

**FRANCO ESGUERRA, PETITIONER, VS. ALFONSO MANANTAN,
DANILO MANANTAN, ARIANG ANTONIO, AQUILINO CONCEPCION,
AND FORTUNATO MIGUEL, RESPONDENTS.**

G.R. NO. 158328. February 23, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for review on certiorari assailing the Decision[1] dated October 30, 2002 of the Court of Appeals in CA-G.R. CV No. 58050 and its Resolution[2] dated May 20, 2003 denying the motion for reconsideration. The appellate court had affirmed the decision[3] dated February 13, 1997 of the Regional Trial Court (RTC) of Guimba, Nueva Ecija, Branch 31.

This case stemmed from the complaint for ejectment filed by petitioner Franco Esguerra against respondents before the RTC. Franco claims he is the registered owner of a parcel of land surveyed as Lot No. 661, Cad. No. 699, covering an area of 7,786 square meters, and situated in Barangay San Cristobal, Licab, Nueva Ecija. Franco avers that he inherited it from his father, Pio Esguerra, who had inherited it from his father, Lorenzo Esguerra. However, Pio allowed Gaudencio Miguel[4] to occupy his property and later mortgaged the land to Gaudencio as evidenced by a document entitled "Deed of Sale with Right to Repurchase" dated June 6, 1960. In 1979, Gaudencio executed an instrument denominated as Kasunduan to cancel said deed of sale with the right to repurchase.

Before the repurchase of the property, respondents Alfonso Manantan, Danilo Manantan, Ariang Antonio, Aquilino Concepcion and Fortunato Miguel constructed their houses on the lot without the knowledge and consent of Pio.

On April 14, 1992, Franco filed his application for free patent of the subject property. On May 20, 1992, Free Patent No. 034914-92-1117 was issued in his name. Pursuant to such free patent title, the Register of Deeds of the Province of Nueva Ecija issued Original Certificate of Title (OCT) No. P-15176 in Franco's name.

Thereafter, Franco demanded that respondents vacate the premises, but they refused to do so. He then filed a complaint for ejectment against them before the RTC which was docketed as Civil Case No. 723-G.

Pending the ejectment case, respondents filed a case for annulment of OCT No. P-15176 which was docketed as Civil Case No. 779-G. This case was subsequently consolidated with Civil Case No. 723-G.

On February 13, 1997, the RTC dismissed the complaint for ejectment and declared null and void OCT No. P-15176. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the defendants Alfonso Manantan, Danilo Manantan, Ariang Antonio, Aquilino Concepcion and Fortunato Miguel in Civil Case No. 723-G and plaintiffs in Civil Case No. 779-G and against the plaintiff Franco Esguerra in Civil Case No. 723-G and defendant in Civil Case No. 779-G, to wit:

- Dismissing the complaint in Civil Case No. 723-G for lack of merit;
- In Civil Case No. 779-G, the Court hereby declares, as it hereby declared as NULL and VOID AND WITHOUT FORCE AND EFFECT Original Certificate of Title No. P-15176, issued by Register of Deeds [of] the Province of Nueva Ecija pursuant to Free Patent No. 034914-92-1117 in the name of Franco F. Esguerra, and ordering the same Register of Deeds to cancel said OCT No. P-15176, including the owner's copy issued to said Franco F. Esguerra.

IT IS SO ORDERED.[5]

Franco appealed to the Court of Appeals. The appellate court denied the appeal and affirmed the trial court's decision. Hence, this petition where petitioner assigns the following errors:

I.

THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE PETITIONER IS ESTOPPED FROM RAISING THE ISSUE OF LACK OF JURISDICTION.

II.

THE COURT OF APPEALS ERRED WHEN IT RULED THAT RESPONDENTS HAD ACQUIRED A VESTED RIGHT OVER THE PROPERTY AND THEREFORE HAVE THE RIGHT TO ATTACK THE TITLE OF PETITIONERS AND SEEK RECONVEYANCE OF TITLE OVER THE SUBJECT LAND.

III.

THE COURT OF APPEALS ERRED WHEN IT RULED THAT PETITIONER['S] RIGHT TO REDEEM THE PROPERTY ALREADY EXPIRED.

IV.

THE COURT OF APPEALS ERRED WHEN IT RULED THAT PETITIONER'S CLAIM FOR MORAL AND ATTORNEY'S FEES ARE WITHOUT BASIS.[6]

Simply stated, the issues before us in this case are: (1) Was petitioner estopped from questioning the jurisdiction of the RTC? (2) Who has a better right over the contested property?

On the first issue, petitioner contends that he is not estopped from questioning the trial court's jurisdiction to decide the complaints for ejectment and annulment of title. He claims that he immediately appealed the decision to the Court of Appeals and thus, he cannot be guilty of laches since the appeal was the earliest opportunity to question the validity of the decision.

On the second issue, petitioner argues that respondents occupied the subject property by mere tolerance of Gaudencio even without the permission of Pio. He also avers that since respondents' possession has not been open, continuous, exclusive and notorious for 30 years, they have not acquired the property through prescription. According to him, the subject property was already redeemed on December 24, 1978 as evidenced by the Kasunduan executed by Gaudencio in 1979.

He contends that respondents' action to annul the title on the ground of fraud has prescribed since they filed it two years after the issuance of title. He avers that the action should have been filed within one year after the date of the issuance of the decree of registration. He further claims that the respondents have no personality to question his title because only the State has the right to do so.

Respondents, for their part, maintain that they had established their open and continuous possession of the subject property for 30 years and that they had been paying the real estate taxes of the property. They also stress that

Franco neither possessed nor improved the subject property and even admitted that respondents possessed the property. They maintain that their action for annulment of title has not prescribed since what they actually filed was an action for reconveyance which prescribes after ten years from registration of title.

The Court of Appeals, in affirming the RTC decision, reasoned that petitioner was estopped from questioning the trial court's jurisdiction to hear and decide the case when he had voluntarily submitted himself to its jurisdiction. It also found that the respondents had acquired title over the same for having been in actual adverse possession of the subject property for 30 years. On the issue of redemption, the appellate court held that under Article 1606[7] of the Civil Code of the Philippines, Pio's right to redeem the property had already prescribed.

We agree with the appellate court that petitioner is estopped from questioning the jurisdiction of the RTC. Lack of jurisdiction of the court over an action cannot be waived by the parties or be cured by their silence, acquiescence, or express consent. A party may assail the jurisdiction of the court over the action at any stage of the proceedings and even on appeal.[8] However, participation in all stages of the proceedings before the trial court, including invocation of its authority in asking for affirmative relief, effectively bars a party by estoppel from challenging the court's jurisdiction.[9]

Note that it was petitioner who filed a complaint for ejectment against respondents before the RTC. It was actually the respondents who moved to dismiss the complaint for lack of jurisdiction. The trial court denied it since the allegations of the complaint showed that it was in fact one for recovery of possession of real property.[10] When respondents filed a complaint for annulment of title, petitioner moved to dismiss it, citing the pendency of the ejectment case, and not lack of jurisdiction, as ground. But it was denied by the RTC. Thereafter, both parties moved for joint trial of the cases. Considering that these cases involved the same question of fact, the trial court was correct to jointly try and decide them. Two cases involving the same parties and affecting closely related subject matters must be ordered consolidated and jointly tried in court, where the earlier case was filed.[11]

Moreover, petitioner never raised the issue of lack of jurisdiction in his pleadings before the RTC. It was only in the Court of Appeals where he asserted for the first time that the RTC lacked jurisdiction over the ejectment case. This Court therefore cannot countenance petitioner's adopting inconsistent postures by attacking the jurisdiction of the regular courts to which he had voluntarily submitted. Estoppel bars him from doing so.[12]

There is also no merit in petitioner's contention that the action for annulment of title had prescribed. The one-year prescriptive period does not apply when the person seeking annulment of title is in possession of the lot. This is because the action partakes of a suit to quiet title which is imprescriptible.[13] In this case, inasmuch as respondents are in possession of the lot, their action to annul OCT No. P-15176 is not barred by prescription.

We now come to the crucial issue: Who has a better right over the contested property?

We held in *Magistrado v. Esplana*[14] that so long as there is a clear showing of open, continuous, exclusive, and notorious possession, and hence, a registrable possession, by present or previous occupants, by any proof that would be competent and admissible, the property must be considered to be private.

In the present case, it was established that the subject land is private property since time immemorial. Records reveal that the property was cultivated as riceland and was first declared for tax purposes under the name of Graciano Agustin. On June 6, 1960, Pio exercised acts of ownership over the land by entering into a notarized contract of sale with the right to repurchase with Gaudencio. He declared in the contract that he had inherited the land from his father and had been in possession of the property for 27 years. Pio likewise declared the property for tax assessment purposes, as required under Presidential Decree No. 76,[15] on September 25, 1973. In the

Kasunduan executed on April 25, 1979, Gaudencio acknowledged that Pio owned the land. Pio further disposed of the property in his last will and testament in favor of his heirs which include petitioner. Although the will is void for not complying with the formal requisites of a notarial will, it may be used to show the exclusive and adverse character of petitioner's possession as a co-heir and co-owner.[16] It also appears that respondents occupied the property on permission of Gaudencio. While petitioner did not actually reside and cultivate the land, Gaudencio had agreed to pay buwis or rentals for the houses built thereon by Fortunato Miguel and Alfonso Manantan.[17] Aquilino Concepcion also agreed to pay the rent.[18] Clearly, the evidence on record shows that the property belonged to Pio and upon his death, passed on to his heirs.

Inasmuch as the subject property is private, a free patent issued over it is null and void, and produces no legal effect whatsoever. Private ownership of land is not affected by the issuance of a free patent over the same land, because the Public Land Law applies only to lands of the public domain. The Director of Lands has no authority to grant free patents to lands that have ceased to be public in character and have passed to private ownership. Consequently, a certificate of title issued pursuant to a homestead patent partakes of the nature of a certificate issued in a judicial proceeding only if the land covered by it is really a part of the disposable land of the public domain.[19] Hence, the free patent covering Lot No. 661, a private land, and the certificate of title issued pursuant thereto, are null and void.

Notwithstanding, petitioner's right to possess and claim of ownership over Lot No. 661 are substantiated, contrary to the findings of the trial court and Court of Appeals. This Court is not a trier of facts and not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below, unless there is a misapprehension of facts or failure to consider certain relevant facts which, if properly taken into account, will justify a different conclusion.[20]

In the present case, the trial court and the Court of Appeals failed to consider that Pio, as owner of the subject property and petitioner's predecessor-in-interest, and Gaudencio, respondents' predecessor-in-interest, entered into a notarized contract of sale with the right to repurchase on June 6, 1960. Such contract is an equitable mortgage under Article 1602, paragraph 6 of the Civil Code, to wit:

Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

x x x x

(6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

x x x x

A proof that the contract was an equitable mortgage is that while the contract was dated June 6, 1960, Pio had declared, in a sworn statement, the subject property for tax assessment purposes on September 25, 1973.[21] Further, Gaudencio still recognized Pio as the owner of the property and stated in a notarized document that the property was mortgaged to him ("naisanla sa akin") and that he received Pio's payment of the debt, the same amount under the purported contract of sale.[22] Notably, both documents are considered public documents and enjoy the presumption of validity as to its authenticity and due execution. This legal presumption was not overcome by respondents.[23] Other than the objection that the property subject of the documents is public land, no other proof was presented. Thus, the presumption of validity of these documents prevails. The transaction being an equitable mortgage, Pio's ownership of the property did not cease. Therefore, the period of redemption under Article 1606 does not apply.

The appellate court erred in ruling that respondents had acquired the property through prescription. As borne by

the testimonies of Alfonso Manantan,[24] Fortunato Miguel,[25] and Danilo Manantan,[26] they occupied the property, not as owners but upon permission of Gaudencio. As already established, Gaudencio did not have open, continuous and adverse possession of the property. Moreover, on November 13, 1979, petitioner and Gaudencio agreed that the latter shall pay rent on the land where the houses of Fortunato and Alfonso were built. Thereafter, Aquilino Concepcion and a certain Pedro Antonio also agreed to pay rent. These circumstances belie respondents' claim of acquisitive prescription.

Acquisitive prescription is a mode of acquiring ownership by a possessor through the requisite lapse of time. In order to ripen into ownership, possession must be in the concept of an owner, public, peaceful and uninterrupted. Thus, mere possession with a juridical title, such as by a usufructuary, a trustee, a lessee, an agent or a pledgee, not being in the concept of an owner, cannot ripen into ownership by acquisitive prescription, unless the juridical relation is first expressly repudiated and such repudiation has been communicated to the other party. Acts of possessory character executed due to license or by mere tolerance of the owner would likewise be inadequate. Possession, to constitute the foundation of a prescriptive right, must be *en concepto de dueño*, or, to use the common law equivalent of the term, that possession should be adverse, if not, such possessory acts, no matter how long, do not start the running of the period of prescription.[27] Clearly, respondents, when they agreed to pay rent, became mere lessees and their possession cannot ripen into ownership. They also did not present proof of ownership. The tax receipts offered in evidence merely showed that they paid the taxes due only after petitioner filed a complaint against them. Such payment without adverse possession does not prove ownership.

However, while this Court declares that Lot No. 661 is a private property and not part of the public domain, the petitioner's title as co-owner of the said lot is imperfect and still subject to the rules on confirmation of title under Section 48 (b)[28] of the Public Land Act.[29] As an applicant for confirmation of title, petitioner has the burden of proving that he meets the requirements of the law.[30]

WHEREFORE, the petition is PARTIALLY GRANTED. The Decision dated October 30, 2002 of the Court of Appeals in CA-G.R. CV No. 58050 and its Resolution dated May 20, 2003 denying the motion for reconsideration are MODIFIED. Petitioner Franco Esguerra is declared a co-owner and holder of imperfect title over Lot No. 661. Free Patent No. 034914-92-1117 and Original Certificate of Title No. P-15176, both in the name of Franco Esguerra are declared null and void. No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 44-50. Penned by Associate Justice Eliezer R. de los Santos, with Associate Justices Oswaldo D. Agcaoili and Regalado E. Maambong concurring.

[2] Id. at 51.

[3] Id. at 38-43.

[4] Also known as Dionisio Miguel. See rollo, p. 45; TSN, November 27, 1995, pp. 2-3.

[5] Rollo, p. 43.

[6] Id. at 98.

[7] Art. 1606. The right referred to in Article 1601, in the absence of an express agreement, shall last four years from the date of the contract.

Should there be an agreement, the period cannot exceed ten years.

x x x x

[8] *Duero v. Court of Appeals*, G.R. No. 131282, January 4, 2002, 373 SCRA 11, 19-20.

[9] *Id.* at 18.

[10] Records (Civil Case No. 723-G), p. 118.

[11] *Zulueta v. Asia Brewery, Inc.*, G.R. No. 138137, March 8, 2001, 354 SCRA 100, 111.

[12] *Roxas v. Court of Appeals*, G.R. No. 138955, October 29, 2002, 391 SCRA 351, 358.

[13] *Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago*, G.R. No. 151440, June 17, 2003, 404 SCRA 193, 203.

[14] G.R. No. 54191, May 8, 1990, 185 SCRA 104, 109.

[15] REQUIRING ALL PERSONS, NATURAL OR JURIDICAL, OWNING OR ADMINISTERING REAL PROPERTY, INCLUDING THE IMPROVEMENTS THEREON, TO FILE SWORN STATEMENT OF THE TRUE VALUE OF SUCH PROPERTY.

[16] See *Calicdan v. Cendaña*, G.R. No. 155080, February 5, 2004, 422 SCRA 272, 280-281.

[17] Exhibit "M" (Civil Case No. 723-G), agreement executed by Franco Esguerra and Gaudencio Miguel.

[18] Exhibit "N" (Civil Case No. 723-G), agreement executed by Franco Esguerra and Aquilino Concepcion.

[19] *Supra* note 13, at 199.

[20] *Twin Towers Condominium Corporation v. Court of Appeals*, G.R. No. 123552, February 27, 2003, 398 SCRA 203, 222-223.

[21] Exhibit "4" (Civil Case No. 779-G), sworn statement of the current fair market value of real properties.

[22] Exhibit "J" (Civil Case No. 723-G), Kasunduan executed by Gaudencio Miguel.

[23] *Supra* note 13, at 201.

[24] TSN, September 9, 1996, pp. 8-9.

[25] TSN, September 30, 1996, p. 4.

[26] *Id.* at 7.

[27] *Marcelo v. Court of Appeals*, G.R. No. 131803, April 14, 1999, 305 SCRA 800, 807-808.

[28] 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 of title thereafter, under the Land Registration Act, to wit:

x x x x

(b) Those who by themselves or through their predecessors-in-interest have been, in continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or 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. Those 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.

x x x x

[29] Supra note 13, at 204.

[30] Collado v. Court of Appeals, G.R. No. 107764, October 4, 2002, 390 SCRA 343, 361.

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