

**ARACELI MAYUGA, SUBSTITUTED BY MARILYN MAYUGA
SANTILLAN FOR AND ON BEHALF OF ALL THE HEIRS, PETITIONER,
V. ANTONIO ATIENZA, REPRESENTING THE HEIRS OF ARMANDO[]
ATIENZA; BENJAMIN...**

G.R. No. 208197. January 10, 2018

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CAGUIOA, J:

This is a petition for review on certiorari[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated July 8, 2013 of the Court of Appeals[3] (CA) in CA-G.R. CV No. 95599 which granted the appeal by the respondents Antonio Atienza[4] and Benjamin Atienza, Jr.[5] and reversed and set aside the Decision[6] dated April 27, 2010 of the Regional Trial Court, Fourth Judicial Region, Branch 82, Odiongan, Romblon (RTC) in Civil Case No. OD-489.

Facts and Antecedent Proceedings

As culled from the CA Decision, the antecedents are as follows:

On May 4, 2000, Araceli Mayuga (Araceli, for short), as plaintiff, instituted a petition for Cancellation and Recall of Free Patent Application (FPA) No. 11636 and FPA No. 11637 [and Reconveyance] against Antonio Atienza, representing the heirs of Armando Atienza, Benjamin Atienza, Jr., representing the heirs of Benjamin Atienza, Sr., Community Environment and Natural Resource Officer and Register of Deeds of Romblon, as defendants. The petition, docketed as Civil Case No. OD-489, was raffled to the Regional Trial Court (RTC) of Odiongan, Romblon, Branch 82[.]

In her Petition, Araceli, alleged, that [she, Benjamin A. Atienza, Sr. and Armando A. Atienza are the surviving legitimate, legal and forced heirs of the late Perfecto Atienza who died intestate on June 1, 1978[7], and:]

x x x x

3. That the said deceased Perfecto Atienza left estates, to wit:

(a) Lot 9819 Csd 341-D (known as Lot 61-A) with an area of 294 square meters, and

(b) Lot 9820 Csd 341-D (known as Lot 61-B) with an area of 280 square meters,

or a total area of 574 square meters, both lots are located at Budiong, Odiongan, Romblon to which the three (3) compulsory/forced heirs are entitled to an equal share of 1/3 [each].

4. That through manipulation and misrepresentation with intent to defraud a co-heir, respondent Antonio L. Atienza[, son of deceased Armando Atienza,[8]] was able to secure Free [P]atent (NRDN-21) 11636 while respondent Benjamin A. Atienza was able to secure Free Patent (NRDN- 21) 11637, both patents dated February 28, 1992.

5. That Petitioner was not notified of the application filed with public respondent Community Environment &

Natural Resource Officer nor any notice of hearings of proceedings as required by law, being a co-heir and party-in-interest.

x x x x

Thus, she prayed [for],

x x x x

1. The recall and cancellation of FPA (NRD-IV-21) 11636 dated February 28, 1992 issued to Antonio L. Atienza.
2. The recall and cancellation of FPA (NRD-IV-21) 11637 dated February 28, 1992 issued to Benjamin A. Atienza.
3. [The division of] the two lots into three (3) equal parts among the three (3) forced heirs, namely: the Petitioner, Benjamin A. Atienza and Armando A. Atienza.

x x x x

On June 19, 2000, defendants filed a motion for bill of particulars because the allegations of manipulation and misrepresentation were general, vague and ambiguous on which they could not make an intelligent answer. In the Order dated June 22, 2000, plaintiff was directed to submit a bill of particulars.

Plaintiff submitted a Reply to Motion for Bill of Particulars, stating that the allegations on paragraph 4 in her petition are based on the following considerations:

x x x x

1. That petition/application for title filed by Respondents before the Bureau of Lands dated June 22, 1973 was based on a "Confirmation Affidavit of Distribution of Real Estate," allegedly executed by Perfecto Atienza, allegedly confirming [an] alleged partition of 1960, was misrepresented to Perfecto Atienza as mere compliance of Presidential Decree No. 76 of December 6, 1972 for Real Estate Tax purposes;
2. That the Bureau of Lands [had] never notified the Petitioner, being one of the Compulsory/Forced heirs about the petition/application for issuance of title and the hearing thereon;
3. That Respondents took advantage of the absence of Petitioner in the Philippines, who was in the United States then when they filed the Petition/Application for issuance of title in the year 1989.

x x x x

On August 18, 2000, the RTC issued an Order admitting the Reply to Bill of Particulars.

In their Answer, defendants denied the material allegations of the complaint, and by way of affirmative defenses, averred that, the petition is moot and academic; the Free Patent Titles have become indefeasible after the lapse of one year from its issuance in 1992; fraud as a ground for review of title under Section 38 of Act 496 is not applicable to a case where a certificate of title was issued in pursuance of a patent application; that they and their predecessors-in-interest have been in open, public, continuous possession of the subject property for over 30 years; the basis for their Application for Free Patent with the CENRO is a Confirmation Affidavit of Distribution of Real Estate executed by their father, Perfecto Atienza, confirming partition in 1960.

Defendant Community Environment and Natural Resources Officer (CENRO, for short) also filed an Answer, alleging that, Free Patent No. 045909-92-141P was issued by then Provincial Environment and Natural Resources Officer (PENRO), Dionico F. Gabay on February 28, 1992 by virtue of the Free Patent Application No. (NRD-IV-21)-11636 filed by Antonio L. Atienza at the CENRO Office in Odiongan, Romblon covering Lot No.

9819, Cad. 341-D, Odiongan Cadastre which is identical to Lot 61-A, Csd-04-008722-D; while Free Patent Application No. (NRD-IV-21)11637 filed by Benjamin A. Atienza with the CENRO Office covering Lot 9820, Cad. 341-D, Odiongan Cadastre which is identical to Lot 61-B, Csd-04-008722-D; it has no participation whatsoever in the processing and issuance of free patents and/or titles in the names of Antonio L. Atienza and Benjamin A. Atienza. It also prayed that it be excluded as a defendant in the case.

On July 9, 2001, plaintiff filed an Amended Complaint to implead the Heirs of Armando A. Atienza, namely, Antonio L. Atienza, Mae Atienza-Apostol, Susan Atienza-Sumbeling and Heirs of Benjamin M. (sic) Atienza, Sr., namely, Benjamin M. Atienza, Jr., Antonio M. Atienza, Pewrpetuo (sic) M. Atienza, Maribel M. Atienza and Cristina Atienza, as defendants.

Defendants moved to dismiss the original petition for failure of the plaintiff's counsels to state their IBP No. and P.T.R. No. and the amended complaint for failure to attach a verification and certification against forum-shopping but on September 13, 2001, the RTC issued an Order denying the motion to dismiss for lack of merit.

The parties thereafter submitted their respective pre-trial briefs. A pre-trial conference was conducted and later, trial ensued.

On April 27, 2010, the RTC ruled in favor of Plaintiff Araceli. It ruled that the application by the defendants for a Free Patent with the CENRO is tainted with fraud because said application was processed without the plaintiff's knowledge nor a notice of hearing of any proceeding was sent to her. In fact, the defendants took advantage while the latter was in the United States. Moreover, the titling of the fraudulently registered real property will not bar the action for reconveyance.

Thus, the RTC decreed, that:

X X X X

WHEREFORE, premises considered, the Register of Deeds [of] Romblon, Romblon is hereby directed to Cancel the Certificates issued pursuant [to] Free Patent No. 11636 in the name of Antonio L. Atienza and Free Patent No. 11637 in the name of Benjamin A. Atienza. The defendants are hereby ordered to reconvey the 1/3 share of Araceli A. Mayuga as the compulsory heir of the late Perfecto Atienza on Lot 9819 which is identical to Lot 61-A and 9820 which is identical to Lot 61-B all located at Budiong, Odiongan, Romblon.

SO ORDERED.

X X X X X

Defendants filed a motion for reconsideration but the same was denied in the Order dated July 29, 2010.

Aggrieved, defendants interposed an appeal [before the Court of Appeals] assailing the decision of the RTC.[9]

The CA granted the appeal. It reversed and set aside the RTC Decision dated April 27, 2010, and dismissed the Amended Complaint for Recall and Cancellation of Free Patent Application (FPA) No. 11636 and FPA No. 11637 and Action for Reconveyance.[10]

On the procedural aspect of the appeal, the CA ruled that the RTC erred in not dismissing the Amended Complaint for failure to append a certification against non-forum shopping.[11] On the substantive aspects of the appeal, the CA ruled that the free patents issued in favor of the respondents can no longer be assailed under the rule of indefeasibility and incontrovertibility of the certificate of title upon the expiration of one year from and after the date of the entry of the decree of registration pursuant to Section 32 of Presidential Decree No. 1529.[12] The CA further ruled that the RTC erred in its finding that fraud and misrepresentation attended the respondents'

applications for free patents.[13] It noted that the basis for the respondents' application was the Confirmatory Affidavit of Distribution of Real Estate dated June 22, 1973 executed by their father, the late Perfecto Atienza during his lifetime and was at liberty to dispose of his property to anyone he desired.[14] The said document was duly notarized and the petitioner could not impugn its validity by mere self-serving allegations.[15] Besides, the records negate the claim of the petitioner that she was not notified of the free patent applications because a Notice of Application for Free Patent was "posted in conspicuous place on the land applied for, on the bulletin board of the barrio where the land is located, and at the door of [the] municipal building on the 2[nd] day of January, 1987 and remained posted until the 18[th] of December." [16] The respondents presented Romulo Fetalvero, Management Officer III of the PENRO-DENR, Odiongan, Romblon who testified that they complied with the requirements for the issuance of a free patent.[17] Thus, the petitioner's allegations of fraud, manipulation and misrepresentation were unsubstantiated.[18]

Furthermore, the CA held that the RTC erred in ordering the reconveyance of 1/3 of the subject properties to the petitioner since she failed to establish her title and ownership over such portion.[19] The CA gave due recognition to the tax declarations dated as early as 1974 presented by the respondents and the Report of Investigation by Emilio Firmalo, Deputy Land Investigator/Inspector, which disclosed that Antonio Atienza and his predecessors-in-interest had possessed and occupied the subject land since 1962, while Benjamin Atienza and his predecessors-in-interest fully possessed the same since 1962.[20]

The dispositive portion of the CA Decision states:

WHEREFORE, premises considered, the appeal is GRANTED. The assailed Decision dated April 27, 2010 of the Regional Trial Court (RTC) of Odiongan, Romblon, Branch 82 in Civil Case No. OD-489, and the subsequent Order dated July 29, 2010 are REVERSED and SET ASIDE. The Amended Complaint for Recall and Cancellation of Free Patent Application (FPA) No. 11636 and FPA No. 11637 and Action for Reconveyance is DISMISSED.

SO ORDERED.[21]

Proceedings Before the Court

Hence, the present Petition was filed after the Court granted the petitioner's Motion for Extension of Time to File Petition for Review[22] in its Resolution[23] dated September 16, 2013.

The respondents filed their Comments (To the Petition for Review)[24] dated December 16, 2013 (Comment). The Comment pointed as procedural flaw the defective verification and certification of the Petition on account of the lack of authority of Marilyn Mayuga Santillan, who verified the Petition instead of petitioner Araceli Mayuga. The respondents also argued that the petitioner has not explained the lack of verification and certification against non-forum shopping in the original complaint which was one of the reasons for the reversal of the RTC Decision by the CA.[25] As substantive flaws, the respondents argued that their titles have become indefeasible one year after the date of entry of the decree of registration and the petitioner's complaint for recall and cancellation of free patent application and reconveyance, having been initiated eight years from the date of the entry in the registration book of the Register of Deeds and beyond four years from the discovery of the alleged fraud, was filed out of time.[26] The respondents further argued that the petitioner failed to prove that there was fraud or misrepresentation in the acquisition of their titles.[27]

The petitioner filed a Reply[28] dated April 11, 2014. The petitioner raised therein that title emanating from free patent fraudulently obtained does not become indefeasible,[29] and the action for reconveyance was seasonably filed based on implied or constructive trust.[30]

In a Manifestation[31] dated October 30, 2015, the Court was informed of the death of petitioner Araceli Mayuga in September 2015. The Court in its Resolution[32] dated January 18, 2016, required the petitioner's counsel to file a motion for substitution of party together with the death certificate of the petitioner.

The petitioner's counsel filed a Motion for Substitution of Party and Compliance[33] dated March 11, 2016, praying that Marilyn Mayuga Santillan be substituted as petitioner on behalf of all the heirs of the original petitioner Araceli Mayuga. In the Court's Resolution[34] dated April 20, 2016, the motion for substitution was granted.

Issue

Based on the Petition and the pleadings filed by the parties, the core issue is:

Whether the CA erred in reversing the RTC Decision and dismissing the amended complaint of the petitioner for cancellation of free patent and reconveyance.

The Court's Ruling

The Petition lacks merit.

To recall, the amended complaint filed by the petitioner was for "Recall and Cancellation of FPA No. 11636 and FPA No. 11637 and Reconveyance." [35]

The RTC considered the said complaint mainly as an action for declaration of nullity of the free patents and the corresponding certificates of title issued to the respondents. The RTC Decision directed the Register of Deeds of Romblon to cancel the certificates of title issued pursuant to Free Patent No. 11636 in the name of respondent Antonio L. Atienza and Free Patent No. 11637 in the name of Benjamin A. Atienza, Sr. and ordered the respondents to reconvey the alleged 1/3 share of petitioner Araceli A. Mayuga. On the other hand, the CA considered the separate merits of the amended complaint's causes of action for declaration of nullity of the free patents and reconveyance. The Court will follow the CA's path.

The Court in *Spouses Galang v. Spouses Reyes*, [36] citing *Heirs of Kionisala v. Heirs of Dacut*, [37] observed the essential differences among an action for declaration of nullity of free patents and the corresponding certificates of titles issued pursuant thereto, an action for reversion and an action for reconveyance, viz.:

An ordinary civil action for declaration of nullity of free patents and certificates of title is not the same as an action for reversion. The difference between them lies in the allegations as to the character of ownership of the realty whose title is sought to be nullified. In an action for reversion, the pertinent allegations in the complaint would admit State ownership of the disputed land. x x x

On the other hand, a cause of action for declaration of nullity of free patent and certificate of title would require allegations of the plaintiffs ownership of the contested lot prior to the issuance of such free patent and certificate of title as well as the defendant's fraud or mistake; as the case may be, in successfully obtaining these documents of title over the parcel of land claimed by plaintiff. In such a case, the nullity arises strictly not from the fraud or deceit but from the fact that the land is beyond the jurisdiction of the Bureau of Lands to bestow and whatever patent or certificate of title obtained therefor is consequently void ab initio. The real party in interest is x x x the plaintiff who alleges a pre-existing right of ownership over the parcel of land in question even before the grant of title to the defendant. x x x

x x x x

With respect to the purported cause of action for reconveyance, it is settled that in this kind of action the free patent and the certificate of title are respected as incontrovertible. What is sought instead is the transfer of the

property, in this case the title thereof, which has been wrongfully or erroneously registered in the defendant's name. All that must be alleged in the complaint are two (2) facts which admitting them to be true would entitle the plaintiff to recover title to the disputed land, namely, (1) that the plaintiff was the owner of the land and, (2) that the defendant had illegally dispossessed him of the same.[38] (Emphasis omitted, underscoring in the original)

Given the foregoing differences, an action for reconveyance and an action for declaration of nullity of the free patent cannot be pursued simultaneously. The former recognizes the certificate of title issued pursuant to the free patent as indefeasible while the latter does not. They may, however, be pursued alternatively pursuant to Section 2, Rule 8 of the Rules of Court on alternative causes of action or defenses.

The action for declaration of nullity of the free patents issued in favor of the respondents must fail, as the CA correctly ruled.

As noted by the CA, the respondents satisfactorily complied with the requirements for the issuance of a free patent. After quoting the pertinent portion of the direct examination of Romulo Fetalvero, Management Officer III of the PENRO-DENR, Odiongan, Romblon, on the respondents' compliance with the requirements, the CA stated:

From the foregoing, the grant of free patents to defendants-appellants, having been performed in the course of the official functions of the DENR officers, enjoys the presumption of regularity. This presumption of regularity was not successfully rebutted by plaintiff-appellee. All told, there is no clear and convincing evidence of fraud and plaintiff-appellee's failure to prove it is fatal to [her] own cause. And there being none, We will have to sustain the issuance of [the] free patents to the defendants-appellants.[39]

Regarding the petitioner's allegation of fraud, the CA correctly dismissed the same, pointing out that her "avermment that [she] was not notified of [the] applications for the free patent as well as of the proceedings which transpired leading to the granting and registration of the land in the [respondents'] name is bare and self-serving,"[40] and "the records negate this claim because a Notice of Application for Free Patent was 'posted in [a] conspicuous place on the land applied for, on the bulletin board of the barrio where the land is located, and at the door of [the] municipal building on the 2nd day of January, 1987 and remained posted until the 18[th] of December.'"[41] The CA was likewise not convinced with the petitioner's allegation of fraud and misrepresentation in the execution of the Confirmation Affidavit of Distribution of Real Estate dated June 22, 1973 (Confirmation Affidavit) by the petitioner's father, the late Perfecto Atienza (Perfecto). Being a notarized document, the CA imbued it with the legal presumption of validity, its due execution and authenticity not having been impugned by the mere self-serving allegations of the petitioner.[42]

The petitioner having failed to persuade the Court by clear and convincing evidence that the respondents perpetuated fraud against her, the Court's conclusion in *Spouses Galang* finds application in the present case, viz.:

x x x As between these two claims, this Court is inclined to decide in favor of the Galangs who hold a valid and subsisting title to the property which, in the absence of evidence to the contrary, the Court presumes to have been issued by the PENRO in the regular performance of its official duty.

The bottom line here is that, fraud and misrepresentation, as grounds for cancellation of patent and annulment of title, should never be presumed, but must be proved by clear and convincing evidence, with mere preponderance of evidence not being adequate. Fraud is a question of fact which must be proved.

In this case, the allegations of fraud were never proven. There was no evidence at all specifically showing actual fraud or misrepresentation. x x x.[43]

Also, *Lopez v. Court of Appeals*[44] supports the recognition of the respondents as the absolute and exclusive owner of the disputed lots, being grantees of free patents over them.

In Lopez, the homestead application of one Fermin Lopez had unfortunately remained unacted upon up to the time of his death, being neither approved nor denied by the Director of the (then) Bureau of Lands as the Bureau failed to process it; the Court ruled that he could not have acquired any vested rights as a homestead applicant over the property,[45] and his heirs did not inherit any property right from him.[46] The other heirs of Fermin had no right to be declared co-owners with Hermogenes Lopez, the eldest child of Fermin, who filed a new application after Fermin's death and was granted a homestead patent over the land which was subject of Fermin's application because the land exclusively pertained to Hermogenes. The Court reasoned out:

The failure of the Bureau of Lands to act on the application of Fermin up to the time of his death, however, prevented his heirs to be subrogated in all his rights and obligations with respect to the land applied for.

Perforce, at the time Hermogenes applied for a homestead grant over the disputed property, it was still part of alienable public land. As he applied for it in his own name, his application inures to his sole benefit. After complying with the cultivation and residency requirements, he became a grantee of a homestead patent over it, thereby making him its absolute and exclusive owner.[47]

Thus, the CA did not commit any reversible error in dismissing the complaint for the recall and cancellation of the free patent applications of the respondents.

Proceeding now to the determination of whether the petitioner has succeeded in proving her cause of action for reconveyance, the petitioner likewise failed in this respect. As correctly pointed out by the CA and stated earlier, an action for reconveyance involving land that is titled pursuant to a free patent is one that seeks to transfer property, wrongfully registered by another, to its rightful and legal owner or to one with a better title.[48] As such, two facts must be alleged in the complaint and proved during the trial, namely: (1) the plaintiff was the owner of the land or possessed it in the concept of owner, and (2) the defendant illegally divested him of ownership and dispossessed him of the land.[49]

Such facts, as the CA observed, were not only not alleged in the amended complaint, the petitioner Araceli Mayuga (Araceli[50]) also failed to prove that she was entitled to 1/3 of the two lots in dispute by succession.

Apparently, Araceli had taken the position that being one of the surviving compulsory heirs of their late father, Perfecto, she was entitled to 1/3 of the disputed lots on the assumption that the decedent left only three legal heirs (his children Araceli, Benjamin, Sr. and Armando)[51] and that the disputed lots were part of the inheritance[52] left by their father when he died in 1978. Araceli, however, overlooked the fact that Perfecto executed the Confirmation Affidavit dated June 22, 1973 almost five years prior to his death on June 1, 1978. Araceli did not even bother to provide the Court a copy thereof so that the Court could make a determination of its legal import. And the CA correctly accorded the Confirmation Affidavit the legal presumption of validity, being a duly notarized document, where its validity could not be impugned by mere self-serving allegations.[53]

Assuming that Perfecto owned the disputed lots and the Confirmation Affidavit was a deed of partition, Perfecto could have legally partitioned his estate during his lifetime. Under Article 1080 of the Civil Code, "[s]hould a person make a partition of his estate by an act inter vivos, or by will, such partition shall be respected, insofar as it does not prejudice the legitime of the compulsory heirs."

Unlike in the old Civil Code, partition inter vivos is expressly allowed in the present Civil Code. The rationale for the change is exhaustively explained by recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa,[54] thus:

xxx This article allows the deceased to make a partition of his estate before his death which partition shall be respected insofar as it does not prejudice the legitime of the co-heirs. This partition may be made either by an act inter vivos or by will. Whether one or the other, however, is followed, the requirements of law as to form

must be complied with.[55] If the testator should make it by will, then there is no doubt that the same is valid and binding on the heirs. If the testator makes a partition inter vivos, should such partition be after the making of a will and in accordance therewith or can the testator make a partition inter vivos without any supporting will? Under the old Civil Code the article employed the term "testator"[56] in lieu of the term now used which is "person." Interpreting this provision of law our Supreme Court in line with the opinion of the Spanish Supreme Court and Manresa, ruled that the word "testator" in the article can have no other meaning than that there must have been a previous will executed by the decedent wherein the property was disposed of to the heirs. Subsequently, the testator makes a partition by an act inter vivos in accordance with the disposition made in such will. Hence, our Supreme Court ruled that where the testator made a partition inter vivos but the will was declared null and void, the partition was also null and void.[57] The word "testator" in the Old Civil Code was changed by the New Civil Code into the term "person," precisely to do away with the interpretation given to the article by our Supreme Court, the Supreme Court of Spain and Manresa. Where the old code uses the specific term "testator," the New Civil Code uses the broader term "person." What is the effect of this change? There is no doubt that the intention behind the change is to do away with the interpretation requiring a valid will in order that there be a valid partition inter vivos. Consequently, we may say that a partition inter vivos may be valid even though there is no supporting will. However, in accordance with what disposition shall said partition be made if made inter vivos? May the deceased freely, in said partition inter vivos, designate the shares of the heirs granting that the same does not prejudice the legitime of the co-heirs? If this is so, is not this a will without the formalities of a will? Was that the intention of the legislature in amending the article from the term "testator" to "person"? If that is the intention, then property may pass through the will of the testator without the formalities of a will. Hence, this will in effect destroy the intention of the legislature in carefully providing for the formalities of the will so as to safeguard the testamentary right of a person. Any act inter vivos which will designate under this theory a partition of the property will be valid disposition even though it is not a will.

It is submitted that this is not the intention of the legislature. A distinction must be made between a disposition of property and its partition. The disposition of property must be made in the manner allowed by law, namely, by will. After the designation in the will, then comes the second part, the division in conformity with that disposition and the testator may make this division in the same will or another will or by an act inter vivos.[58] Hence, in reality, partition is simply making concrete and particular the apportionment already previously made by the testator in his will. Since our law now does not require a valid will in order that the partition inter vivos may be valid and as we submit that the partition cannot make the designation of heirs or the designation of shares but merely makes concrete, specific a designation previously made, according to what designation will this partition inter vivos be made if there is no will of the testator? It is submitted that this designation shall be in accordance with the laws of intestacy. Inasmuch as the deceased did not make a will, it is presumed that he wanted the disposition in accordance with law, and this apportionment by the law must be interpreted to be the presumed will of the deceased; hence, the partition inter vivos must be in accordance with the designation laid down by law in case of intestacy. Said partition shall be valid so long as it does not impair the legitime of the co-heirs. That there can be a prejudice to the legitime of the co-heirs in intestate succession has been previously explained inasmuch as whether the succession is testamentary or legal, compulsory succession must always take place. From what has been explained, it is clear that should the testator institute a stranger as heir, he cannot make a partition inter vivos without making a designation by a valid will because the stranger cannot inherit by the laws of intestacy.

Since the Civil Code allows partition inter vivos, it is incumbent upon the compulsory heir questioning its validity to show that his legitime is impaired. Unfortunately, Araceli has not shown to what extent the Confirmation Affidavit prejudiced her legitime.

Araceli could not also claim preterition by virtue of the Confirmation Affidavit on the assumption that the disputed two lots pertained to Perfecto's inheritance, he had only three legal heirs and he left Araceli with no share

in the two lots. Article 854 of the Civil Code partly provides: "[t]he preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious."

As explained by Justice Eduardo P. Caguioa:

x x x Preterition consists in the omission in the testator's will of a compulsory heir in the direct line or anyone of them either because they are not mentioned therein or although mentioned they are neither instituted as heir nor expressly disinherited. The act of totally depriving a compulsory heir of his legitime can take place either expressly or tacitly. The express deprivation of the legitime constitutes disinheritance. The tacit deprivation of the same is called preterition. x x x[59]

x x x In order that there be preterition, it is essential that the heir must be totally omitted. This is clear from the wording of this article in conjunction with Article 906[60]. x x x[61]

x x x x

Summarizing, therefore, total omission means that the omitted compulsory heir receives nothing under the will, whether as heir, legatee or devisee, has received nothing by way of donation inter vivos or propter [nuptias], and will receive nothing by way of intestate succession.[62]

Although Araceli was a compulsory heir in the direct descending line, she could not have been preterited. Firstly, Perfecto left no will. As contemplated in Article 854, the presence of a will is necessary. Secondly, before his death, Perfecto had properties in Limon, Rizal which was almost 50 hectares, part of which was developed for residential and agricultural purposes, and in Odiongan.[63] Araceli could not have been totally excluded in the inheritance of Perfecto even if she was not allegedly given any share in the disputed two lots.

If Araceli's share in the inheritance of Perfecto as claimed by her was indeed impaired, she could have instituted an action for partition or a settlement of estate proceedings instead of her complaint for cancellation of free patent and reconveyance.

Furthermore, as the persons who applied for and were awarded free patents, the respondents are the rightful, legal owners of the disputed lots. The free patents having been issued by the Department of Environment and Natural Resources on February 28, 1992 and recorded in the Book of Entries at the Office of the Registry of Deeds in June 1992,[64] the respondents' certificates of title have already become indefeasible pursuant to Section 32 of Presidential Decree No. 1529 (the Property Registration Decree), which pertinently provides: "Upon the expiration of said period of one year [from and after the date of entry of the decree of registration], the decree of registration and the certificate of title issued shall become incontrovertible."

Given the foregoing, the resolution of the procedural issues pertinent to the Petition has become superfluous.

WHEREFORE, the Petition is hereby DENIED for lack of merit. The Court of Appeals Decision dated July 8, 2013 in CA-G.R. CV No. 95599 is hereby AFFIRMED.

SO ORDERED.

Carpio (Chairperson), Peralta, and Perlas-Bernabe, JJ., concur.
Reyes, Jr., J., on leave.

[*] Also referred to as Armanda in other parts of the rollo.

[1] Rollo, pp. 16-27, excluding Annexes.

[2] Id. at 28-44. Penned by Associate Justice Ramon A. Cruz, with Associate Justices Noel G. Tijam (now a Member of this Court) and Leoncia R. Dimagiba concurring.

[3] Special Seventh (7th) Division.

[4] Representing the Heirs of Armando Atienza.

[5] Representing the Heirs of Benjamin A. Atienza, Sr.

[6] Rollo, pp. 45-52. Penned by Executive Judge Jose M. Madrid.

[7] Id. at 45 and 47.

[8] Id. at 48.

[9] Id. at 29-32.

[10] Id. at 42.

[11] Id. at 35.

[12] Id at 35-36.

[13] Id. at 36.

[14] Id at 37.

[15] Id. at 38.

[16] Id. at 37-38.

[17] Id. at 38-39.

[18] See id. at 37-38.

[19] Id. at 40.

[20] Id.

[21] Id. at 42.

[22] Id. at 3-6.

[23] Id. at 6-A.

[24] Id. at 56-62.

[25] Id. at 56-57.

[26] See id. at 58-60.

[27] Id. at 58-59.

[28] Id. at 103-111.

[29] Id. at 104.

[30] Id. at 105-106.

[31] Id. at 117-119.

[32] Id. at 121.

[33] Id. at 122-125.

[34] Id. at 128.

[35] The RTC Decision erroneously used FTA instead of FPA (Free Patent Application). Id. at 45.

[36] 692 Phil. 652 (2012).

[37] 428 Phil. 249, 260-262 (2002).

[38] Supra note 36, at 660-662.

[39] Rollo, p. 39.

[40] Id. at 37.

[41] Id. at 37-38.

[42] Id. at 38.

[43] Spouses Galang v. Spouses Reyes, supra note 36, at 666-667.

[44] 446 Phil. 722 (2003).

[45] Id. at 739.

[46] Id. at 740, citing CIVIL CODE, Arts. 774 and 776.

[47] Id., citing Santos v. CA, 267 Phil. 578 (1990).

[48] CA Decision, p. 13, rollo, p. 40; citations omitted.

[49] Id., id.; citations omitted.

[50] For purposes of this portion of the Decision.

[51] CIVIL CODE, Arts. 978 and 980 provide:

ART. 978. Succession pertains, in the first place, to the descending direct line.

x x x x

ART. 980. The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares.

[52] Id., Art. 776 provides:

ART. 776. The inheritance includes all the property, rights and obligations of a person which are not extinguished by his death.

[53] Rollo, p. 38.

[54] Eduardo P. Caguioa, COMMENTS AND CASES ON CIVIL LAW CIVIL CODE OF THE PHILIPPINES Vol. III (1970 3[rd] Ed.), pp. 467-469.

[55] Id. at 467, citing Fajardo v. Fajardo, 54 Phil. 842 (1930).

[56] *Id.*, citing Art. 1056, Spanish Civil Code.

[57] *Id.*, citing *Legasto v. Verzosa*, 54 Phil. 766 (1930); *Maria Reyes v. Reyes*, 45 O.G. No. 4, p. 1836.

[58] *Id.* at 468, citing 7 *Manresa*, 6[th] ed., pp. 634-636; Decision of Supreme Court of Spain of June 13 1903.

[59] *Id.* at 154-155, citing 6 *Manresa*, 6[th] ed., p. 340; *Neri v. Akutin*, 74 Phil. 185 (1943).

[60] CIVIL CODE, Art. 906 provides:

ART. 906. Any compulsory heir to whom the testator has left by any title less than the legitime belonging to him may demand that the same be fully satisfied.

[61] Eduardo P. Caguioa, *supra* note 54, at 155.

[62] *Id.* at 157.

[63] *Rollo*, p. 49.

[64] *Id.* at 34.

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