

ANTHONY U. UNCIANO, PETITIONER, VS. FEDERICO U. GOROSPE AND LEONA TIMOTEA U. GOROSPE, RESPONDENTS.

G.R. No. 221869. August 14, 2019

Ponente: REYES, J. JR., J.

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REYES, J. JR., J.:

Before us is a Petition for Review[1] seeking reversal of the October 23, 2015 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 135946.[3] The assailed decision reversed and set aside the April 21, 2014 Decision[4] of the Regional Trial Court (RTC)[5] of Aparri, Cagayan, which, in turn, affirmed in toto the judgment[6] rendered by the Municipal Trial Court (MTC) of Buguey, Cagayan, in an action reivindicatoria instituted by petitioner Anthony U. Unciano against respondents Federico U. Gorospe and Leona Timotea U. Gorospe.

The Facts

Enrique Unciano, Sr., petitioner's father, had filed a free patent application over a parcel of land located in Barangay Leron, Buguey, Cagayan.[7] During the pendency of the application, he advertised the property for sale because he needed financial assistance. He sold it to his daughter, herein petitioner, for P70,000.00,[8] after signing a waiver by which he expressly relinquished in favor of petitioner his rights as a free patent applicant.[9] Later on, he executed a Deed of Absolute Sale,[10] followed by a Deed of Confirmation of Sale.[11]

Following approval of the application, the corresponding Original Certificate of Title (OCT) No. P-80515 was issued in the name of Enrique Sr.[12] He immediately executed a Deed of Reconveyance in favor petitioner.[13] The OCT does not contain an annotation of the previous transactions affecting the property.[14] Thereafter, Transfer Certificate of Title (TCT) No. T-134942 was issued in the name of petitioner,[15] and she commenced paying realty taxes on the property.[16]

It appeared that respondents Federico Gorospe and Leona Timotea Gorospe, petitioner's sister, have been cultivating the land when the underlying transactions were entered into by petitioner and Enrique, Sr. Controversy arose when, after Enrique's death, respondents refused to surrender the property to petitioner. Although the parties entered into mediation before the Lupong Tagapamayapa, they failed to settle amicably.[17]

This impelled petitioner to file an accion reivindicatoria with prayer for a temporary restraining order and damages[18] before the MTC.

The MTC Ruling

In her complaint, petitioner, under claim of ownership by virtue of the Deeds of Absolute Sale and Reconveyance and the TCT in her name, prayed that respondents be ordered to vacate the property so that she could cultivate it herself.[19] For their part, respondents lamented that the sale was void under Section 118 of Commonwealth Act (C.A.) No. 141 which prohibits the sale or encumbrance of awarded public lands within five (5) years from the issuance of the patent.[20]

The MTC found petitioner to be the lawful owner of the land after having derived her title from Enrique, Sr., through the Deed of Absolute Sale. As the sale was perfected prior to the registration and titling of the property, the MTC held that the same was not prohibited under Section 118 of C.A. No. 141. It pointed out that the approval of Enrique, Sr.'s free patent application and the issuance of the OCT in his name were conclusive proof of his ownership from which petitioner derives her right. It declared the OCT indefeasible and imprescriptible, and not subject to collateral attack in the instant action for recovery of possession but rather in a direct proceeding assailing its validity. In the same vein, it held that questions as to the validity of the Deed of Reconveyance and the consequent deprivation of the other heirs of their share by virtue thereof, must likewise be resolved in the proper forum.[21]

The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendants and hereby ORDERS (sic):

(i)

defendants and any and all persons acting under them and in their behalf to vacate the subject property described as Lot No. 2926 Pls-570 located at Leron, Buguey, Cagayan and covered by Transfer Certificate of Title No. T-134942 and surrender the possession of the same to the plaintiff;

(ii)

defendants to pay plaintiff reasonable rent in the amount of Five Thousand Pesos (P5,000.00) per annum from December 2002 up to the time they actually vacate the subject property;

(iii)

defendants to pay plaintiff moral damages in the amount of Fifty Thousand Pesos (P50,000.00);

(iv)

defendants to pay plaintiff litigation expenses and attorney's fees in the amount of Fifty Thousand Pesos (P50,000.00); and,

(v)

Cost against defendants[.]

SO ORDERED.[22]

The RTC Ruling

The RTC, in its April 21, 2014 Decision, affirmed the findings and conclusion of the MTC as follows:

WHEREFORE, premises considered, the Decision of the Municipal Trial Court, Buguey, Cagayan dated August 27, 2013, appealed from is AFFIRMED IN TOTO.

[SO ORDERED].[23]

The Court of Appeals' Ruling

Disagreeing with the rulings below, the CA held that the waiver, the Deed of Absolute Sale and the Deed of Confirmation of Sale were all inconsequential because they were executed pending approval of the free patent application, as in fact they were not annotated on the OCT. With that, the Deed of Reconveyance, executed after the issuance of the OCT, was likewise ineffective and not binding because any alienation or encumbrance of the

property is proscribed under the terms of Section 118 of C.A. No. 141. Accordingly, it declared petitioner's TCT as null and void, and the OCT in Enrique, Sr.'s name, valid and subsisting as follows:

WHEREFORE, premises considered, the Petition for Review is PARTLY GRANTED. The assailed Decision dated April 21, 2014 and Order dated June 10, 2014 of the RTC, Branch 10, Aparri, Cagayan in Civil Case No. 11-5511 are hereby SET ASIDE. Transfer Certificate of Title (TCT) No. T-134942 is hereby declared null and void, while Original Certificate of Title (OCT) No. P-80515 is declared valid and subsisting. Accordingly, the Register of Deeds of the Province of Cagayan is hereby ORDERED to cancel TCT No. T-134942 in the name of respondent Anthony Unciano and to reinstate OCT No. P-80515 in the name of Enrique Unciano, Sr.

SO ORDERED.[24]

Hence, this Petition.

The Issues

The Honorable Court of Appeals erred in ruling that:

1)

the provision in Section 118 of Commonwealth Act No. 141 applies to alienation before the approval of a Patent;

2)

a Counterclaim is a [permissible [d]irect [a]ttack to the validity of a Torrens Title; and

3)

the Transfer Certificate of Title (TCT) No. T-134942 in the name of herein petitioner is [n]ull and [v]oid.[25]

The Court's Ruling

The Court shall address the issues jointly as we resolve to deny the Petition.

Verily, the validity or invalidity of the subject Deed of Absolute Sale is the lynchpin that holds all the other issues raised in this petition.

Petitioner posits that the prohibition against alienation or encumbrance under Section 118 of C.A. No. 141 does not apply to a sale made prior to the approval of the patent application supposedly because the prohibition applies only from the approval of the application and for five years from the date of the issuance of the patent.[26]

Section 118 states:

SEC. 118. Except in favor of the Government or any of its branches, units, or institutions, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Commerce, which approval shall not be denied except on constitutional and legal grounds. (Emphasis supplied)

The proscription against the sale or encumbrance of property subject of a pending free patent application is not pointedly found in the aforequoted provision. Rather, it is embodied in the regalian doctrine enshrined in the

Constitution, which declares all lands of the public domain as belonging to the State, and are beyond the commerce of man and not susceptible of private appropriation and acquisitive prescription.[27] What divests the Government of its title to the land is the issuance of the patent and its subsequent registration in the Office of the Register of Deeds. Such registration is the operative act that would bind the land and convey its ownership to the applicant.[28] It is then that the land is segregated from the mass of public domain, converting it into private property.[29]

In property law, fundamental is the principle that no one can give what he does not have.[30] In other words, a seller may sell only what he or she owns, or that which he does not own but has authority to transfer, and a buyer can acquire only what the seller can legally transfer.[31] In fact, the Civil Code states that in a contract of sale, the seller binds himself to transfer the ownership of the thing sold,[32] and to do so, he must have the right to convey ownership of the thing at the time it is delivered.[33] The thing must be licit.[34]

Based on these precepts, the contested lot in this case, during the pendency of the free patent application, was still part of the public domain and, therefore, an illicit subject of a contract of sale between Enrique, Sr. and petitioner. At the time, Enrique, Sr. did not have the right to transfer ownership inasmuch as he merely had an inchoate right as a patent applicant. By lodging an application for free patent, he had thereby acknowledged and recognized the land to be part of the public domain.[35] His application is an unmistakable recognition of his non-ownership of the subject land, such that his waiver of rights and the execution of the subsequent Deed of Absolute Sale – both in favor of petitioner – only suggest bad faith on his part for violating the condition of the sworn application that the same is for his exclusive benefit alone.[36] Indeed, the fact that the OCT was later issued in his name is an affirmation that the state will award homestead lots only to the person in whose name the application was filed and to no one else.

Thus, in *Development Bank of the Philippines v. Court of Appeals*,[37] the Court affirmed the nullification of a mortgage on a piece of public land constituted during the pendency of the free patent application therefor. In holding that the petitioner bank did not acquire valid title as mortgagee under the deed of mortgage, the open, continuous and public possession of the land by the mortgagor for thirty 30 years did not change the character of the land as still being part of the public domain prior to the issuance of the patent.[38] *Visayan Realty v. Meer*[39] pointed out that the grant of a sales application merely authorizes the applicant to take possession of the land so that he could comply with the requirements prescribed by law before a final patent can be issued in his favor.[40] Before these requirements shall have been complied with, *Javier v. Court of Appeals*[41] emphasizes that the Government still remains the owner of the property, as in fact the application could still be cancelled and the land awarded to another applicant should it be shown that the legal requirements had not been complied with.[42]

Upon this disquisition and on the basis of Section 118 in relation to Section 124[43] of C.A. No. 141 did the Court, in *Egao v. Court of Appeals*[44] invalidate two sale transactions involving portions of a homestead lot – one entered into by petitioner therein during pendency of the application and the other, after issuance of the free patent but within the 5-year ban on encumbrance and alienation. There, the Court upheld the petitioner's OCT in spite of the contracts of sale which were perfected prior to the approval of the patent application and during the prohibitory period and therefore null and void.[45]

On this note, the Court of Appeals was correct in holding that the Deed of Reconveyance, upon which petitioner's TCT was issued, is void and ineffective in transferring rights to her as it involved a prohibited alienation under Section 118 of C.A. No. 141. It is clear at this juncture that petitioner's TCT is a nullity, yet petitioner now objects to the competence of the Court of Appeals in declaring it so. She posits that by handing down a ruling on the validity of her title, the appellate court has thereby sanctioned an impermissible attack on a Torrens title.[46]

Petitioner is mistaken.

Accion reivindicatoria, or an action for reconveyance, is a legal and equitable remedy granted to the rightful owner of a land which has been wrongfully or erroneously registered in the name of another for the purpose of compelling the latter to transfer or reconvey the land to him. The action does not seek to reopen the registration proceedings and to set aside the decree of registration but only purports to show that the person who secured the registration of the property in controversy is not the real owner thereof.[47] In this action, the decree of registration is respected as incontrovertible, but what is sought instead is the transfer of the property, wrongfully or erroneously registered, in another's name, to its rightful owner or to one with a better right.[48]

Indeed, Section 48[49] of Presidential Decree No. 1529[50] bars a collateral attack to a certificate of title and allows only a direct attack. An attack is direct when the object of the action is to annul or set aside such proceeding or enjoin its enforcement.[51] Conversely, an attack is indirect or collateral when, in an action to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof. Such action to attack a certificate of title may be an original action or a counterclaim, in which a certificate of title is assailed as void.[52]

There is no obstacle to the determination of the validity of petitioner's TCT in the instant case. While the indefeasibility of a Torrens title may not be collaterally attacked, it bears to stress that the underlying complaint originated from the MTC as an action for reconveyance filed by petitioner against herein respondents, and not an original action filed by the latter to question the validity of the TCT on which petitioner anchors her claim. Thus, although a ruling on the validity of the title may constitute a collateral attack, it must be emphasized that respondents, in their answer to the complaint, have put forth a counterclaim of ownership over the subject property along with a claim for damages.[53]

The Court of Appeals, therefore, may competently rule – as in fact it did – on the validity of petitioner's title for the counterclaim to be considered a direct attack on the same. This is based on the well-settled principle that a counterclaim is essentially a complaint filed by the defendant against the plaintiff and stands on the same footing as an independent action.[54] As plaintiffs in their own counterclaim, respondents are entitled to an opportunity to prove their cause of action and establish their rights like the petitioner in the original complaint.

In sum, the Court finds that the sale made by Enrique, Sr. in favor of petitioner during the pendency of his free patent application is void and did not produce legal effect. As petitioner has not derived valid title from the said transaction, the Deed of Reconveyance in her favor and the TCT that was eventually issued could also not have placed her in ownership of the subject property. Indeed, the definite state policy which our public land laws seek to promote is to keep in the family of the homesteader that portion of the public land which the state has gratuitously given to him.[55]

That the alienation of the property in this case was made in favor of the applicant's own heir no less, and before the issuance of the patent applied for, is, to our mind of no moment. A validation of arrangements of this kind would only open the door to fraudulent schemes that enable the means to circumvent the law. Thus, it was held in *Gonzaga v. Court of Appeals*: [56]

Section 118 of the Public Land Act reads: "Except in favor of the Government or any of its branches, units, or institutions, or legally constituted banking corporations, lands acquired under the free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; but the improvements or crops of the land may be mortgaged or pledged to qualified persons, associations, or corporations." Is it not a clear expression then of the state policy to assure that the original grantee, even if he were minded otherwise, is

deprived for a period of five years of his freedom of disposition? Thus is he protected from his own weaknesses or temptation to sell, or lack of business acumen, the purpose being, in the language of Justice J.B.L. Reyes in *Artates v. Urbi*, to keep and preserve for him "or his family the land given to him gratuitously by the State, so that being a property owner, he may become and remain a contented and useful member of our society." Considering that such is policy, does it not logically follow that he is precluded disposing of his rights prior even to his obtaining the patent? Both policy and reason, therefore, unite in conclusion that no such distinction should be made. Then, it is not to be forgotten that the state is possessed of plenary power as the persona in law to determine who shall be the favored recipients of public lands, as well as under what terms they may be granted such privilege, not excluding placing of obstacles in the way of their exercising what otherwise would be ordinary acts of ownership?[57]

WHEREFORE, the Petition is DENIED. The October 23, 2015 Decision of the Court of Appeals in CA-G.R. SP No. 135946 is AFFIRMED.

SO ORDERED.

Caguioa, Lazaro-Javier, and Zalameda, JJ., concur.
Carpio, (Chairperson), J., on official leave.

[1] RULES OF COURT, Rule 45

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Priscilla J. Baltazar-Padilla and Socorro B. Inting, concurring; rollo, pp. 17-37.

[3] Entitled Federico U. Gorospe and Leona Timotea U. Gorospe v. Anthony U. Unciano.

[4] Signed by Judge Pablo M. Agustin; id at 85-87.

[5] Branch 10.

[6] Signed by Judge Clifford L.C. Sobrevilla; rollo, pp. 71-84.

[7] Free Patent Application No. H-6720-A, filed with the Department of Environment and Natural Resources Community Environment and Natural Resources in Aparri Cagayan; id. at 18, 72 and 85.

[8] Id; Petitioner, Anthony U. Unciano, is a female per verification with the records.

[9] Dated April 30, 2001; id. at 54.

[10] Dated November 5, 2001; id. at 55.

[11] Dated December 13, 2002; id. at 56.

[12] Per Patent No. 021502-02-17999; id. at 57.

[13] Rollo, pp. 58-59.

[14] Id. at 57-A.

[15] Id. at 60.

[16] Id. at 61.

[17] See Certification to File Action dated May 2, 2011; id. at 63.

[18] Docketed as Civil Case No. 94; id. at 66.

[19] Rollo, pp. 45-51.

[20] Rollo, pp. 67-68.

[21] Id. at 77-81.

[22] Id. at 83-84.

[23] Id. at 87.

[24] Id. at 37.

[25] Id. at 6.

[26] Id. at 7-8.

[27] See Valiao v. Republic, 677 Phil. 318, 326-327 (2011).

[28] Visayan Realty v. Meer, 96 Phil. 515, 520 (1955).

[29] Javier v. Court of Appeals, 301 Phil 506, 515 (1994).

[30] Daclag v. Macahilig, 582 Phil. 138, 153 (2008), Segura v. Segura, 247-A Phil. 449, 458 (1988).

[31] Daclag v. Macahilig, 582 Phil. 138, 153 (2008).

[32] Art. 1458. By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

[33] Art. 1459. The thing must be licit and the vendor must have a right to transfer the ownership thereof at the time it is delivered.

[34] Sec. 90. Every application under the provisions of this Act shall be made under oath and shall set forth:

(a)

The full name of applicant, his age, place of birth, citizenship, civil status, and post-office address.

In case the applicant is a corporation, association or co-partnership, the application shall be accompanied with a certified copy of its articles of incorporation, association or co-partnership together with an affidavit of its President, manager, or other responsible officer, giving the names of the stockholders or members, their citizenship, and the number of shares subscribed by each.

(b)

That the applicant has all the qualifications required by this Act in the case.

(c)

That he has none of the disqualifications mentioned herein.

(d)

That the application is made in good faith, for the actual purpose of using the land for the object specified in the application and for no other purpose, and that the land is suitable for the purpose to which it be devoted.

(e)

That the application is made for the exclusive benefit of the application and not, either directly or indirectly, for the benefit of any other person or persons, corporation, association, or partnership.

[35] *Heirs of Patiwayan v. Martinez*, 226 Phil. 183, 190 (1986), and *Sumail v. CFI*, 96 Phil. 946, 953 (1955).

[36] Section 90(e) C.A. No. 141.

[37] 323 Phil. 489 (1996).

[38] *Id.* at 495-496.

[39] 96 Phil. 515 (1955).

[40] *Id.* at 520.

[41] 301 Phil. 506 (1994).

[42] *Id.* at 515.

[43] Sec. 124. Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of sections one hundred and eighteen, one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two, and one hundred and twenty-three of this Act shall be unlawful and null and void from its execution and shall produce the effect of annulling and cancelling the grant, title, patent, or permit originally issued, recognized or confirmed, actually or presumptively, and cause the reversion of the property and its improvements to the State.

[44] 256 Phil. 243 (1989).

[45] *Id.* at 250-253.

[46] *Rollo*, p. 11.

[47] *Spouses Lopez v. Spouses Lopez*, 620 Phil. 368, 376 (2009).

[48] *Uy v. Court of Appeals*, 769 Phil. 705, 718-179, citing *Hi-Tone Marketing Corp. v. Baikal Realty Corp.*, G.R. No. 149992, August 20, 2004, 437 SCRA, 121, 143.

[49] Sec. 48. Certificate not subject to collateral attack. A certificate of title shall not be subject to collateral attack. It cannot be altered, modified or cancelled except in a direct proceeding in accordance with law.

[50] THE PROPERTY REGISTRATION DECREE.

[51] *Arangote v. Maglunob*, 599 Phil. 91, 111 (2009).

[52] *Id.*

[53] *Rollo*, pp. 68-69. In their Answer, respondents, under the heading "Compulsory Counterclaim," repleaded portions of their affirmative defenses claiming ownership of the subject lot. In their prayer, they sought the court to declare them to be the absolute owner of the land, among others.

[54] *Firaza v. Spouses Ugay*, 708 Phil. 24, 30 (2013).

[55] *Ortega v. Tan*, 260 Phil. 371, 378 (1990).

[56] 151-A Phil. 834-842 (2002).

[57] *Id.* at 840, emphasis supplied.

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