEMO DAT QUOD NON HABET*. Gregorio Bontuyan could not feign ignorance of Simeon Noval's ownership of the property, considering that the latter was his son-in-law, and that he (Gregorio Bontuyan) was the one who received the owner's copy of T.D. No. 100356 covering the property under the name of Simeon Noval.[41] At the dorsal portion of the said tax declaration, there was even an annotation that the property was transferred to Simeon Noval as shown by the deed of sale executed before Notary Public Gregorio A. Uriarte who notarized the deed of sale over the property executed by Protacio Tabal in favor of Simeon Noval on January 5, 1959.[42] We note that the respondents failed to adduce in evidence any receipts of real property tax payments made on the property under their names, which would have fortified their claim that they were the owners of the property. We agree with the findings of the CA, thus:

This case involves two parcels of land – Lot 17150 and Lot 13273. Lot 17150 is registered under the Torrens System under the names of plaintiffs-appellants, while Lot 13273 remained to be unregistered.

In this case, records show that defendant-appellee and intervenors-appellees are the true owners of the subject lots. They have in their favor tax receipts covering the subject lots issued since 1945.

While, indeed, tax receipts and declarations are not incontrovertible evidence of ownership, such, however, if accompanied with open, adverse, continuous possession in the concept of an owner, as in this case, constitute evidence of great weight that person under whose name the real taxes were declared has a claim of right over the land.

Further, defendant-appellee and intervenors-appellees presented before the trial court the Deed of Absolute Sale dated February 14, 1948, executed by Calixto Gabud, conveying the subject lots in favor of Protacio Tabal. The deed is a notarial document.

Likewise presented is the Deed of Absolute Sale of the subject lots dated January 5, 1959, executed by Protacio Tabal in favor of spouses Simeon Noval and Vivencia Bontuyan. The document is, likewise, a notarial document.

Defendant-appellee and intervenors-appellees also presented the Deed of Absolute Sale of the subject lots

dated May 22, 1968, executed by spouses Simeon Noval and Vivencia Bontuyan in favor of Lourdes Leyson. The deed is a notarial document.

A notarial document is evidence of the facts in clear, unequivocal manner therein expressed. It has in its favor the presumption of regularity. It is admissible in evidence without necessity of preliminary proof as to its authenticity and due execution.

There exist (sic) no trace of irregularity in the transfers of ownership from the original owner, Calixto Gabud, to defendant-appellee and intervenors-appellees.

Plaintiffs-appellants, on the other hand, offered no convincing evidence as to how their predecessor-in-interest, Gregorio Bontuyan, acquired the subject lots. Plaintiffs-appellants presented only the Free Patent and OCT No. 0-1619, covering Lot No. 17150, issued in the name of Gregorio Bontuyan.

As to Lot No. 13273, We find no sufficient reason why defendant-appellee and intervenors-appellees should be disturbed in their ownership and possession of the same.[43]

As copiously shown by the record, Gregorio Bontuyan filed his application for a free patent with the Bureau of Lands on December 4, 1968 in gross bad faith, thereby defrauding Lourdes Leyson of the said property through deceit. Gregorio Bontuyan falsely declared in the said application: (a) that he entered upon and cultivated the property since 1918 and that the property was not claimed or occupied by any person; and (b) that Lot No. 17150 was located in Sirao, Cebu City, when, in fact, the property was located in Adlawon, Cebu City. Lourdes Leyson was not notified of the said application and failed to file any opposition thereto. Gregorio Bontuyan was then able to secure Free Patent No. 510463 on November 19, 1971 and OCT No. 0-1619 on March 21, 1974. It appears in the said title that the property's location was indicated as "Sirao, Cebu City." [44] Indeed, the CA declared that Gregorio Bontuyan had acquired title to the property through fraud:

However, as to Lot No. 17150, We find that despite the fraud committed by Gregorio Bontuyan (plaintiffs-appellants' predecessor-in-interest) in acquiring his title over the said lot, ownership over the said lot should be adjudged in favor of plaintiffs-appellants.

Records, indeed, show that, at the time when Gregorio Bontuyan applied for Free Patent, Gregorio Bontuyan was living with his daughter, Vivencia Bontuyan (defendant-appellee's predecessor-in-interest). Thus, Gregorio Bontuyan must have known that at the time when he applied for free patent on December 1968, the subject lots were already sold on May 1968 by his daughter Vivencia Bontuyan in favor of Lourdes Leyson, predecessor-in-interest of defendants-appellees.

Moreover, records further show that Gregorio Bontuyan sold twice Lot [No.] 17150 to plaintiffs-appellants. The first was in 1976 and the other was in 1980. Plaintiffs-appellants offered no reasonable explanation why Gregorio Bontuyan have (sic) to sell twice Lot No. 17150 in favor of plaintiffs-appellants.

As found by the trial court, these are badges of bad faith which affect the validity of the title of Gregorio Bontuyan over the subject lots.

We are aware that the torrens system does not create or vest title. It only confirms and records title already existing and vested. It does not protect a usurper from the true owner. It cannot be a shield for the commission of fraud. It does not permit one to enrich himself at the expense of another. Where one does not have any rightful claim over a real property, the torrens system of registration can confirm or record nothing.[45]

The findings of the CA affirmed the findings of the trial court in its decision, thus:

After having thoroughly analyzed the records and the evidences adduced during the trial of this case, this Court is convinced and sincerely believes that the lots in question were originally owned by Calixto Gabud as evidenced by T.D. [No.] 03276R marked as Exh. "1." In 1945, this consisted of only one lot in Adlawon, Cebu

City, as there was no provincial road yet. However in 1948, the said parcel of land was divided into two because a provincial road was constructed passing through it. Hence, T.D. [No.] 03276R and T.D. [No.] 01979-R were issued to Calixto Gabud. On February 16, 1948, Calixto Gabud sold the said parcels of land to spouses Protacio Tabal and Ludegaria (sic) Bontuyan as evidenced by an Absolute Deed of Sale, Exh. "2." On January 5, 1959, spouses Protacio Tabal and Ludegaria (sic) Bontuyan, in turn, sold the same parcels of land to spouses Simeon Noval and Vivencia Bontuyan as evidenced by a Deed of Sale, Exh. "4." It is noteworthy to mention at this point in time that Vivencia Bontuyan is one of the daughters of Gregorio Bontuyan, the father of herein plaintiff Naciansino Bontuyan. In May 1968, spouses Simeon Noval and Vivencia Bontuyan sold the subject parcels of land to Lourdes vs. (sic) Leyson, the mother of herein defendant as evidenced by a Deed of Sale marked as Exh. "6." It is quite perplexing for the court to imagine that Gregorio Bontuyan, father of herein plaintiff, who was then residing with spouses Simeon Noval and Vivencia Bontuyan at 179 C San Jose dela Montaña, Mabolo, Cebu City, as reflected in his application for Free Patent (Exhs. "8" & "26") dated December 4, 1968 was unaware of the sale of the subject parcels of land made by his daughter Vivencia Bontuyan and spouse Simeon Noval to Lourdes Leyson. It is evident that, after the sale from spouses Noval to Lourdes Leyson in May 1968, Gregorio Bontuyan applied for Free Patent for the same parcels of land in December 1968 claiming to have cultivated the land since 1918, stating therein the location as Sirao and not Adlawon which is the true and correct location. Sirao and Adlawon are two different barangays which are not even adjacent to each other. In fact, as borne out by Exh. "25," it is separated by Barangay Guba. In 1974, Free Patent No. 510463 and OCT# 0-1619 was issued to Gregorio Bontuyan covering subject property, the location of which is in Barangay Sirao in consonance to his application. Gregorio Bontuyan's application for Free Patent over subject parcels of land had raised in the mind of this Court reasonable badges of bad faith on his part as the subject parcels of land were already sold by his daughter Vivencia Bontuyan and spouse Simeon Noval to Lourdes Leyson. Another badge of bad faith is raised in the mind of this Court when he (Gregorio) sold the subject parcels of land twice to his son Naciansino Bontuyan in 1976 and 1980, respectively, wherein both Deeds of Sale were notarized by different Notary Publics, (Exhs. "10" & "16").[46]

Considering that Lourdes Leyson was in actual possession of the property, the respondents cannot, likewise, claim that they were in good faith when Gregorio Bontuyan allegedly sold the property to them on April 28, 1980.

Anent the third and fourth assignments of error, we do not agree with the ruling of the CA that the petitioners failed to directly attack the validity of OCT No. 0-1619. The CA failed to consider the fact that, in their respective answers to the complaint, the petitioners inserted therein a counterclaim wherein they repleaded all the material allegations in their affirmative defenses, that Gregorio Bontuyan secured OCT No. 0-1619 through fraud and deceit and prayed for the nullification thereof.

While Section 47 of Act No. 496 provides that a certificate of title shall not be subject to collateral attack, the rule is that an action is an attack on a title if its object is to nullify the same, and thus challenge the proceeding pursuant to which the title was decreed. The attack is considered direct when the object of an action is to annul or set aside such proceeding, or enjoin its enforcement. On the other hand, an attack is indirect or collateral when, in an action to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof.[47] Such action to attack a certificate of title may be an original action or a counterclaim in which a certificate of title is assailed as void. A counterclaim is considered a new suit in which the defendant is the plaintiff and the plaintiff in the complaint becomes the defendant. It stands on the same footing and is to be tested by the same rules as if it were an independent action.[48] Furthermore, since all the essential facts of the case for the determination of the title's validity are now before the Court, to require the party to institute cancellation proceedings would be pointlessly circuitous and against the best interest of justice.[49]

The CA, likewise, erred in holding that the action of the petitioners to assail OCT No. 0-1619 and TCT No. 1392 and for the reconveyance of the property covered by the said title had already prescribed when they filed their answer to the complaint.

Case law has it that an action for reconveyance prescribes in ten years, the point of reference being the date of registration of the deed or the date of issuance of the certificate of title over the property. In an action for reconveyance, the decree of registration is highly regarded as incontrovertible. What is sought instead is the transfer of the property or its title, which has been wrongfully or erroneously registered in another person's name, to its rightful or legal owner, or to one who has a better right.[50]

However, in a series of cases, this Court declared that an action for reconveyance based on fraud is imprescriptible where the plaintiff is in possession of the property subject of the acts. In *Vda. de Cabrera v. Court of Appeals*,[51] the Court held:

... [A]n action for reconveyance of a parcel of land based on implied or constructive trust prescribes in ten years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the property, but this rule applies only when the plaintiff or the person enforcing the trust is not in possession of the property, since if a person claiming to be the owner thereof is in actual possession of the property, as the defendants are in the instant case, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe. The reason for this is that one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, the reason for the rule being, that his undisturbed possession gives him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by one who is in possession.

Similarly, in the case of *David v. Malay*,[52] the same pronouncement was reiterated by the Court:

... There is settled jurisprudence that one who is in actual possession of a piece of land claiming to be owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, the reason for the rule being, that his undisturbed possession gives him a continuing right to seek the aid of the court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by one who is in possession. No better situation can be conceived at the moment for Us to apply this rule on equity than that of herein petitioners whose ... possession of the litigated property for no less than 30 years and was suddenly confronted with a claim that the land she had been occupying and cultivating all these years, was titled in the name of a third person. We hold that in such a situation the right to quiet title to the property, to seek its reconveyance and annul any certificate of title covering it, accrued only from the time the one in possession was made aware of a claim adverse to his own, and it is only then that the statutory period of prescription commences to run against such possessor.

The paramount reason for this exception is based on the theory that registration proceedings could not be used as a shield for fraud.[53] Moreover, to hold otherwise would be to put premium on land-grabbing and transgressing the broader principle in human relations that no person shall unjustly enrich himself at the expense of another.[54]

In the present case, Lourdes Leyson and, after her death, the petitioners, had been in actual possession of the property. The petitioners were still in possession of the property when they filed their answers to the complaint which contained their counterclaims for the nullification of OCT No. 0-1619 and TCT No. 1392, and for the consequent reconveyance of the property to them. The reconveyance is just and proper in order to put a stop to the unendurable anomaly that the patentees should have a Torrens title for the land which they and their predecessors never possessed and which has been possessed by another in the concept of an owner.[55]

On the fifth assignment of error, we rule for the petitioners. The award of attorney's and appearance fees is better left to the sound discretion of the trial court, and if such discretion is well exercised, as in this case, it will not be disturbed on appeal.[56] With the trial and the appellate courts' findings that the respondents were in bad faith, there is sufficient basis to award attorney's and appearance fees to the petitioners. Had it not been for the filing of

a baseless suit by the respondents against the petitioners, the latter would not have sought the services of counsel to defend their interests and represent them in this case.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Decision of the Court of Appeals declaring the respondents the owners of Lot No. 17150 covered by OCT No. 0-1619 and TCT No. 1392; and setting aside the award of attorney's fees in favor of the petitioners by the Regional Trial Court are REVERSED AND SET ASIDE.

The Court hereby AFFIRMS the ownership of the petitioners of Lot No. 17150. OCT No. 0-1619 and TCT No. 1392 covering the said lot are hereby nullified. The Register of Deeds is ORDERED to cancel TCT No. 1392 and to issue another title over the property in favor of the petitioners as co-owners thereof. The trial court's award of P50,000.00 for attorney's fees to the petitioners is AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Teodoro P. Regino (retired) and Rebecca De Guia-Salvador, concurring.

[2] Records, p. 30. (Exhibit "1")

[3] Ibid.

[4] Id. at 31. (Exhibit "2")

[5] Id. at 32. (Exhibit "3")

[6] Id. (Exhibit "4")

[7] Id. at 33. (Exhibit "5")

[8] Id. (Exhibit "5-A")

[9] Id. at 34.

[10] Id. at 42.

[11] Id. at 35. (Exhibit "6")

[12] Id. at 36. (Exhibit "7")

[13] Id. at 37. (Exhibit "7-A")

[14] Id. at 38. (Exhibit "7-B")

[15] Id. at 39. (Exhibit "7-C")

[16] Id. at 357-400. (Exhibits "28" to "28-QQ")

[17] Id. at 346. (Exhibit "8")

[18] Id. at 347. (Exhibit "9")

[19] Id. at 405. (Exhibit "21")

[20] Id. at 356. (Exhibit “16”)

[21] Id. at 350. (Exhibit “10”)

[22] Id. at 220. (Exhibit “B”)

[23] Id. at 351. (Exhibit “11”)

[24] Id. at 355. (Exhibit “15”)

[25] Id. at 227. (Exhibit “C”)

[26] Id. at 8.

[27] Id. at 3-4.

[28] Id. at 28.

[29] Id. at 93-94.

[30] Id. at 453-459.

[31] Rollo, p. 15.

[32] Id. at 20.

[33] Id. at 24.

[34] Id. at 25.

[35] 147 SCRA 611 (1987).

[36] 281 SCRA 162 (1997).

[37] Section 1, Rule 131 of the Revised Rules of Evidence.

[38] Supra at No. 4. (Exhibit “2”)

[39] Supra at No. 6. (Exhibit “4”)

[40] Supra at No. 11. (Exhibit “6”)

[41] Supra at No. 8. (Exhibit “5-A”)

[42] Supra at No. 6. (Exhibit “4”)

[43] Rollo, pp. 35-36.

[44] Records, p. 347. (Exhibit “9-A”)

[45] Rollo, p. 37.

[46] Records, pp. 458-459.

[47] *Mallilin, Jr. v. Castillo*, 333 SCRA 628 (2000), citing *Co v. Court of Appeals*, 196 SCRA 705 (1991).

[48] *Pro Line Sports Center, Inc. v. Court of Appeals*, 281 SCRA 162 (1997).

[49] *Mendoza v. Court of Appeals*, 158 SCRA 508 (1988).

[50] Heirs of Pomposa Saludaes v. Court of Appeals, 420 SCRA 51 (2004).

[51] 267 SCRA 339 (1997), citing Heirs of Jose Olviga v. Court of Appeals, 227 SCRA 330 (1990).

[52] 318 SCRA 711 (1999), citing Faja v. Court of Appeals, 75 SCRA 441 (1977).

[53] Heirs of Pomposa Saludaes v. Court of Appeals, *supra*, p. 49.

[54] Almarza v. Arguelles, 156 SCRA 718 (1987).

[55] Linaza v. Intermediate Appellate Court, 182 SCRA 855 (1990).

[56] De Castro v. Court of Appeals, 384 SCRA 607 (2002).

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