

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. JOSE T. CHING  
REPRESENTED BY HIS ATTORNEY-IN-FACT, ANTONIO V. CHING,  
RESPONDENT.**

*G.R. No. 186166. October 20, 2010*

Ponente: MENDOZA, J.

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**MENDOZA, J.:**

In this Petition for Review on certiorari under Rule 45, the Republic of the Philippines, represented by the Office of the Solicitor General (OSG), assails the November 28, 2008 Decision[1] of the Court of Appeals (CA), in CA-G.R. CV No. 00318-MIN, reversing the December 3, 2002 Resolution[2] of the Regional Trial Court, Butuan City, Branch 2 (RTC), disallowing the Application for Registration of Title of respondent Jose Ching, represented by his Attorney-in-Fact, Antonio Ching, in Land Registration Case No. N-290.

**THE FACTS**

On August 9, 1999, respondent Jose Ching, represented by his Attorney-in-Fact, Antonio Ching, filed a verified Application for Registration of Title covering a parcel of land with improvements identified as Lot 1, SGS-13-000037-D, being a portion of Lot 2738, GSS-10-000043, before the RTC. The subject lot is a consolidation of three (3) contiguous lots situated in Banza, Butuan City, Agusan del Norte, with an area of 58,229 square meters. The first parcel of land is covered by Tax Declaration No. 96GR-11-003-0556-A; the second parcel by Tax Declaration No. 96GR-11-003-0444-I; and the third parcel by Tax Declaration No. 96GR-11-003-0537-A. In support of his application, respondent attached the (a) Sketch plan;[3] (b) Technical description;[4] (c) Tracing Cloth of Plan of Portion of Lot 2738, Gss-10-000043, which is a Segregation Plan of Portion of Lot 2738, Gss-10-0000431, as surveyed for Jose T. Ching and duly approved by the Bureau of Land DENR Region XIII on July 08, 1998 covering the subject land;[5] and (d) Special Power of Attorney executed by Jose T. Ching authorizing Antonio V. Ching, Jr. to file an application for title over the land.[6]

Respondent alleged that on April 10, 1979, he purchased the subject land from the late former governor and Congressman Democrito O. Plaza as evidenced by a Deed of Sale of Unregistered Lands.[7]

Initially, the RTC, acting as a land registration court, ordered respondent to show cause why his application for registration of title should not be dismissed for his failure to state the current assessed value of the subject land and his non-compliance with the last paragraph of Section 17 of Presidential Decree (P.D.) No. 1529.[8]

Accordingly, on September 3, 1999, respondent filed a Verified Amended Application[9] which the RTC found to be sufficient in form and substance. The case was set for initial hearing on December 22, 1999.[10]

On December 16, 1999, the OSG duly deputized the Provincial Prosecutor of Agusan del Norte to appear on behalf of the State.[11] Thereafter, on January 20, 2000, the OSG filed an Opposition to the application for registration of title. Specifically, the OSG alleged:

(1) That neither the applicant nor his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the land in question since June 12, 1945 or prior thereto [Sec. 48 (b) C.A. 141, as amended by P.D. 1073];

(2) That the muniments of title and/or any tax declarations and tax payments receipts of applicant attached to or alleged in the application, do not constitute competent and sufficient evidence of a bona fide acquisition of the land applied for or of his open, continuous, exclusive and notorious possession and occupation of the land in the concept of owner since June 12, 1945 or prior and the tax declaration and tax payment receipts appear not to be genuine and are of recent vintage;

(3) That the claim of ownership in fee simple on the basis of Spanish title or grant can no longer be availed of by the applicant who have failed to file an appropriate application for registration within six (6) months from 16 February 1976 under P.D. No. 892 as the instant application appears to have been filed on December 17, 1998; and

(4) That the parcels of land applied for are portions of the public domain belonging to the Republic of the Philippines not subject to private appropriation.[12]

On June 28, 2001, the Department of Environment and Natural Resources likewise filed its opposition to the application.

On December 3, 2002, the RTC resolved to dismiss the respondent's application for registration.[13] The dispositive portion reads:

IN VIEW OF THE FOREGOING, the court resolves to dismiss as it hereby dismisses the instant application for registration of title for insufficiency of evidence.

SO ORDERED.

The RTC was not convinced that respondent's Deed of Sale sufficiently established that he was the owner in fee simple of the land sought to be registered. The RTC wrote "[e]vidence only shows that the applicant and his vendor as predecessor-in-interest have been in open, peaceful, notorious and exclusive possession starting from 1965. Among the tax declarations marked Exhibits `R' to `R-7' includes the oldest one marked Exhibit `R-7' shown in the back lower portion that it was effective beginning the year 1980, and among the tax declarations marked Exhibit `S' to `S-8' inclusive, the oldest one marked Exhibit `S-8' is effective in the year 1980 and among the Tax Declaration marked Exhibit `T' to `T-7' inclusive, the oldest one marked Exhibit `T-7' shows that it began to be effective in the year 1980 also. In the Certification (Exhibit `U') issued by the Office of the City Treasurer of Butuan shows that the payment of the realty taxes paid for the 3 parcels started only in the year 1980." [14]

Respondent filed a motion for reconsideration and a subsequent supplemental motion for reconsideration with attached additional tax declarations. The RTC denied both motions in its December 11, 2003 Resolution[15] stating that it could not consider the additional tax declarations attached in the Supplemental Motion for Reconsideration as these were not formally offered in evidence. The RTC also noted that the additional documents were mere photocopies and would not have any probative value because they were not in accord with the requirements under Act 496[16] and P.D. 1529[17] that only original muniments of title or copies thereof must be presented.

Respondent appealed the RTC ruling before the CA. Respondent claimed that the RTC erred in dismissing the application for registration of title for insufficiency of evidence and in failing to consider the additional tax declarations attached in his Supplemental Motion for Reconsideration.[18]

On November 28, 2008, the CA reversed the RTC's earlier resolution and granted respondent's application for

registration of title.[19] The decretal portion of said decision reads:

WHEREFORE, the appealed Decision of the Regional Trial Court, Branch 2, Butuan City acting as land registration court, dismissing the application for registration of title for insufficiency of evidence is hereby REVERSED and SET ASIDE. The Appellant's application for land registration is GRANTED.

SO ORDERED.[20]

The CA ruled that the RTC erred in failing to consider the additional documents attached in respondent's Supplemental Motion for Reconsideration. The CA ratiocinated:

Clearly from the foregoing tax declarations which all went unchallenged and formed part of the record of the instant case, it could clearly be seen that the same parcels of land had been in possession of the petitioner-appellant's (respondent) predecessors-in-interest since 1948 until these parcels were purchased by him on 10 April 1979. Since the applicant and his predecessors-in-interest had been in possession of the land for more than thirty (30) years continuously, peacefully, adversely, publicly and to the exclusion of everybody, the same was "in the concept of owners." This also means that petitioner-appellant is no longer required to prove that the property in question is classified as alienable and disposable land of the public domain.[21] The long and continuous possession thereof by petitioner-appellant and his predecessors-in-interest since 1948 or a total period of fifty-one (51) years before the application was filed on 09 August 1999 converted the property to a private one. This is but a mere reiteration of the established rule that alienable public land held by a possessor, personally, or through his predecessor-in-interest, openly, continuously and exclusively for the prescribed statutory period of thirty (30) years under the Public Land Act, as amended, is converted to private property by the mere lapse or completion of said period, ipso jure.[22]

Hence, this petition.[23]

In its Memorandum,[24] the OSG submits the following

#### ISSUES

##### I

The Court of Appeals erred in reversing and setting aside the Resolution dated December 23, 2002 of the Land Registration Court denying the BELATED submission of tax declarations which the herein respondent merely attached in its supplemental motion for reconsideration and which were NOT FORMALLY OFFERED in evidence during the trial of the case, as required under Section 34 of Rule 132 of the 1997 Revised Rules of Civil Procedure;

##### II

The Court of Appeals erred in reversing and setting aside the Resolution dated December 23, 2002 of the Land Registration Court denying the admission of MERE PHOTOCOPIES of tax declarations which have not been verified or authenticated, in flagrant violation of the requirements of both Act 496 (Land Registration Act) and PD 1529 (Property Registration Act) providing that only ORIGINAL muniments of titles or original copies thereof shall be filed;

##### III

The Court of Appeals erred in reversing and setting aside the subject Resolution of the Land Registration Court which denied the application for registration on the ground that the respondent herein failed to prove that the subject land is alienable and disposable land of the public domain and have been in possession for the length of time and manner and concept prescribed in Section 48(b) of the CA 141 as amended.[25]

The petition is meritorious.

Sec. 14(1) of P.D. 1529[26] in relation to Section 48(b) of Commonwealth Act 141, as amended by Section 4 of P.D. 1073,[27] provides:

SEC. 14. Who may apply.--The following persons may file in the proper Court of First Instance [now Regional Trial Court] an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

X x x

Section 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 [now Regional Trial Court] of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

X x x

(b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, since June 12, 1945, or earlier, immediately preceding the filing of the application for confirmation of title except when prevented by war or force majeure. These 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.

Based on these legal parameters, applicants for registration of title under Section 14(1) must sufficiently establish: (1) that the subject land forms part of the disposable and alienable lands of the public domain; (2) that the applicant and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the same; and (3) that it is under a bona fide claim of ownership since June 12, 1945, or earlier.

Thus, before an applicant can adduce evidence of open, continuous, exclusive and notorious possession and occupation of the property in question, he must first prove that the land belongs to the alienable and disposable lands of the public domain. It is doctrinal that, under the Regalian doctrine, all lands of the public domain pertain to the State and the latter is the foundation of any asserted right to ownership in land. Accordingly, the State presumably owns all lands not otherwise appearing to be clearly within private ownership. To overcome such presumption, irrefutable evidence must be shown by the applicant that the land subject of registration has been declassified and now belongs to the alienable and disposable portion of the public domain.[28]

Notably, the Court finds no evidence in this case that would show that the land in question has been classified as alienable and disposable land of the public domain. The sketch plan, technical description and the tracing clothing plan that respondent presented do not show the actual legal status of the land. Hence, the conclusion reached by the CA that it was no longer necessary for the respondent to prove the alienability of the land in question on the assumption that he had already completed the thirty-year possessory requirement was misplaced. The requirements of alienability and possession and occupation since June 12, 1945 or earlier under Section 14(1) are indispensable prerequisites to a favorable registration of his title to the property. Absent one, the application for registration is materially infirmed.

Since respondent provided no competent and persuasive evidence to show that the land has been classified as alienable and disposable, then the application for registration should be denied.

At any rate, after reviewing the documents submitted by the respondent, it is clear that there was no substantive evidence to show that he complied with the requirement of possession and occupation since June 12, 1945 or earlier.

The earliest tax declaration that respondent tried to incorporate in his Supplemental Motion for Reconsideration does not measure up to the time requirement. In particular, the tax declaration on the first lot, as shown by Tax Declaration No. 6932 in the name of Adolfo Calo, only began in 1948.[29] On the second lot, Tax Declaration No. 3852 in the name of Marcos Azote merely appeared in 1952.[30] While on the third lot, Tax Declaration No. 6891 registered in the name of the Heirs of Felipe Calo came up in 1948.[31] Unmistakably, the respondent cannot avail of registration under Section 14(1) of P.D. 1529.

In his Memorandum,[32] respondent proffered that should not the land be registrable under Section 14(1) of P.D. 1529, it could still be registered under Section 14(2) of P.D. 1529.[33]

He cannot.

The case of *Heirs of Mario Malabanan vs. Republic*[34] summarized the distinctions between the legal requisites in applications for registration of title under Section 14(1) and Section 14(2) of P.D. 1529, to wit:

(1) In connection with Section 14(1) of the Property Registration Decree, Section 48(b) of the Public Land Act recognizes and confirms that "those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a bona fide claim of acquisition of ownership, since June 12, 1945" have acquired ownership of, and registrable title to, such lands based on the length and quality of their possession.

(a) Since Section 48(b) merely requires possession since 12 June 1945 and does not require that the lands should have been alienable and disposable during the entire period of possession, the possessor is entitled to secure judicial confirmation of his title thereto as soon as it is declared alienable and disposable, subject to the timeframe imposed by Section 47 of the Public Land Act.[35]

(b) The right to register granted under Section 48(b) of the Public Land Act is further confirmed by Section 14(1) of the Property Registration Decree.

(2) In complying with Section 14(2) of the Property Registration Decree, consider that under the Civil Code, prescription is recognized as a mode of acquiring ownership of patrimonial property. However, public domain lands become only patrimonial property not only with a declaration that these are alienable or disposable. There must also be an express government manifestation that the property is already patrimonial or no longer retained for public service or the development of national wealth, under Article 422 of the Civil Code.[36] And only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run.

(a) Patrimonial property is private property of the government. The person acquires ownership of patrimonial property by prescription under the Civil Code is entitled to secure registration thereof under Section 14(2) of the Property Registration Decree.

(b) There are two kinds of prescription by which patrimonial property may be acquired, one ordinary and other extraordinary. Under ordinary acquisitive prescription, a person acquires ownership of a patrimonial property through possession for at least ten (10) years, in good faith and with just title. Under extraordinary acquisitive prescription, a person's uninterrupted adverse possession of patrimonial property for at least thirty (30) years, regardless of good faith or just title, ripens into ownership.

The import of this ruling is clear. Under Section 14(2) of P.D. 1529, before acquisitive prescription could

commence, the property sought to be registered must not only be classified as alienable and disposable; it must also be expressly declared by the State that it is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. Thus, absent an express declaration by the State, the land remains to be property of public dominion.

WHEREFORE, the petition is GRANTED. The November 28, 2008 Decision of the Court of Appeals is hereby REVERSED and SET ASIDE. The Application for Registration of Title of respondent Jose T. Ching in Land Registration Case No. N-290 is DENIED.

**SO ORDERED.**

Corona,[\*] C.J., Carpio, (Chairperson), Leonardo-De Castro,[\*\*] and Peralta, JJ., concur.

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[\*] Designated as an additional member in lieu of Justice Antonio Eduardo B. Nachura, per Raffle dated August 12, 2009.

[\*\*] Designated as an additional member in lieu of Justice Roberto A. Abad, per Special Order No. 905 dated October 5, 2010.

[1] Rollo, pp. 33-51. Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Romulo V. Borja and Mario V. Lopez, concurring.

[2] Id. at 79-99.

[3] Id. at 80.

[4] Id.

[5] Id. at 82.

[6] Id.

[7] Id. at 80-81.

[8] Id. at 79.

[9] Id. at 80.

[10] Id. at 83.

[11] Id. at 83-84.

[12] Id. at 85.

[13] Id. at 79-99.

[14] Id. at 98-99.

[15] Id. at 170.

[16] "Land Registration Act."

[17] "Property Registration Decree."

[18] Rollo, pp. 35-37.

[19] Id. at 33-51.

[20] Id. at 50-51.

[21] Emphasis supplied.

[22] Rollo, pp. 49-50.

[23] Id. at 9-32.

[24] Id. at 167-198.

[25] Id. at 177-178.

[26] Amending and Codifying the Laws Relative to Registration of Property and for other Purposes.

[27] Extending the Period of Filing Applications for Administrative Legalization (Free Patent) and Judicial Confirmation of Imperfect and Incomplete Titles to Alienable and Disposable Lands in the Public Domain under Chapter VII and Chapter VIII of Commonwealth Act No. 141, as amended, for eleven (11) years commencing January 1, 1977.

[28] Republic of the Philippines v. Roche, G.R. No. 175846, July 06, 2010 citing Pagkatipunan v. Court of Appeals, 429 Phil. 377, 386-387 (2002).

[29] Rollo, p. 39.

[30] Id. at 39-40.

[31] Id. at 40.

[32] Id. at 205-237.

[33] (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

[34] Heirs of Mario Malabanan v. Republic, G.R. No. 179987, April 29, 2009, 587 SCRA 172, 203.

[35] Section 47, Public Land Act, as amended by Republic Act No. 9176, states:

Section 47. The persons specified in the next following section are hereby granted time, not to extend beyond December 31, 2020 within which to avail of the benefits of this Chapter: Provided, That this period shall apply only where the area applied for does not exceed twelve (12) hectares: Provided, further, That the several periods of time designated by the President in accordance with Section Forty-Five of this Act shall apply also to the lands comprised in the provisions of this Chapter, but this Section shall not be construed as prohibiting any said persons from acting under this Chapter at any time prior to the period fixed by the President.

[36] Emphasis supplied.

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