HEIRS OF JUAN GRIÑO, SR. REPRESENTED BY REMEDIOS C. GRIÑO, PETITIONERS, VS. DEPARTMENT OF AGRARIAN REFORM, RESPONDENT.

G.R. NO. 165073. June 30, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On challenge via petition for certiorari are the October 17, 2003 Decision and the June 21, 2004 Resolution of the Court of Appeals in CA-GR SP No. 73368, "Heirs of Juan Griño, Sr. represented by Remedios C. Griño v. Department of Agrarian Reform."[1]

Juan Griño, Sr. (Griño), now deceased, was the owner of a parcel of agricultural land, Lot 1505-B, covered by Transfer Certificate of Title (TCT) No. T-53350[2] of the Register of Deeds of Iloilo containing an area of 9.35 hectares, located in Barangay Gua-an, Leganes, Iloilo.

Griño was also the owner of a 50-hectare parcel of land located in Barangay Tad-y, Sara, Iloilo which he, on February 8, 1972, mortgaged to the Development Bank of the Philippines (DBP) to secure the payment of a loan.

On October 21, 1972, then President Ferdinand E. Marcos issued Presidential Decree No. 27 (PD 27), "DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR."

Griño's 9.35 hectare land was placed under the coverage of PD 27 on account of which Certificates of Land Transfer (CLTs) covering a portion thereof were issued in favor of his tenants Marianito Gulmatico, Ludovico Hubero, Rodolfo Hubero, Placida Catahay and Roberto Gula.

Griño later filed in the early 80's a letter-petition for the cancellation of the above-said CLTs, contending that they were issued to the tenants without giving him an opportunity to be heard; the land was the only riceland he had in the Municipality of Leganes; the area planted with palay was only a little over 6 hectares; the land had a very great sentimental value to him; and several of his children and grandchildren who had no suitable residential lots might need the land to build their homes.

In lieu of the land covered by the CLTs, Griño offered seven hectares for each of the tenants from his above-said 50-hectare land.[3]

Griño, however, later ceded to the DBP his 50-hectare land via dacion en pago to settle his obligation to it.

On July 10, 1985, Griño died.[4] He was survived by his wife and seven children. On June 22, 1988, his wife also passed away.[5]

On June 15, 1988, Republic Act 6657 or the COMPREHENSIVE AGRARIAN REFORM LAW (CARL) took effect.

DAR Regional Director Antonio S. Maraya, acting on the petition of Griño for the cancellation of the CLTs, dismissed the same by Order[6] of September 25, 1989 (Maraya Order), citing Letter of Instructions No. 474 (LOI 474),[7] the pertinent portions of which Order read:

> Based from the foregoing, Atty. Rex Tupas, then Legal Officer III, Agrarian Reform Team, Leganes, Iloilo recommended in his report dated April 5, 1982 the dismissal of herein petition of Juan Griño for lack of merit and the maintenance of the Certificates of Land Transfer issued in favor of the above enumerated tenants covering the subject farmholdings, the petitioner, Juan Griño, being an owner of fifty hectaresuntenanted other agricultural lands which will not entitle him for exemption/retention pursuant to LOI 474, as implemented by MAR Memorandum Circular No. 11 dated April 21, 1978. This recommendation was concurred in by the Regional Director, Department of Agrarian Reform, Region VI, Iloilo City.
>
> WHEREFORE, premises considered, the instant petition filed by Juan Griño for the cancellation of the Certificates of Land Transfer issued in favor of his tenants covering certain parcels of land situated at Brgy. Gua-an, Leganes, Iloilo, is hereby DISMISSED for lack of merit, and accordingly, the Certificates of Land Transfer issued shall be maintained.[8] (Emphasis and underscoring supplied)

The Land Bank of the Philippines later advised Griño's heirs, herein petitioners, by letter[9] of June 6, 1996, of the DAR's submission of Griño's 9.35 hectare land transfer claim for payment under PD 27, its approval on June 5, 1996, and the requirements for the proceeds of the claim to be released.

Petitioners later filed with the DAR Regional Office an application for retention[10] dated March 14, 1997 of the 9.35 hectare land pursuant to Section 6 of the CARL which reads:

> SECTION 6. Retention Limits. – Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no caseshall retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: Provided, that landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder, Provided, further, That original homestead grantees or their direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.
>
> x x x x (Emphasis and underscoring supplied)

Petitioners sought the exemption of the 9.35 hectare land from the coverage of either PD 27 or the CARL, contending that Griño had seven children and if a landowner is entitled to five hectares as retention limit, the remaining land of Griño would not be enough for his children, the 50-hectare land of Griño having already been ceded to the DBP.[11]

In the meantime or on June 5 and 25, 1997, Emancipation Patents were issued in favor of Griño's above-named tenants.[12]

DAR Regional Director Dominador B. Andres subsequently dismissed petitioners' application for retention, by Order[13] dated April 27, 1998, ratiocinating as follows:

> x x x x
>
> The reckoning date for the application of Operation Land Transfer is October 21, 1972, the date of effectivity of P.D. 27, which is the law applicable in this case, and not the date of effectivity of R.A. 6657 (June 15,

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> 1988), which is applicable here only in suppletory manner. By operation of law, as of October 21, 1972, the subject landholdings were covered by Operation Land Transfer under Presidential Decree No. 27 in view of the fact that the landholdings, subject of this case are tenanted and Juan Griño, Sr. has other landholdings located at Sara, Iloilo with an area of 50.0000 hectares, more or less. The conveyance of the 50.0000hectares landholdings in favor of the Development Bank of the Philippinessometime in 1985 has no legal effect of exempting the tenantedlandholdings from Operation Land Transfer considering that theconveyance happened only in 1985, several years after the subjecting ofthe said properties under the coverage of Operation Land Transfer.
>
> x x x x[14] (Emphasis and underscoring supplied)

Petitioners moved to reconsider[15] the April 27, 1998 Order of the DAR Regional Director but it was denied by Order[16] of August 18, 1998.

Petitioners appealed to the DAR Secretary, arguing that the Regional Director erred in:

> - . . . NOT CANCELING RESPONDENTS' [CLTs] WHICH WERE NULL AND VOID FOR HAVING BEEN ISSUED WITHOUT DUE PROCESS OF LAW AND WITHOUT PAYMENT OF JUST COMPENSATION.
>
> - . . . HOLDING THAT GRIÑO DID NOT HAVE A RIGHT OF RETENTION/EXEMPTION OVER HIS TENANTED AGRICULTURAL LAND (LOT 1505-B) BECAUSE HE OWNED 50 HECTARES OF UNTENANTED OTHER AGRICULTURAL LAND IN SARA WHEN PD NO. 27 TOOK EFFECT.
>
> - . . . HOLDING THAT THE REVERSION OF THE 50- HECTARE LAND IN SARA, ILOILO TO THE DBP IN PAYMENT OF GRIÑO'S MORTGAGE DEBT, WAS CIRCUMVENTION OF PD 27.
>
> - . . . . NOT ALLOWING GRIÑO AND (LATER) HIS HEIRS THE RIGHT TO CHOOSE TO RETAIN HIS 9-HECTARE-LOT 1505-B IN LEGANES, ILOILO, IN LIEU OF THE 50-HECTARE LAND IN SARA, ILOILO, AS PROVIDED IN SECTION 6 O[F] RA 6657 WHICH WAS ALREADY THE LAW WHEN THE APPEALED ORDERS WERE ISSUED.[17]

By Order[18] dated September 3, 2002, then DAR Secretary Hernani A. Braganza denied petitioners' appeal:

> x x x x
>
> The fact that the 50-hectare property was mortgaged to the DBP in 1972 is of no moment in relation to PD 27. The naked title of said property remained with Juan Griño, Sr. and he was still the owner thereof when PD 27 took effect.
>
> However, we agree with herein applicants-appellants that the reversion of the 50-hectare property to the DBP by way of dacion en pago in 1985 was not done in circumvention of PD 27. Said property was untenanted coconut land, hence, beyond the coverage of PD 27. However, said transaction merely confirmed the fact that Juan Griño, Sr. was the ownerof the 50-hectare property when PD 27 took effect on 21 October 1972.
>
> Since Juan Griño, Sr. cannot retain any portion of his tenanted riceland in Leganes, Iloilo, herein applicants-appellants, who are his successors-in-interest, cannot also retain the same property under PD 27. Herein applicants-appellants merely succeeded to the rights of their predecessor-in-interest by virtue of the Law on Succession under the New Civil Code. It should be noted that under DAR AO 4 (1991), no retention rights are granted to the children of landowners.
>
> Applicants-appellants next assert their right of retention and their right to choose the area to be retained as provided in Section 6 of RA 6657.
>
> The contention is likewise without merit.

x x x

The . . . statement of the Supreme Court clearly indicates that a landowner who failed to exercise his retention right of land under PD 27 may do so under RA 6657 provided he is qualified to do so under the regime of PD 27. Stated differently, where a landowner is not entitled to retain land under PD 27, he cannot avail of the right of retention over the same land under RA 6657.

In the case at hand, it is established that Juan Griño, Sr. was not entitled toexercise his retention right over subject property under PD 27. As such,he is also not entitled to exercise said right under RA 6657. If Juan Griño,Sr. had no retention rights under PD 27 and RA 6657, it follows that hisheirs, who are his successors-in-interest, cannot also exercise the sameright under PD 27 and RA 6657.

x x x x (Underscoring supplied)[19]

Before the Court of Appeals to which petitioners elevated the case via petition for review, it raised the following arguments:

- Griño had the right to retain subject land, because LOI 474 exempted from OLT landowners of ricelands who owned other agricultural lands exceeding 7 hectares if they did not derive sufficient income from the latter.

- Petitioners had each inherited a 1.33 hectare share of the subject land as of 1985, which was already way below the retention limits of PD 27 and RA 6657.[20]

By Decision[21] dated October 17, 2003, the appellate court affirmed the September 3, 2002 Order of the DAR Secretary, the pertinent portions of which decision read:

x x x Juan Griño's disputed land came within the coverage of P.D. 27 because it is tenanted riceland. Because P.D. 27 initially lacked implementing rules and regulations, there were a lot of uncertainties at the start on how the transfer of ownership to tenant-framers would operate. As the above outline of the major post-P.D. 27 developments showed, the government started with the landed estates and worked its way down to seven hectares of tenanted rice and corn land by the time it came out with LOI 474. What was certain at that point was that from the combined application of P.D. 27 and LOI 474, Juan Griño, Sr. hadno right of retention because he owned 9 hectares of tenantedriceland and 50 hectares of coconut land. Thus, his tenants were given – in 1981, during the lifetime of Juan Griño, Sr. – their Certificates of Land Transfers preparatory to the Emancipation Patents they would receive if they can perfect their payments of their portion of the covered riceland. Juan Griño, Sr. objected to the issuance of the CLTs soon after. This was the status of Juan Griño, Sr.'s retention rights when he died in 1985.

x x x x

While Juan Griño seasonably objected to the CLTs, the objection was simply a pending remedial action passed on to the heirs. This remedialaction lost its efficacy for the heirs when the DAR dismissed thepetition on September 25, 1989 and their heirs failed to appeal thedismissal. x x x

x x x x

Additionally, when the heirs of Juan Griño, Sr. filed their application for retention under RA 6657 in 1997 they had to contend with an existing adverse ruling by the DAR – the order of September 25, 1989 and the CLTs the ruling confirmed. In 1997, the estate of Juan Griño, Sr. could no longer file a petition that would question the denial of Juan Griño, Sr.'s retention rights as res adjudicata had then set in. The DAR was the agency vested by law with the authority to rule on retention issues and its ruling lapsed to finality fifteen (15) days after its service. That the ruling has been dulyserved and has reached finality appear to us to be uncontroverted. The DAR ruling is a ruling on the merits of Juan Griño, Sr.'s petition for cancellation of the issued CLTs, and laid to rest any issue of retention as between Juan Griño, Sr. and his successors, and the government. Thus, res

> adjudicata fully applies.
>
> The estate and the individual heirs are likewise estopped by laches from questioning the denial of Juan Griño, Sr.'s claim for retention. The denial was made on September 25, 1989 and the heirs' present petition, assuming that it can be characterized as an attack on the denial of Juan Griño, Sr.'s retention rights, was made only onMarch 17, 1997 or 7 ½ years later. At this point, laches has set in, laches being "the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence, could or should have been done earlier. x x x
>
> x x x x
>
> In our view, allowing the heirs to resurrect the long entombed issue of retention under the circumstances of this case would not only be a major setback for the government's agrarian reform program, but would be unjust as well to the individual tenants-beneficiaries who are now full-pledged owners of the lands they till. Any adverse ruling against the new owners would be doubly unjust since they were never heard in this present petition.
>
> x x x x[22] (Emphasis and underscoring supplied;
> citations omitted)

Petitioners moved to reconsider the appellate court's decision upon the following arguments:

> - The Order of DAR Regional Director Maraya dated September1989 purportedly denying Juan Griño, Sr.'s petition for cancellation of CLTs appeared only in 1998 – 6 months after the PARO had declared in the EPs issued in 1997 that no CLTs had been issued. Hence, the supposed Maraya Order upholding said CLTs could not be held against herein Petitioners, as even the PARO did not know of their existence (assuming they existed at all).
>
> - There was no substitution of heirs in relation to the supposed Petition for Cancellations of CLTs, hence herein Petitioners cannot be held bound by the DAR Regional Director's Order dated September 1989.
>
> - Addressing the Order to a dead person, without showing that it was validly served upon any heir or representative, does not constitutevalid notice upon herein Petitioners.
>
> - A Petition for Cancellation of CLTs is not tantamount to an Application for Retention. The issuance of CLTs is not a bar to thePetitioner's exercise of their Constitutionally-guaranteed right ofretention.
>
> - The case of Daez v. CA which also involves a denial of a petition for cancellation of CLTs, shows that the right of retention can stillbe exercised under RA 6657 after such denial.[23] (Underscoring supplied)

By Resolution[24] dated June 21, 2004, the appellate court denied petitioners' motion for reconsideration, holding that, among other things, the issues raised therein "werenever raised in the proceedings below nor in their petition for review"; and that "it is against all rules of procedural orderliness and fair play for the petitioners to claim that [its] [d]ecision is wrong because the underlying facts – stated in the petitioners' Statement of Facts and submissions – are incorrect or incomplete" and "[p]etitioners are in fact estopped . . . . from making this claim after [it has] relied on their statements and submissions in rendering [its] Decision."

The appellate court likewise held that the DAR could not be faulted if there was no substitution of parties, for although the DARAB rules do not contain any provision bearing on the death of a party, the Rules of Court makes it the duty of counsel to inform the tribunal the fact of death of the party and the name and address of his representative.

Furthermore, the appellate court held that even without above-stated rule, "ordinary common sense . . . dictate[s] that the heirs of a deceased litigant cannot sleep on their duty to attend the estate of the deceased" and "[s]ince no notification appears to have been undertaken by the heirs, [it] find[s] no merit in petitioners' claim that there was

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no substitution of heirs and the denial of Griño's petition for cancellation of CLTs does not bind them."

Hence, the present petition for certiorari, petitioners faulting the appellate court to have committed grave abuse of discretion:

> In refusing to recognize [its] Constitutional right of retention – as embodied in RA 6657 – which the Association of Small Landowners case had already acknowledged by the time the Maraya Order was supposedly issued[.]
>
> In refusing to recognize these strange discoveries of glaring irregularities – of facts gleaned from the DAR's records submitted to the Court and made available to herein Petitioners only after the Petition for Review had been filed before the Court of Appeals[.]
>
> In insisting that [they] had already lost [their] right of retention because the Maraya Order had become final, despite the PARO's unequivocal certification at the back of each Emancipation Patent that there were no CLTs issued, and the Maraya Order was conveniently "discovered" within the DAR itself only in 1998[.][25]

The proper remedy for petitioners to challenge the appellate court's decision and resolution was to file a petition for review on certiorari under Rule 45 on or before July 20, 2004 or 15 days after they received a copy of the appellate court's resolution on July 5, 2004 denying their motion for reconsideration. They, however, filed the present petition for certiorari under Rule 65 on September 20, 2004.

It is well settled, however, that certiorari cannot be used as a substitute for lost appeal. Certiorari lies only when there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law. Why the question being raised by petitioners, i.e., whether the appellate court committed grave abuse of discretion could not have been raised on appeal,[26] no reason therefor has been advanced.

While this Court, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, has the discretion to treat a petition for certiorari as having been filed under Rule 45, especially if filed within the reglementary period under said Rule, it finds nothing in the present case to warrant a liberal application of the Rules, no justification having been proffered, as just stated, why the petition was filed beyond the reglementary period.[27]

Technicality aside, the petition just the same fails.

Petitioners fault the appellate court for ignoring the "evidence" they discovered when they had the opportunity to examine the records forwarded by the DAR to the appellate court – "that Griño was misled into believing that [the] CLTs had been issued, when there were none, or that the [September 25, 1989] Maraya Order denying Griño's petition for cancellation of [the] CLTs was without legal effect – because the (1) CLTs were inexistent, (2) he was dead by the time the Order was rendered, and the property had long passed on to his heirs, and (3) the heirs were never notified of said order, and there is no showing that it was sent even to Juan Griño, Sr.'s address of record either."

As the appellate court ruled, however, petitioners are guilty of laches in their attempt to "resurrect the retention issue [seven and a half] years after its denial was decreed and came to finality."

As the appellate court ruled too, the DAR cannot be faulted if no substitution of parties took place when Griño died, it being the duty of the heirs to attend to the estate of the deceased, which duty includes notification to adjudicating tribunals the fact of death of the litigant.

At all events, these issues raised by petitioners, which substantially reiterate those raised in their motion for reconsideration before the appellate court, were as the appellate court observed, never raised in the proceedings

below nor in petitioners' petition for review before said court.

WHEREFORE, the petition is DISMISSED.

Costs against petitioners.

SO ORDERED.

Quisumbing, (Chairman), Carpio, Tinga, and Velasco, Jr., JJ., concur.

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[1] Penned by Justice Arturo D. Brion and concurred in by Justices Salvador J. Valdez, Jr. and Josefina Guevarra-Salonga.

[2] Department of Agrarian Reform (DAR) records, pp. 12-11. (DAR records are paginated from pp. 210-1.

[3] DAR records, p. 24.

[4] Id. at 6.

[5] Id. at 7.

[6] Id. at 24-23.

[7] LETTER OF INSTRUCTIONS No. 474
TO: The Secretary of the Agrarian Reform

WHEREAS, last year, I ordered that small landowners of tenanted rice/corn lands with areas of less than twenty-four hectares but above seven hectares shall retain not more than seven hectares of such lands except when they won other agricultural lands containing more than seven hectares or land used for residential, commercial, industrial or other urban purposes form which they derive adequate income to support themselves and their families;

WHEREAS, the Department of Agrarian Reform found that in the course of implementing any directive there are many landowners of tenanted rice/corn lands with areas of seven hectares or less who also own other agricultural lands containing more than seven hectares or lands used for residential, commercial, industrial or other urban purposes where they derive adequate income to support themselves and their families;

WHEREAS, it is therefore necessary to cover said lands under the Land Transfer Program of the government to emancipate the tenant-farmers therein.

NOW, THEREFORE, I FERDINAND E. MARCOS, President of the Philippines, do hereby order the following:

- You shall under take to place under the Land Transfer Program of the government pursuant to Presidential Decree No. 27, all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas of lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families.

- Landowners who may choose to be paid the cost of their lands by the Land Banks of the Philippines shall be paid in accordance with mode of payment provided in Letter of Instructions No. 273 dated May 7, 1973.

x x x x

[8] DAR records, p. 23.

[9] Court of Appeals (CA) rollo, pp. 37-38.

[10] DAR records, p. 100.

[11] Id. at 28.

[12] Rollo, pp. 70-85.

[13] DAR records, pp. 122-118

[14] Id. at 120-119.

[15] Id. at 127-123

[16] Id. at 137-132.

[17] Id. at. 158-153.

[18] Id. at 210-200.

[19] Id. at 203-201.

[20] CA rollo, pp. 14-17.

[21] Id. at 112-134.

[22] Id. at 127-133.

[23] Id. at 161-174.

[24] Id. at 246-252.

[25] Rollo, pp. 12-13.

[26] Republic v. Court of Appeals, 379 Phil. 92, 97 (2000).

[27] The President, Philippine Deposit Insurance Corporation v. Court of Appeals, G.R. No. 151280, June 10, 2004, 431 SCRA 682, 688 citing Republic v. Court of Appeals, supra at 98.

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