

DIRECTOR OF LANDS, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, SILVESTRE MANLAPAZ AND NATIVIDAD PIZARRO, RESPONDENTS.

G.R. No. 45828. June 01, 1992

Ponente: ROMERO, J.

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ROMERO, J.:

This is a petition for review on certiorari seeking the reversal of the Decision[1] rendered by respondent Court of Appeals in CA-G.R. No. 56788-R, dated March 7, 1977, affirming the Decision[2] of the then Court of First Instance of Bataan, dated April 6, 1974, in Land Registration Case No. N-235, adjudicating in favor of herein private respondents the subject two (2) parcels of land.

The undisputed facts of the case are as follows:

On January 29, 1973, spouses Silvestre Manlapaz and Natividad Pizarro (herein private respondents) filed an application before the Court of First Instance of Bataan, seeking the registration and confirmation of titles to two (2) parcels of land, under Act 496 in relation to Sec. 48 (B) of C.A. No. 141, designated as Lot No. 2855 and Lot No. 2856. The parcels of land applied for are portions of Lot 2749 of Orion Cadastre covered by plans Sgs-4600-D and Sgs-4601-D, situated at Barrio Damulog, Municipality of Orion, Province of Bataan, containing an area of 49,954 sq. meters and 54,052 sq. meters, respectively.[3]

Prior to the initial hearing of the case, the trial court in its Order dated April 5, 1973, directed the Land Registration Commissioner to submit his report on whether or not the parcels of land in question had been issued patents or whether the same are subject of pending decrees.[4] In compliance with this directive, Acting Geodetic Engineer (Chief Surveyor) Amado Masicampo, on behalf of the Commissioner of Land Registration, filed a manifestation dated April 26, 1973 stating that the subject parcels of land described on Plans Sgs-4600-D and Sgs-4601-D are portions of Lot 2749, Cad. 241, Orion Cadastre and that the same have been the subject of registration proceedings in Court Cadastral Case No. 15, LRC (GLRO) Cadastral Record No. 1021 wherein a decision has been rendered although there is no existing record of the same on file because it was among those records lost or destroyed due to the ravages of the last global war. The record also disclosed that Plans Sgs-4600-D and Sgs-4601-D, when plotted in the Municipal Index Map through their respective lines conflict with Lot 1, Sgs-2806 which has been issued Sales Patent No. 5819.[5]

The Director of Lands seasonably filed an opposition on the ground that neither the applicants nor their predecessor-in-interest possess sufficient title to acquire ownership in fee simple of the parcels of land applied for; that they have not been in open, continuous, exclusive and notorious possession and occupation of the land in question for at least thirty (30) years immediately preceding the filing of the present application; and that these parcels of land are portions of the public domain belonging to the Republic of the Philippines, and therefore, not subject to appropriation.[6]

At the hearing on August 21, 1973, the Court issued an order of special default with the exception of the Director

of Lands.[7] As prayed for by private respondents' counsel, the parties were allowed to present evidence before the Clerk of Court who was commissioned to receive the same and to submit his findings after the termination of the reception of evidence.[8]

In order to establish thirty (30) years of open and continuous possession over the subject property, private respondents presented Crisanto Angeles and Monico Balila. Crisanto Angeles claimed that he first took possession of these two (2) parcels of land in the year 1931 while he was still twenty (20) years old. He cleared the land and planted different kinds of fruit-bearing trees such as mango, star apple and bananas, as well as seasonal crops thereon. He likewise converted 5,000 sq. meters thereof into a ricefield which was enlarged to one hectare.[9] These parcels of land were declared for taxation purposes only in 1966.[10] Meanwhile, in the year 1938, he sold the parcel containing an area of about five (5) hectares to Pablito Punay, who immediately took possession of the same, cultivated it and introduced several improvements thereon.[11] In September 1972, after he had already cleared the whole tract of the second parcel of land, he sold the same to private respondents.[12] Pablito Punay also sold the first parcel of land he acquired from Crisanto to them.[13] Angeles further stated that he knew all the owners of the adjoining parcels of land but, on cross-examination, was unable to remember their names.[14] Witness Monico Balila testified that he is the owner of the parcel of land adjoining private respondent's property. He had seen Angeles clear the same and plant different fruit trees. On cross-examination, he said that he was twelve (12) years old when he first lived at Bilolo, Orion, Bataan in 1938. His landholding was five kilometers away from private respondents' land and it was his uncle who was then in possession of the land he presently owns.[15]

Private respondent Silvestre Manlapaz also testified that upon their acquisition of the two (2) parcels of land designated as Lots 2855 and 2856, they immediately took possession of the same, planted coconuts, camotes and other vegetables and expanded the portion planted to palay. Some portions were converted into two (2) residential lots, one with an area of 276 sq. meters and the other, 105 sq. meters. They then declared those properties in their names and paid the corresponding land taxes.[16]

The Director of Lands, on the other hand, did not present any evidence to support his opposition.

On April 6, 1974, the lower court rendered its decision, the dispositive part of which reads as follows:

"WHEREFORE, the title to two parcels of land identified and shown in plans Sgs-4600-D and 4601-D, situated at Barrio Damulog, Municipality of Orion, Province of Bataan, containing an area of 49,954 square meters and 54,052 square meters, respectively, is ordered confirmed in the name of the spouses Silvestre Manlapaz and Natividad Pizarro, both of legal age, Filipino citizens and residents of Pilar, Bataan.

After this decision shall have become final, let an order issue for a decree of registration in favor of the applicants.

SO ORDERED."[17]

From said judgment, the Director of Lands interposed an appeal to the Court of Appeals which promulgated its decision[18] on May 7, 1977, affirming the decision of the lower court. It found that the defense of res judicata was belatedly raised on appeal. The omission to include the same in the answer as one of the affirmative defenses constitutes a waiver of said defense. The manifestation of Mr. Masicampo stating that the two (2) parcels of land have been the subject of registration proceedings was not enough to support res judicata. It concluded that the 30-year period of continuous possession of private respondents' predecessors-in-interest has been satisfactorily proved, the Director of Lands not having presented any evidence to contradict, impugn or impeach the facts established by private respondents.

Hence, this petition which assigns the following errors:

I

Respondent Court erred in ruling that petitioner failed to raise the defense of res judicata in the trial court and, hence, waived the same.

II

Respondent Court erred in ruling that petitioner failed to prove res judicata by competent evidence.

III

Respondent Court erred in ruling that after the cadastral proceedings and the declaration of the subject parcels of land as public land therein, the same may be the subject of judicial confirmation of imperfect title or claim based on adverse and continuous possession of at least thirty (30) years, citing the case of *Mindanao v. Director of Lands, et al.*, G.R. No. L-19535, July 10, 1967.[19]

The Court of Appeals committed no error in disregarding res judicata. In the case of *Director of Lands v. Court of Appeals*,[20] this Court had addressed a similar contention in this manner:

"WE find no legal basis to uphold the foregoing contentions of petitioner. It is clear from the evidence on record that in the proceedings had before the Court of First Instance of Batangas, acting as a land registration court, the oppositor Director of Lands, petitioner herein, did not interpose any objection nor set up the defense of res adjudicata with respect to the lots in question. Such failure on the part of oppositor Director of Lands, to OUR mind, is a procedural infirmity which cannot be cured on appeal. Section 2, Rule 9, Revised Rules of Court of 1964, in no uncertain language, provides that:

'SEC. 2. Defenses and objections not pleaded deemed waived. - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; x x x'

All defenses therefore not interposed in a motion to dismiss or in an answer are deemed waived. (*Santiago, et al. v. Ramirez, et al.*; L-15237, May 31, 1963, 8 SCRA 157, 162; *Torreda v. Boncaros*, L-39832, January 30, 1976, 69 SCRA 247, 253).

Thus, the defense of res adjudicata when not set up either in a motion to dismiss or in answer, is deemed waived. It cannot be pleaded for the first time at the trial or on appeal. (*Phil. Coal Miners' Union v. CEPOC, et al.*, L-19007, April 30, 1964, 10 SCRA 784, 789). (Underscoring supplied)

Furthermore, petitioner advanced the view that it is the intendment of the law that a person who fails to prove his title to a parcel of land which is the object of cadastral proceedings or one who does not file his claim therein is forever barred from doing so in a subsequent proceeding. Judgment in a cadastral proceeding which is a proceeding in rem constitutes res judicata even against a person who did not take part in the proceedings as claimant.

We disagree. The above-cited case likewise settled this contention. It said:

"But granting for a moment, that the defenses of res adjudicata was properly raised by petitioner herein, WE still hold that, factually, there is no prior final judgment at all to speak of. The decision in Cadastral Case No. 41 does not constitute a bar to the application of respondent Manuela Pastor; because a decision in a cadastral proceeding declaring a lot public land is not the final decree contemplated in Sections 38 and 40 of the Land Registration Act.

A judicial declaration that a parcel of land is public, does not preclude even the same applicant from

subsequently seeking a judicial confirmation of his title to the same land, provided he thereafter complies with the provisions of Section 48 of Commonwealth Act No. 141, as amended, and as long as said public land remains alienable and disposable (now sections 3 and 4, PD No. 1073).”[21] (Underscoring supplied)

As a rule, the Court respects the factual findings of the Court of Appeals, imparting to them a certain measure of finality. However, the rule is not without clearly defined exceptions, among which are: “x x x (2) the inference made is manifestly mistaken; x x x (4) the judgment is based on misapprehension of facts; x x x and (9) when the finding of fact of the Court of Appeals is premised on the absence of evidence and is contradicted by evidence on record.”[22]

It must be emphasized that the burden is on applicant to prove his positive averments and not for the government or the private oppositors to establish a negative proposition insofar as the applicants' specific lots are concerned.[23] Applying this rule to the instant case, the conclusions reached by the court a quo and respondent Court of Appeals that the private respondents through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession of the subject land under a bonafide claim of ownership are not persuasive for the following reasons.

First, the testimony of Crisanto Angeles as to his possession and ownership of the two (2) parcels of land fails to inspire belief. He claimed that he was in possession of the land way back in 1930. Yet he declared the same for taxation purposes only in 1966. Although tax receipts are not incontrovertible evidence of ownership, they constitute at least proof that the holder had a claim of title over the property.[24] He stated that he knew the owners of the adjoining properties, but during the cross-examination, he was unable to give their names. Nor was he able to explain how he came into possession of the parcel of land and there is no showing of any title, perfect or imperfect, granted by the state to him or his predecessors.

Second, the attempt of Monico Balila to corroborate Angeles' length of possession over the subject property is less than credible. Having been an adjoining owner only in 1953 by his own admission, he could not have known how long Crisanto Angeles owned and possessed the parcels of land.

Third, Pablito Punay, the second predecessor-in-interest of Lot No. 2855 of the private respondents was not made to testify. No reason was disclosed for his failure to appear before the court.

Lastly, the documents introduced by the applicants merely evidenced the fact that the parcels of land applied for were alienable and disposable lands of the public domain;[25] but no document has been presented that would clearly establish the length of time of the possession of their predecessors-in-interest. That the private respondents have paid the corresponding taxes since 1972[26] when they possessed the same is of no moment because what is vital to consider is their predecessors-in-interest's compliance with the 30-year period.

Undoubtedly, the private respondents have failed to submit convincing proof of their predecessors-in-interest's actual, peaceful and adverse possession in the concept of owner of the lots in question during the period required by law. This is of utmost significance in view of the basic presumption that lands of whatever classification belong to the State and evidence of a land grant must be “well-nigh incontrovertible.”[27]

WHEREFORE, premises considered, the May 7, 1977 decision of the Court of Appeals is hereby REVERSED and SET ASIDE, and judgment is rendered DISMISSING the application for registration and confirmation of titles of Lots No. 2855 and 2856. No pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin and Davide, Jr., JJ., concur.

- [1] Justice Sixto A. Domondon, ponente; Justices Luis B. Reyes and Mama Busran, concurring.
- [2] Per Judge Abraham P. Vera.
- [3] CFI Decision, Record on Appeal, p. 25; Rollo, p. 45.
- [4] Record on Appeal, pp. 6-7.
- [5] Ibid, pp. 9-10.
- [6] Ibid, pp. 11-13.
- [7] Ibid, p. 14.
- [8] Ibid, p. 15.
- [9] TSN, January 12, 1974, p. 7.
- [10] Ibid, p. 10.
- [11] Annex "C," Court of Appeals' Decision, p. 4; Rollo, p. 50.
- [12] Exhibit "G," Record on Appeal, p. 21.
- [13] Exhibit "H," Record on Appeal, pp. 21-22.
- [14] TSN, January 12, 1974, pp. 5, 9-10.
- [15] Ibid, pp. 12-19.
- [16] TSN, February 2, 1974, pp. 2-15; Exhs. "F," "K-1" to "K-2;" Record on Appeal, pp. 21-23.
- [17] Record on Appeal, pp. 24-32.
- [18] Annex "C," Rollo, pp. 47-51.
- [19] Brief for Petitioner, p. 6; Rollo, p. 95.
- [20] G.R. No. L-47847, July 31, 1981, 106 SCRA 426, at 432-433.
- [21] Ibid.
- [22] Orcino v. Civil Service Commission, G.R. No. 92869, October 18, 1990, 190 SCRA 815, 820.
- [23] Gutierrez Hermanos v. CA, G.R. Nos. 54472-77, September 28, 1989, 178 SCRA 37.
- [24] Director of Lands v. Santiago, L-41278, April 15, 1988, 160 SCRA 186, citing Director of Lands v. Reyes, L-27594 and 28144, November 28, 1975, 68 SCRA 177.
- [25] Exhibits "D-1-A," "D-2" and "I."
- [26] Exhibits "F," "K," "K-2."
- [27] Director v. Reyes, supra at p. 24; Santiago v. De los Santos, L-20241, November 22, 1974, 61 SCRA 146.

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