

**CATALINA VDA. DE CARREON, LOURDES CARREON, PEDRITO CARREON, JOSE CARREON, AGUSTINA CARREON, FILOMENA CARREON, ADELAIDA CARREON, SOTERO CARREON, ROSARIO CARREON, ANITA CARREON, E...**

*G.R. No. 51207. October 19, 1989*

Ponente: GANCAYCO, J.

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**GANCAYCO, J.:**

This is a petition for review of the decision dated April 30, 1979 of the Fourth Division of the Court of Appeals[1] in CA G.R. No. 58500-R, which affirmed the judgment of the lower court with costs against petitioners, the dispositive portion reading as follows:

"WHEREFORE, FOR ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered declaring defendants owners of Lot No. 2642 of Mati Cadastre, and ordering plaintiffs to convey said lot covered by Transfer Certificate of Title No. T-14292 to the defendants herein, and to pay the costs."[2]

Petitioners assign as alleged errors committed by the trial court the same errors which they reiterated in the Court of Appeals, as follows -

**"I**

THE TRIAL COURT ERRED IN NOT DISMISSING DEFENDANTS-APPELLEES' COUNTERCLAIM UPON A MOTION TO DISMISS BASED ON THEIR FAILURE TO STATE THEREIN A CAUSE OF ACTION.

**II**

THE TRIAL COURT ERRED IN NOT DISMISSING DEFENDANTS-APPELLEES' COUNTERCLAIM FOR LACK OF JURISDICTION FOR FAILURE TO PAY DOCKET FEES THEREFOR.

**III**

THE TRIAL COURT ERRED IN HOLDING THAT EXHIBITS "1-A" and "1-C" WERE FICTITIOUS.

**IV**

THE TRIAL COURT ERRED IN NOT HOLDING EXHIBITS "7" AND "7-A" (SURVEY NOTIFICATION CARDS) TO BE HEARSAY EVIDENCE AND CONSIDERING THEM INSTEAD AS PROOFS OF OWNERSHIP.

## V

THE TRIAL COURT ERRED IN DECLARING THE ORDER OF THE COURT OF FIRST INSTANCE OF DAVAO DATED AUGUST 16, 1960 ADJUDICATING LOT 2642 IN FAVOR OF PLAINTIFFS-APPELLANTS AS NULL AND VOID.

## VI

THE TRIAL COURT ERRED IN NOT HOLDING THAT DEFENDANTS-APPELLEES DID NOT HAVE ANY REGISTERABLE RIGHT OVER LOT NO. 2642.

## VII

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE PLAINTIFFS-APPELLANTS ARE LEGALLY ENTITLED TO THE REMOVAL OF THE CLOUD IN THEIR TITLE, CAST BY THE ANNOTATION IN T.C.T. No. T-14292 OF DEFENDANTS-APPELLEES' 'AFFIDAVIT OF ADVERSE CLAIM'."<sup>[3]</sup>

The facts as found by the Court of Appeals are undisputed.

"On January 3, 1972 the plaintiffs filed a complaint to remove the cloud and quiet the title over their property pursuant to the provisions of Article 476 of the Civil Code. The disputed property is a 213,083 square meter parcel of land at Tarragona, Davao Oriental denominated as Lot 2642 of the Mati Cadastre.

In their answer filed on January 24, 1972, the defendants included a counterclaim to nullify the plaintiffs' certificate of title, to order the plaintiffs to vacate the disputed land, and to pay attorney's fees.

The plaintiffs are the registered owners of Lot 2642. The original certificate of title was issued on December 17, 1964 in the name of Feliciano Carreon pursuant to a decree in a cadastral proceedings. On March 18, 1969 a transfer certificate of title was issued in the names of plaintiffs as heirs of Feliciano Carreon.

On October 12, 1971 the defendants annotated on the plaintiffs' certificate of title an affidavit of adverse claim. This was the cloud sought to be removed by the plaintiffs in their action to quiet title. According to the plaintiffs, the defendants' annotation on their title was a decision of the Supreme Court in *Paciencia Lim Serrano v. Court of Appeals* (33 SCRA 865 and referred to in the records of the instant case as L-28332) adjudicating Lot 2642 in the defendants-appellees' favor. Not having been parties in that case, the plaintiffs stated that decision is not effective against them.

The defendants asked for the nullification and voiding of the plaintiffs' certificate of title in their counterclaim because -

(1) Lot 2642 was the subject of a public land application of the late Antonio Maguinsawan from whom the defendants trace their rights.

(2) There was a pending cadastral case No. N-25, N-326 wherein Lot No. 2642 was claimed not only by the late Feliciano Carreon but also defendant Hermila Cartagena and Paciencia Lim Serrano.

(3) The alleged orders supposedly signed by Judge Numeriano P. Napoles as a result of which a decree of registration was issued in favor of the late Feliciano Carreon could not have been issued because Lot 2642 was a contested lot and Judge Napoles was a municipal judge and not the judge of a court of first instance plus the absence of the supposed orders in favor of Feliciano Carreon in a long decision adjudicating non-contested lots in the cadastral proceedings.

(4) Assuming such originals of the questioned orders exist, the same are null and void because the contested lot was adjudicated as a non-contested lot.

(5) Lot 2642 was one of the subject lots in Civil Case No. 2889 for recovery of property against Paciencia Lim Serrano, which the herein defendants ultimately won in L-28332 decided by the Supreme Court.

The plaintiffs-appellants are in the possession of the property to the exclusion of defendants-appellees."<sup>[4]</sup>

The petition is devoid of merit.

On the first issue raised by petitioners that there could be no reconveyance of the property because the respondents never alleged ownership and fraud before the trial court, We agree with the findings of the Court of Appeals which is herein reproduced with approval:

"This allegation cannot be credited. Practically all the paragraphs of the answer with counterclaim either assert the ownership of the defendants against that of the plaintiffs or question the latter's title and ownership as gotten through fraud. The words 'ownership' and 'fraud' are not magic incantations the absence of which renders a pleading worthless. Ownership and fraud are better expressed in entire sentences and paragraphs illustrating these concepts.

The answer admits the complaints' averments that the defendants caused an affidavit of adverse claim to be annotated on TCT No T-14292. The adverse claim was a claim of ownership by the defendants against plaintiffs' titled ownership. The answer admits the paragraph in the plaintiffs' complaint about the Supreme Court's decision in L-28332 adjudicating Lot 2642 to the defendants. The decision is reiterated in paragraph 10 of the counterclaim. Paragraphs 2, 3, and 4 of the counterclaim point out that a cadastral case over the property is still pending thus showing that the cadastral title already issued must have been secured through fraud. Paragraphs 5, 6, 7, 8, and 9 narrate the allegedly questionable circumstances surrounding the challenged orders of the cadastral judge. The counterclaim asks for the voiding ab initio of the certificate of title on the ground that there was no legal basis for its issuance because the Judge never issued the supposed orders upon which the title was based. No matter how one reads the answer with counterclaim, it can be interpreted in only one way - the defendants claiming to be owners are challenging the validity of the plaintiffs' title allegedly secured through fraudulent means.

The appellants state that the irregularities were perpetrated by persons other than Feliciano Carreon and suggest that compensation from the assurance fund is a more proper procedure than an action for reconveyance. We do not think so. The defendants assert rights of ownership. The plaintiffs do not fall under the class of innocent title holders contemplated in the provisions on compensation from the assurance fund. As the lower court observed, the plaintiffs are not innocent purchasers for value who acquired the land for valuable consideration. They merely stepped into the shoes of Feliciano Carreon. While the fraudulently acquired title of Feliciano Carreon has been cancelled and a transfer certificate of title has been issued in the names of his heirs, the latter title may still be cancelled and the property reconveyed to the real owners. In this regard, we agree with the ruling of the lower Court on the issue of ownership. It stated -

The ownership of the defendants over the property in question has been satisfactorily shown to the Court by the evidence adduced by them. The Answer of the late Feliciano Carreon filed in Cadastral Case No. N-25, over the lot in question (Exhs. "6" and "6-A") shows that he had acquired ownership over the land in question by "occupation and cultivation in concept of owner after the death of my brother Pantaleon Carreon". In other words, the late Feliciano Carreon derived his rights over the property from his brother, Pantaleon Carreon. But Pantaleon Carreon had transferred his rights over the property to Antonio Maguinsawan, as shown by Exhs. "4" and "4-A", way back on September 1, 1936. So, when Feliciano Carreon claimed this lot by filing his Answer in 1959 in Cadastral Case No. N-25, LRC Cad. Rec. No. N-191, he had no right over the same because he could not have acquired the rights of Pantaleon Carreon who had already transferred his rights to Antonio Maguinsawan. After the death of Antonio Maguinsawan, the herein property passed to the defendants herein as heirs.

The ownership of the defendants over the lot in question is also shown by Exhibits "7", "7-A", "8" and "8-A",

which are the Survey Notification Cards of Feliciano Carreon over Lot 2642 which is adjoining to the lot in question, and Survey Notification Cards of the Heirs of Paterno Catipunan for Lot No. 2644, another adjoining lot of the lot in question. From these exhibits, it is shown that Lot No. 2642 is in the name of the Heirs of Antonio Maguinsawan. All these documentary evidence strongly and clearly show that Lot No. 2642 really belongs to the defendants herein as Heirs of Antonio Maguinsawan. There can also be no doubt as to the ownership of the herein defendants over the lot in question as the same has been confirmed by the Decision in GR-No. L-28332 of the Supreme Court (CA-GR No. 32974-R). Although the plaintiffs cannot be bound by this Decision because they are not parties to the case, yet this is an additional showing that the defendants herein are the owners of the property in question."[5]

On the issue that the trial court did not acquire jurisdiction over the counterclaim because of failure to pay docket fees, suffice it to say that the counterclaim for reconveyance is necessarily connected with the subject matter of the complaint, so that it is a compulsory counterclaim. Under the rules then in force there is no need to pay docketing fees for a compulsory counterclaim. Moreover, the petitioners did not raise this issue before and during the trial. It was only after the trial that the objection was raised in their memorandum. Indeed petitioners voluntarily submitted to the jurisdiction of the trial court. They cannot later on, after an adverse judgment, question its jurisdiction.[6]

On the third and fifth assigned errors the findings of the lower court that Exhibits "1-A" and "1-C" are fictitious and were issued without due process is predicated on the testimony of Atty. Lobasano, the clerk of court, that the records did not contain the original of the alleged orders, Exhibits "1-A" and "1-C". Thus, the trial court made the following disquisition:

"From the foregoing documentary exhibits, the Court is convinced that the issuance of the Decree of registration covering the lot in question and which resulted to the issuance of Original Certificate of Title No. 0-2496 in the name of Feliciano Carreon, and which was also subsequently transferred to his heirs, the Plaintiffs herein, under Transfer Certificate of Title No. T-14292, was procured through fraud. The Orders of Municipal Judge Numeriano Napoles (Exhs. '1-A' and '1-C') which were the basis of the issuance of the decree of registration, were indeed fictitious for no originals of the same were found in the records of Cadastral Case No. N-25, LRC Cad. Rec. No. N-191, wherein the lot in question is involved. If these Orders were really genuine, there would be no reason why the originals could not be found in the records of said case. The evidence is bereft of any showing that the cadastral record was tampered as to warrant a conclusion that the originals of Exhibits "1-A" and "1-C" were lost or destroyed. As a matter of fact, a long decision of Municipal Judge Napoles (Exh. "9") adjudicating non-contested lots still exists. Since the record shows that there is an Order of Judge Numeriano Napoles adjudicating non-contested lots, dated August 16, 1960, there would be no reason that said Municipal Judge would still issue a separate Order (Exh. "1-C") adjudicating Lot No. 2642 to Feliciano Carreon. Considering that the said Order is dated August 16, 1960, the same could have been included in that long Order of the said Judge (Exh. "9"). This is an indication or a showing that Exhibit '1-C' is fictitious and that no original of the same had even existed. Aside from this, since the records also of the Cadastral Case shows that Lot No. 2642 is still pending hearing, there is more reason for us to believe that the Order adjudicating Lot 2642 (Exh. "1-C") is not genuine. Hence, it can be concluded that the decree of registration of the lot in question was obtained through fraud. Even assuming that the alleged Order adjudicating the lot in question is a genuine one, yet the same can be assailed for want of due process as the other claimants of the lot in question, namely, Paciencia Lim Serrano and defendant Hermila Cartagena, were deprived of their day in court. They were not given an opportunity to adduce their evidence over the lot in question. As a matter of fact, they still believe, that, up to the present, no hearing has yet been conducted. The alleged order being issued without due process, the same is, therefore, null and void."[7]

Thus, there is no merit in petitioners' claim that those orders were genuine. The lower court correctly found that said court orders were fabricated and there was no hearing at all by which said orders could have been issued.

In the fourth assignment of error, petitioners contend that the survey certification cards, Exhibits "7" and "7-A", are hearsay evidence and worthless to prove ownership, being self-serving statements of a claimant of a parcel of land before a surveyor.

These survey certification cards were made by Feliciano Carreon, predecessor-in-interest of petitioners, who secured the title to the property based on an alleged cadastral order. In these cards, the late Carreon admitted that Lot 2642 is identified as belonging to the Heirs of Antonio Maguinsawan. These entries are written declarations against interests which were properly appreciated by the court a quo as evidence of respondents' claim of ownership.

Under the sixth assignment of error it is argued that respondents failed to show any right of possession to warrant registration of the questioned lot under Act No. 496. We uphold the findings and conclusions of the trial court and the Court of Appeals showing that reconveyance is proper in favor of the respondents. What the record show is that said lot was acquired by Antonio Maguinsawan on September 1, 1936. He is the father in law of respondent Hermila Cartagena and grandfather of respondent Salvacion Maguinawan Lunay.

Civil Case No. 2889, filed by respondents, is an action for recovery of possession as owners of said property. The Supreme Court ruled in their favor in G.R. No. L-28332. While this case was pending respondents and Feliciano Carreon and Paciencia Lim Serrano filed answers in Cadastral Case No. N-25. As above adverted to, in the survey notification cards prepared by Feliciano Carreon for Lot No. 2641, he acknowledged that Lot No. 2642, which is the now disputed lot, belongs to the heirs of Antonio Maguinsawan, respondents herein. In his answer, he traced the ownership of his brother Pantaleon Carreon of Lot 2642 who sold the same to Antonio Maguinsawan. Petitioners therefore, cannot lawfully stake any claim to the same as heirs of Feliciano Carreon whose right is derived only from Pantaleon Carreon.

In the light of the foregoing discussions the complaint of petitioners to quiet title must fail and so must this petition. Indeed, this action is obviously dilatory and gratuitous.

WHEREFORE and by reason of the foregoing, this petition is DENIED for lack of merit, and the questioned Decision dated April 30, 1979 in CA-G.R. No. 58500-R is AFFIRMED in toto, with double costs against petitioners.

This decision is immediately executory.

### **SO ORDERED.**

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

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[1] Decision penned by Associate Justice Hugo E. Gutierrez, Jr., and concurred in by Associate Justices Ramon Gaviola, Jr. and Edgardo L. Paras.

[2] Page 12, Rollo.

[3] Pages 12-13, Rollo.

[4] Pages 11 to 12, Rollo.

[5] Pages 13 to 14, Rollo.

[6] *Libudan vs. Gil*, 45 SCRA 17 (1972).

[7] Page 16, Rollo.

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