

JUANITA NAVAL, PETITIONER, VS. COURT OF APPEALS, JUANITO CAMALLA, JAIME NACION, CONRADO BALILA, ESTER MOYA AND PORFIRIA AGUIRRE, RESPONDENTS.

G.R. NO. 167412. February 22, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review assails the Decision[1] of the Court of Appeals dated December 14, 2004, in CA-G.R. SP No. 86736, which reversed the Decision[2] of the Regional Trial Court (RTC) of Naga City, Branch 26, in Civil Case No. 2004-0054 affirming the Decision[3] of the Municipal Circuit Trial Court (MCTC) of Magarao-Canaman, Camarines Sur, as well as the Resolution[4] dated February 17, 2005 denying petitioner's motion for reconsideration.

The facts of the case are as follows:

On December 2, 1969, Ildefonso A. Naval sold a parcel of land located in Sto. Tomas, Magarao, Camarines Sur, consisting of 858 sq. m. to Gregorio B. Galarosa. The sale was recorded in the Registry of Property of the Registry of Deeds of Camarines Sur on December 3, 1969 pursuant to Act No. 3344, the law governing registrations of all instruments on unregistered lands.[5]

Subsequently, Gregorio sold portions of the land to respondents Conrado Rodrigo Balilla[6] on November 4, 1976, Jaime Nacion[7] on January 10, 1977 and spouses Ireneo and Ester Moya[8] in July 1977, and Juanito Camalla[9] on September 4, 1987. All buyers occupied the portion they bought, built improvements thereon, and paid the taxes due thereto.[10]

The controversy arose when petitioner Juanita Naval, the great granddaughter of Ildefonso, was issued on April 1, 1975 by the Register of Deeds of Camarines Sur an Original Certificate of Title (OCT) No. RP-5386 (29791), covering 733 sq. m. of the subject land.[11] She claimed that she bought the subject land from Ildefonso in 1972.[12]

On November 10, 1977, petitioner filed a complaint for recovery of possession against Bartolome Aguirre, Conrado Balila,[13] Ireneo Moya, Jaime Nacion and Domingo Nacion, which was docketed as Civil Case No. 306.[14] However, the case was dismissed[15] without prejudice[16] for failure to prosecute the action for an unreasonable length of time.

Almost 20 years later, or on April 21, 1997, petitioner re-filed the complaint for recovery of possession with damages before the MCTC of Magarao-Canaman, Camarines Sur, against Juanita[17] Camalla, Diosdado Balila, Conrado Balila, Forferia[18] Aguirre, Jaime Nacion and Ester Moya. The case was docketed as Civil Case No. 994.

After trial, the MCTC rendered its decision, the dispositive portion reads as follows:

WHEREFORE, for all the foregoing consideration, decision is hereby rendered in favor of the plaintiff and against defendants:

- 1) Declaring the plaintiff to be the legal owner of the land as described in paragraph 2 of the complaint;
- 2) Ordering defendants Juanito Camalla, Diosdado Balila, Conrado Balila, Porferia Aguirre and Jaime Nacion to vacate the property in question and to deliver its possession to the plaintiff;
- 3) Ordering Ester Moya to vacate the fifty (50) square meters occupied by her and to relinquish its possession to the plaintiff;
- 4) Dismissing the respective claims for damages of the parties.

Pronouncing no costs.

SO ORDERED.[19]

Aggrieved, respondents appealed the decision to the RTC of Naga City, which affirmed in toto the assailed decision.[20]

Respondents thereafter elevated the case to the Court of Appeals via Rule 42 of the Rules of Court. Finding the prior registration of the deed of sale between Ildefonso and Gregorio with the Register of Deeds as a constructive notice to subsequent buyers, the appellate court reversed the decision of the RTC. Thus,

WHEREFORE, premises considered, the present petition is hereby GRANTED. The appealed decision of the court a quo is hereby REVERSED and SET ASIDE and a new judgment is hereby entered dismissing respondent's complaint for recovery of possession with damages. Petitioners' counterclaim for damages is likewise dismissed for lack of legal and factual bases.

No pronouncement as to costs.

SO ORDERED.[21]

Hence, this petition assigning the following errors:

I

THE COURT OF APPEALS ERRED IN DECLARING THAT GREGORIO GALAROSA HAS RIGHTFULLY ACQUIRED OWNERSHIP OVER THE LOT COVERED BY OCT RP #5386 (29791) AND DECLARING HIM TO HAVE POSSESSED THE LOT BEFORE THE ALLEGED SALES TO RESPONDENTS.

II

THE COURT OF APPEALS ERRED IN HOLDING THAT THE PAYMENT OF TAXES BY RESPONDENTS WERE (sic) EVIDENCE OF LAWFUL POSSESSION AND OWNERSHIP.

III

THE COURT OF APPEALS ERRED IN DECLARING THAT THE LOTS CLAIMED BY THE RESPONDENTS HAVE BEEN POSSESSED BY THEM IN GOOD FAITH DESPITE THEIR KNOWLEDGE OF THE EXISTENCE OF OCT RP #5386(29791).[22]

Petitioner claims that she has superior rights over the subject land because the sale between Ildefonso and Gregorio and the subsequent registration thereof with the Register of Deeds had no legal effect since the subject land was declared in the name of Agrifina Avila while the tax declaration cancelled by Gregorio's was that of Gregorio Boñaga. Petitioner thus assails the right claimed by Gregorio over the subject land from which the

respondents derived their respective claims.[23]

On the other hand, respondents contend that the registered sale by Ildefonso to Gregorio in 1969 of the subject land, from whom they derive their claims, vests them with better right than the petitioner; that registration under Act No. 3344 served as constructive notice to the whole world, including the petitioner, who claimed to have purchased the subject land from Ildefonso in 1972, but failed to present evidence to prove such acquisition.[24]

We deny the petition.

Prefatorily, a perusal of the records reveals that during the trial, petitioner vigorously asserted that the subject land was the exclusive property of Ildefonso who sold it to her in 1972.[25] However, in this appeal, petitioner assails the ownership not only of Gregorio but also of Ildefonso by alleging that at the time the latter sold the land to Gregorio, the same was declared in the name of Agrifina Avila. When a party adopts a certain theory in the court below, he is not allowed to change his theory on appeal, for to allow him to do so would not only be unfair to the other party, but it would also be offensive to the basic rules of fair play, justice and due process.[26]

In this appeal, the issue for resolution is who has the superior right to a parcel of land sold to different buyers at different times by its former owner.

It is not disputed that the subject land belonged to Ildefonso and that it was not registered under the Torrens System[27] when it was sold to Gregorio in 1969 and to the petitioner in 1972. Further, the deed of sale between Ildefonso and Gregorio was registered with the Register of Deeds of Camarines Sur pursuant to Act No. 3344, as shown by Inscription No. 54609 dated December 3, 1969, Page 119, Volume 186, File No. 55409 at the back thereof.

In holding that respondents have a better right to possess the subject land in view of the bona fide registration of the sale with the Register of Deeds of Camarines Sur by Ildefonso and Gregorio, the Court of Appeals applied Article 1544 of the Civil Code, which provides:

ART. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

While we agree with the appellate court that respondents have superior right over the petitioner on the subject property, we find Article 1544 inapplicable to the case at bar since the subject land was unregistered at the time of the first sale. The registration contemplated under this provision has been held to refer to registration under the Torrens System, which considers the act of registration as the operative act that binds the land.[28] Thus, in *Carumba v. Court of Appeals*,[29] we held that Article 1544 of the Civil Code has no application to land not registered under Torrens System.

The law applicable therefore is Act No. 3344, which provides for the registration of all instruments on land neither covered by the Spanish Mortgage Law nor the Torrens System. Under this law, registration by the first buyer is constructive notice to the second buyer that can defeat his right as such buyer in good faith.

Applying the law, we held in *Bautista v. Fule*[30] that the registration of an instrument involving unregistered land in the Registry of Deeds creates constructive notice and binds third person who may subsequently deal with the same property. We also held in *Bayoca v. Nogales*[31] that:

Verily, there is absence of prior registration in good faith by petitioners of the second sale in their favor. As stated in the Santiago case, registration by the first buyer under Act No. 3344 can have the effect of constructive notice to the second buyer that can defeat his right as such buyer. On account of the undisputed fact of registration under Act No. 3344 by [the first buyers], necessarily, there is absent good faith in the registration of the sale by the [second buyers] for which they had been issued certificates of title in their names. It follows that their title to the land cannot be upheld. x x x.

Even if petitioner argues that she purchased and registered the subject land in good faith and without knowledge of any adverse claim thereto, respondents still have superior right over the disputed property. We held in *Rayos v. Reyes*[32] that:

"[T]he issue of good faith or bad faith of the buyer is relevant only where the subject of the sale is registered land and the purchaser is buying the same from the registered owner whose title to the land is clean x x x in such case the purchaser who relies on the clean title of the registered owner is protected if he is a purchaser in good faith for value." Since the properties in question are unregistered lands, petitioners as subsequent buyers thereof did so at their peril. Their claim of having bought the land in good faith, i.e., without notice that some other person has a right to or interest in the property, would not protect them if it turns out, as it actually did in this case, that their seller did not own the property at the time of the sale.

It is an established principle that no one can give what one does not have, *nemo dat quod non habet*. Accordingly, one can sell only what one owns or is authorized to sell, and the buyer can acquire no more than what the seller can transfer legally.[33] In the case at bar, since Ildefonso no longer owned the subject land at the time of the sale to the petitioner, he had nothing to sell and the latter did not acquire any right to it.

Even if we apply Article 1544, the facts would nonetheless show that respondents and their predecessors-in-interest registered first the source of their ownership and possession, i.e., the 1969 deed of sale, and possessed the subject land at the earliest time. Applying the doctrine of "priority in time, priority in rights" or "*prius tempore, potior jure*," respondents are entitled to the ownership and possession of the subject land.[34]

True, a certificate of title, once registered, should not thereafter be impugned, altered, changed, modified, enlarged or diminished except in a direct proceeding permitted by law.[35] Moreover, Section 32 of Presidential Decree No. 1529 provides that "[u]pon the expiration of said period of one year, the decree of registration and the certificate of title shall become incontrovertible."

However, it does not deprive an aggrieved party of a remedy in law. What cannot be collaterally attacked is the certificate of title and not the title or ownership which is represented by such certificate. Ownership is different from a certificate of title.[36] The fact that petitioner was able to secure a title in her name did not operate to vest ownership upon her of the subject land. Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein.[37] It cannot be used to protect a usurper from the true owner; nor can it be used as a shield for the commission of fraud; neither does it permit one to enrich himself at the expense of others.[38] Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.[39]

As correctly held by the Court of Appeals, notwithstanding the indefeasibility of the Torrens title, the registered owner may still be compelled to reconvey the registered property to its true owners. The rationale for the rule is that reconveyance does not set aside or re-subject to review the findings of fact of the Bureau of Lands. In an action for reconveyance, the decree of registration is respected 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 the one with a better right.[40]

Finally, the Court of Appeals correctly held that an action for reconveyance does not prescribe when the plaintiff is in possession of the land to be reconveyed, as in this case. Thus, in *Leyson v. Bontuyan*:[41]

x x x [T]his 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*, 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*, 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. 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.

WHEREFORE, in view of the foregoing, the petition is DENIED. The Decision of the Court of Appeals dated December 14, 2004, in CA-G.R. SP No. 86736, dismissing petitioner's complaint for recovery of possession and respondents' counterclaim for damages for lack of legal and factual bases, and the Resolution dated February 17, 2005 denying the motion for reconsideration, are AFFIRMED.

SO ORDERED.

Panganiban, C.J., (Chairman), Austria-Martinez and Callejo, Sr., JJ., concurChico-Nazario, J., on leave.

[1]CA rollo, pp. 153-171. Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Regalado E. Maambong and Lucenito N. Tagle.

[2] Id. at 111-117. Penned by Judge Filemon B. Montenegro.

[3] Id. at 81-95. Penned by Judge Eddie P. Monserate.

[4]Id. at 190.

[5]Records, p. 253.

[6] Id. at 314.

[7] Id. at 278.

[8] Id. at 272.

[9] Id. at 263.

[10] CA rollo, p. 155.

[11] Rollo, p. 57.

[12] CA rollo, p. 111.

[13] Referred to as Conrado Balilia in some parts of the records.

[14] CA rollo, p. 112.

[15] Id.

[16] Id.

[17] Referred to as Juanito Camalla in some parts of the records.

[18]Referred to as Porferia Aguirre in some parts of the records.

[19]CA rollo, pp. 94-95.

[20] Id. at 117.

[21]Id. at 170-171.

[22] Rollo, pp. 17-18.

[23] Id. at 18.

[24]Id. at 142-143 & 147.

[25] CA rollo, p. 111.

[26]Homeowners Savings & Loan Bank v. Dailo, G.R. No. 153802, March 11, 2005, 453 SCRA 283, 293.

[27]Act No. 496 (1903) or the Land Registration Act, now Presidential Decree No. 1529 (1978) or the Property Registration Decree.

[28] Abrigo v. De Vera, G.R. No. 154409, June 21, 2004, 432 SCRA 544, 557.

[29] G.R. No. L-27587, February 18, 1970, 31 SCRA 558, 560-561.

[30] 85 Phil. 391, 393 (1950), cited in Naawan Community Rural Bank, Inc. v. Court of Appeals, 443 Phil. 56, 64 (2003).

[31] 394 Phil. 465, 479-480 (2000).

[32]446 Phil. 32, 50 (2003).

[33] Consolidated Rural Bank (Cagayan Valley), Inc. v. Court of Appeals, G.R. No. 132161, January 17, 2005, 448 SCRA 347, 363.

[34] Rayos v. Reyes, *supra* at 51.

[35] De Pedro v. Romasan Development Corporation, G.R. No. 158002, February 28, 2005, 452 SCRA 564, 575.

[36] Lee Tek Sheng v. Court of Appeals, 354 Phil. 556, 561 (1998).

[37] Heirs of Clemente Ermac v. Heirs of Vicente Ermac, 451 Phil. 368, 377 (2003).

[38] De Pedro v. Romasan Development Corporation, *supra* at 577.

[39] Lee Tek Sheng v. Court of Appeals, *supra* at 561-562.

[40] Heirs of Pomposa Saludaes v. Court of Appeals, G.R. No. 128254, January 16, 2004, 420 SCRA 51, 56.

[41] G.R. No. 156357, February 18, 2005, 452 SCRA 94, 113-115.

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