

REPUBLIC OF THE PHILIPPINES REPRESENTED BY THE DIRECTOR OF LANDS, PETITIONER, VS. RUFO NERI, JUSTO CHARMEN, AGAPITO GORNOT, PATERNO MADANLO, ADRIAN ARCHIE AND GUILLERMINA VDA. D...

G.R. No. 57475. September 14, 1992

Ponente: ROMERO, J.

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ROMERO, J.:

This is a petition for review on certiorari[1] which seeks to annul and set aside the June 30, 1980 decision of the Court of Appeals[2] affirming the August 19, 1974 decision of the then Court of First Instance of Davao[3] adjudicating to private respondents the portions of the land in controversy for which they had laid claims, and ordering the survey of said portions and thereafter, the issuance of original certificates of title in their names on the basis of said survey.

The land in question is located in Mati, Davao and has a total area of 815,320 square meters. It was allegedly bought by Encarnacion Lamorena between 1920 and 1921 from Bonifacio Baldomera (or Palmera) and Lucas Lamonte. In 1938, Lamorena filed in the Court of First Instance of Davao "Expediente No. 291, G.L.R.O. No. 53114," a petition for registration of the said 81-hectare land which had been surveyed under Psu-46022, subdivided and designated as Lots Nos. 1772-A, 1772-B, 1772-C, 1768, 2816, 1775, 1770-A, 1770-B and 2680, Cad. 286.

On October 20, 1938, Lamorena and one Mariano Lamorena, who appears to be the former's brother, executed a "deed of sale with right to repurchase" the same tract of land within one year from November 8, 1938 in consideration of the amount of P4,112.00 in favor of Baldomera G. Caburian.[4] The parties stipulated in the contract that if the vendors should fail to exercise the right to repurchase, such right would be forfeited and the contract, without executing another document therefore, would be considered as an absolute sale and the vendor would abandon and vacate the premises. The parties also agreed that the vendor would pay the vendee an "annual rental" of P150.00 "payable on or before November 8, 1939."

On February 19, 1940, Lamorena filed in "Expediente No. 291" a petition praying for the dismissal of her application for registration and for a declaration that the land subject of the petition or application for registration is part of the public domain. Consequently, on March 8, 1940, the court rendered a decision declaring the area applied for as public land; recognized Lamorena as the owner and possessor of all the improvements thereon, and recommended that she be given preference by the Director of Lands in the acquisition of the said land in accordance with law ("se recomienda al Director de Terrenos que conceda preferencia a dicha solicitante en la adquisicion de dicho terreno, de acuerdo con las disposiciones de las ley [sic] vigente sobre el particular").[5]

Sometime in 1946, Caburian, exercising her alleged acquired right of ownership over the land, demanded from Neri and the others working on the land, the share of the Lamorenas in its produce. Some complied with the demand but the rest who refused to do so, were ordered by Caburian to vacate the premises. Hence, on August 25,

1947, Justo Charmen, Adriano Archi (Archie or Arche), Paterno Madanlo, Fernando Mansilagan, Gervacio Valenteros, Agapito Gurnot (Gornot), Federico Vargas, Heirs of Francisco Magundag and Gabriel Palmera, represented by Leopoldo Lopez, petitioned the President to intervene in their behalf in the controversy. The Bureau of Lands thereafter investigated the matter. It was found out that the said alleged tenants desired to acquire the land through homestead applications, Caburian by sales application and the Lamorenas by free patent applications. The Lamorenas had included two sisters, Carmen and Gloria, as claimant-applicants just so they could comply with the law limiting each free patent applicant to a maximum of 24 hectares.

In the decisions all dated October 23, 1951, then Director of Lands Jose P. Dans dismissed the claim of the homestead applicants on the basis of his finding that they were either tenants of the Lamorenas or mere intruders.[6] On the other hand, in B.L. Conflict No. 58 (N), the Director of Lands considered the homestead application of Rufo Neri and rejected the free patent applications of the Lamorenas on the ground that "Baldomera Caburian has been subrogated to the ownership of the improvements existing on the land described in Psu-46022 and to whatever rights the respondents Lamorenas have acquired to the land in question." [7] The dispositive portion of the decision of the Director of Lands, also dated October 23, 1951, states:

"IN THE LIGHT OF ALL THE FOREGOING, this Office is of the opinion, and so decides, that the claims of Rufo Neri to the portion which is outside of his Homestead Application No. 183913 (E-99319) should be, as hereby it is dismissed. The Free Patent Applications (all new) of Encarnacion, Mariano, Carmen and Gloria all surnamed Lamorena, are hereby rejected.

It appearing that Lot No. 1773 of 0.602 hectares is part of the Municipal Road and Lot No. 1770-B of 4,000 hectares is needed for a school site, those lots shall be excluded from the land in dispute.

There being no sales application of Baldomera G. Caburian in the records of this office, she shall file within sixty (60) days from the date hereof, another sales application to cover Lots Nos. 1768, 1770-A. 1772-A, 1772-B. 1772-C, 2680, and 2816, Mati Cadastre No. 286, in accordance with the sketch reproduced at the back hereof, and the application shall be given due course.

SO ORDERED."

The homestead applicants and the Lamorenas appealed to the Secretary of Agriculture and Natural Resources. On July 23, 1952 then Secretary Fernando Lopez dismissed the appeal of the homestead applicants in view of their failure to file memorandum in support of their appeal.[8] It was on May 3, 1954 that the appeals of Rufo Neri and the Lamorenas were resolved by then Undersecretary of Agriculture and Natural Resources Jaime Ferrer.[9] The decision emphasized the fact that since Caburian did not question the decision of the Director of Lands excluding from her sales application the municipal road and the school, said portion of the decision had become final and executory.

The same decision, quoting the pertinent terms and conditions of the contract between Encarnacion and Mariano Lamorena and Caburian and noting the facts that the Lamorenas "failed to redeem the land in question as well as the improvements thereon in accordance with the terms of the contract" and that the land had been declared part of the public domain in the 1940 decision in G.L.R.O. No. 53114, ruled that the conveyance made by the Lamorenas in favor of Caburian "should be considered as a transfer only of their possessory right and the improvements thereon." The decision also held that the contract between the Lamorenas and Caburian was one of sale with right to repurchase and not an equitable mortgage. Accordingly, the appeals were dismissed.

The Lamorenas elevated the case to the Office of the President on the sole issue of whether the contract between them and Caburian was a deed of sale with right to repurchase or an equitable mortgage. In his decision of January 10, 1958, then Executive Secretary Juan A. Pajo, acting on the strength of the opinion of the Secretary of

Justice, deemed the contract as one of equitable mortgage and therefore reversed the decision appealed from.[10] He directed that "the application of the appellants should be given due course and free patents granted them if they qualify therefore" but "without prejudice to whatever action may be instituted in court by the appellee against the appellants with regard to their contract."

The decision of the Office of the President having become final and executory, on June 10, 1959, Director of Lands Zoilo Castrillo ordered its execution. He specifically directed the District Land Officer of Davao City "to repair to the premises and enforce the aforementioned decision of the President, by ordering Baldomera G. Caburian, her tenants, relatives and all those acting in her behalf to vacate the land in question and placing Encarnacion, Mariano, Carmen and Gloria, all surnamed Lamorena in possession of their respective portions." [11]

It turned out, however, that Caburian had filed a motion for the reconsideration of the decision of the Office of the President but in its "decision" of May 31, 1961, said Office denied it. The records likewise show that earlier, or on August 5, 1959, Caburian had filed in the Court of First Instance of Manila a petition for certiorari seeking the "review" of the decision of the Office of the President.[12] She obtained a writ of preliminary injunction enjoining the execution of said decision but upon Lamorena's filing a bond, the injunction was dissolved. On May 4, 1961, the court dismissed the petition. Notwithstanding the finality of said decision, Caburian remained in possession of the land. Hence, on July 31, 1961, Acting Director of Lands Nicanor G. Jorge issued an order of execution reiterating the earlier order of execution of Director of Lands Castrillo.

Undaunted, Caburian (now represented by her heir and special administratrix Guillermina Garcia Vda. de Mitre) elevated the case to the Court of Appeals.[13] In the decision of January 12, 1973,[14] said appellate court resolved the issue of whether or not the Office of the President abused its discretion in requesting the Secretary of Justice for an opinion on the nature of the contract between Caburian and the Lamorenas when, according to Caburian, said Office "should have based its decision upon deceit, misrepresentations and bad faith committed by" the Lamorenas "who allegedly misrepresented the true facts of the case." Finding Mrs. Mitre's allegation as baseless, the Court of Appeals affirmed the judgment appealed from.

Meanwhile, in 1954, the Director of Lands, in behalf of the Republic of the Philippines, filed in the Municipal Court of Mati a petition for registration of a tract of land covering 12,485.8245 hectares designated as Mati Cadastre No. 286. Docketed as Cadastral Case No. N-16, the petition was pursuant to Sec. 1855 of the Revised Administrative Code in relation to Sec. 53 of the Public Land Act (Commonwealth Act No. 141). The petition alleged that "no voluntary applications for the registration of the said parcels of land have been filed under the provisions of Chapter VIII of Commonwealth Act No. 141, nor under the provisions of the Land Registration Law, and that the title thereto is uncertain and open to question." [15] From 1959 to 1960, the following claimants filed their cadastral answers: Baldomera Caburian (3 answers), Gloria Lamorena (3 answers), Paterno Madanlo (3 answers), Justo Chermen, Rufo Neri, Adriano Arche, Agapito Gornot, the Municipal Government of Mati and Encarnacion Lamorena (3 answers).

On March 1, 1963, the Solicitor General, appearing for the Director of Lands filed a manifestation[16] stating that by virtue of the decision of March 8, 1940 of the Court of First Instance of Davao declaring 81 hectares of the land in question as part of the public domain, the case had become *res judicata*; that Civil Case No. 630 for recovery of possession of the same tract of land which was filed by Caburian against Rufo Neri, et al. in the Municipal Court of Mati had been dismissed on the ground that the subject matter of the action is public land; that, having filed public land applications and protests against the applications of others, the claimants were "now estopped from claiming the land as their private properties because by their acts, they have recognized the land in question as public agricultural land"; that the "findings of facts of the Land Department under the principle of

separation of powers shall not be disturbed by courts of law where there is no showing that there was grave abuse in the exercise of discretion" and therefore the administrative finding that Rufo Neri, et al. are tenants should not be disturbed, and that the Office of the President having resolved the legal issue of the nature of the contract between the Lamorenas and Caburian, the latter had lost all rights to and claims of private ownership over the land in question. The Solicitor General prayed for the dismissal of the claims of Baldomera G. Caburian, Rufo Neri, Justo Charmen, Adriano Arche, Paterno Madanlo, Francisco Magondag or his heirs, Federico Vargas, Gabriel Palmera or his heirs, Pedro Racoma, Fernando Mansilagan and Agapito Gornot, as well as the claims of Encarnacion Lamorena "insofar as their claims to the land are of private ownership."

In their answer to said manifestation, claimants Rufo Neri, Justo Charmen, Agapito Gurnot, Paterno Madanlo and Adriano Arche disputed the Solicitor General's contention that *res judicata* was applicable in their case in view of the fact that they were not parties to the case decided in 1940. Asserting that they were allegedly forced to enter into a contract of tenancy by Mariano Lamorena, a Philippine Constabulary Lieutenant, they denied that they were ever tenants as some of them had been occupying the land as early as 1915 and planting it to coconuts and root crops without sharing the harvests with anyone. They prayed that the court should "maintain jurisdiction in the judicial confirmation of (their) imperfect titles." [17]

On May 10, 1963, the court dismissed the claims of Baldomera Caburian, Rufo Neri, Justo Charmen, Adriano Arche, Paterno Madanlo, Francisco Magundag or his heirs, Federico Vargas, Gabriel Palmera or his heirs, Pedro Racoma, Fernando Mansilagan and Agapito Gurnot as well as that of Encarnacion Lamorena as prayed for by the Solicitor General in his manifestation. The court held that if none of the claimants in a cadastral proceeding can prove that he is entitled to his claim, and the land had been declared public land, the judgment of the Court declaring the land public constitutes *res judicata*. [18]

Claimants Rufo Neri, Justo Charmen, Adriano Arche, Paterno Madanlo and Agapito Gurnot moved for the reconsideration of said order but upon the opposition of the Lamorenas, the court struck out the motion from the records.

On January 28, 1964, the Solicitor General filed a motion for the issuance of a writ of possession. Said motion was objected to by Rufo Neri, et al. on the grounds that the March 8, 1940 decision was rendered without any trial on the merits and that under Sec. 6 of the Public Land Act, only the President, upon the recommendation of the Secretary of Agriculture and Natural Resources, can classify lands of the public domain and declare them as open for disposition. Asserting that they had been in open and continuous possession of the land since 1923, Rufo Neri, et al. argued that they were qualified to acquire public lands suitable for agricultural purposes through homestead, sale, lease or confirmation of an imperfect title. Moreover, the same claimants contended that under *Evangelista v. Director of Lands*, [19] the declaration in a cadastral case that certain lands are public is not a final decree of confirmation and registration within the meaning of Sec. 38 of the Land Registration Act and that a writ of possession may only be granted after the finality of a decree of registration adjudicating title to a successful applicant. [20]

Rufo Neri, et al. also filed a motion to set aside the order dismissing their claims. Reiterating that only the President and not the courts may declare any portion of land as part of the public domain, they asserted that the March 8, 1940 decision was null and void for lack of jurisdiction. [21]

Finding the motion to set aside the order dismissing the claims of Rufo Neri, et al. to be wanting in merit, on February 17, 1964, the court issued the writ of possession prayed for by the Solicitor General. [22] Upon the latter's motion, the court modified the order of February 17, 1964 by specifying in the order of April 13, 1964 that the District Land Officer should take possession of Lot Nos. 713, 1772-A, 1772-B, 1772-C, 1768, 1775, 1770-A,

1770-B, 2816, and 2685 of Cad. 286, Mati, Davao.[23]

Alleging that she had not been notified of the orders of May 10, 1963 and April 13, 1964, Guillermina Garcia Vda. de Mitre, representing the deceased Baldomera Caburian,[24] filed a motion for the reconsideration of said orders. She averred that since the said orders were merely based on the manifestation and motion of the Solicitor General, the court treated the said pleading as a motion to dismiss. However, she added that a motion to dismiss is not applicable in cadastral and registration proceedings which demand that all the parties thereto should be properly notified and heard. She asserted that since she was not a party in the case which led to the decision of March 8, 1940, she cannot be bound thereby. She contended that given the chance, she could prove her claim over the land under Republic Act Nos. 1942 and 931 as amended by Republic Act No. 2061.[25]

In answer to Mrs. Mitre's motion for reconsideration, the Solicitor General contended that the records contain proofs that she had been notified of the proceedings which led to the issuance of the writ of possession; that his manifestation, to which were attached several public documents, should not be considered as a mere motion to dismiss but as a "continuation of the hearing of the case, particularly with respect to the issue (of) whether or not the land in question, in a previous proceedings (sic), had already been declared a public land"; that Caburian has no right or interest in the land because by filing Sales Application No. V-6937, she was estopped from claiming that she had been in possession thereof for more than thirty years; that the decision of March 8, 1940, a land registration proceeding which is a proceeding in rem, is binding upon the whole world including Caburian, who, as vendee of the land, is estopped from claiming any right other than that which came from the vendor; that the issuance of the writ of possession was in order since the Government of the Philippines, through the Director of Lands, is the owner of all lands of the public domain in the absence of proof that the land in question is of private ownership, and the motion for reconsideration of Mitre should be treated as a petition for relief from judgment under Rule 38.[26]

Mrs. Mitre filed a reply to said answer of the Solicitor General reiterating her claim that she had not been given her day in court in regard to the issuance of the writ of possession. Thereafter, she filed a motion to recall or set aside the orders of February 17, 1964 and April 13, 1964. Mrs. Mitre alleged that said orders had been brought before the Court of Appeals under CA-G.R. No. 34100-R on a petition for certiorari and that on August 8, 1964 said appellate court set aside said orders and directed the lower court to proceed with the hearing of the cadastral case.[27] In spite of said decision, the Sheriff of Davao allegedly kept on "molesting" Mrs. Mitre and her overseer by trying to take possession of the premises and taking the harvests therefrom.

On May 17, 1965, the court issued an order reconsidering its "order of dismissal of February 8, 1965" (sic) and set the case for hearing.[28]

Meanwhile, it appears that Rufo Neri, Justo Chermen, Adriano Arche, Agapito Gurnot and Paterno Madanlo filed with the Court of Appeals a petition to prohibit Judge Manases Reyes from recognizing the representation of Lamorena, Caburian and the Municipality of Mati during the trial on the merits of Cadastral Case No. 16. On December 31, 1965, the Court of Appeals rendered a decision dismissing the petition for prohibition on the strength of two reasons.[29] First, the same court's decision in CA-G.R. No. 34100-R "completely wiped out and rendered inexistent the order annex B (issued on May 10, 1964 declaring the lots as public land and dismissing the claims of Rufo Neri, et al., Caburian and Lamorena), and in fact directed the lower court to hear the cadastral case after the requirements therefore had been complied with." Second, the respondents (meaning, Lamorena, Caburian and the Municipality of Mati) are "real parties in interest in the cadastral case and their participation therein is necessary for the complete determination or settlement of the case once and for all."

In due course, the court below issued a decree dated August 19, 1974[30]. Placing more probative weight on the

evidence presented by herein private respondents, the court found that the tenancy relationship alleged by both Lamorena and Caburian was never enforced; that Lamorena possessed no more than eight hectares of the land in question^[31] and said area is not even being claimed by the alleged tenants; that Neri, et al., have been in continuous, open, adverse and notorious possession of the areas they are claiming except in 1947 when Caburian's encargado tried to collect shares from them, and that because Lamorena failed to repurchase the land she sold to Caburian, the latter became its owner but only with respect to what Lamorena could sell to her. The dispositive portion of the decree reads:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered:

1. Adjudicating to the following actual occupants the portions with the areas subject of their respective claims as established by the proofs of record, to wit:

(a) To Juliana Gornot her occupation of three (3) hectares;

(b) To Rufo Neri, his occupation of twenty-four (24) hectares;

(c) To Paterno Madanlo the area occupied by him consisting of three contiguous lots with an area of nineteen and one-half hectares (19 1/2);

(d) To Justo Charmen, his occupation with an area of fifteen (15) hectares;

(e) To Adriano Arche his Occupation of ten (10) hectares;

(f) To Guillermina Vda de Mitre the area of eight (8) hectares; and

(g) To the Municipality of Mati, Davao Oriental, the area of two (2) hectares actually utilized as school site and the cadastral road -

2. Ordering the survey of the different portions above adjudicated and awarded, the expenses of the survey to be borne by them pro rata; and

3. Ordering the issuance of original certificates of title in their respective favor on the basis of the survey directed in the next preceding paragraph."

From that decision, Encarnacion Lamorena and the Republic of the Philippines represented by the Director of Lands appealed to the Court of Appeals. On June 30, 1981, said appellate court affirmed the decision of the lower court. Hence, the Director of Lands interposed the instant petition for review on certiorari questioning the power and authority of the cadastral court to: (a) review and pass upon the administrative decisions rendered by the Director of Lands which, as affirmed by the Secretary of Agriculture and Natural Resources, had long become final and executory; (b) review the decision of the Office of the President finding the transaction between Lamorena and Caburian to be an equitable mortgage; (c) adjudicate portions of the land in favor of the respondents inasmuch as they had been found by the Director of Lands to be mere tenants of either Lamorena or Caburian, and (d) adjudicate portions of the land to the Municipality of Mati as prescription over public land used for public purpose does not run against the State and public lands used or devoted to public use cannot be registered under the Cadastral Act nor under the Public Land Act except by executive proclamation.

The first three questions raised by the petitioner boil down to the basic issue of the applicability of the doctrine of *res judicata* in this case. There is no doubt as to the finality of the decisions of the Director of Lands as affirmed by the Secretary of Natural Resources by the dismissal of the appeal of the herein private respondents (except Guillermina Vda. de Mitre) because only the Lamorenas elevated the case to the Office of the President. Undoubtedly, too, the said administrative officers had jurisdiction over the subject matter and the parties and that

the decisions on private respondents' free patent and homestead applications were on the merit. With regard, therefore, to said private respondents, they appear to be bound by the decisions of said administrative officers for, as the Court held in *Ysmael, Jr. & Co., Inc. v. Deputy Executive Secretary*:^[32]

"It is an established doctrine in this jurisdiction that the decisions and orders of administrative agencies have upon their finality, the force and binding effect of a final judgment within the purview of the doctrine of *res judicata*. These decisions and orders are as conclusive upon the rights of the affected parties as though the same had been rendered by a court of general jurisdiction. The rule of *res judicata* thus forbids the reopening of a matter once determined by competent authority acting within their exclusive jurisdiction."

However, in the instant petition, the Solicitor General invokes *res judicata* with respect to the final and executory administrative decisions of the Executive branch. The Solicitor General is not putting in issue the applicability of said principle with respect to the March 8, 1940 decision of the Court of First Instance of Davao which he did in the cadastral proceeding below through his manifestation of March 1, 1963. While the Solicitor General raised the issue of *res judicata* in the Court of Appeals also with regard to the said administrative decisions,^[33] the fact that he raised it only on appeal remains. This fact militates against the case of the petitioner because if the doctrine of *res judicata* is not set up seasonably as a defense or ground of objection, it is deemed waived; it cannot be asserted for the first time on appeal.^[34] Perhaps, this is the reason why the petitioner, through the Solicitor General, does not directly invoke the said doctrine in the instant petition for review on certiorari. Instead, the Solicitor General euphemistically questions the authority of the cadastral court to "review" the final and executory decisions of the administrative officials concerned.

Res judicata also may not apply with respect to the decision of the Office of the President finding that the transaction between Lamorena and Caburian was an equitable mortgage, but for another reason. The decision was solely based on the appeal of Lamorena but unfortunately, the issue raised therein, i.e., the nature of the contract between Caburian and the Lamorenas, was a judicial one, over which the Executive Branch has no jurisdiction.^[35] The instant cadastral proceeding, therefore, cannot be barred by the final and executory decision of the Office of the President in the absence of a requisite in the applicability of the doctrine of *res judicata*: the Office of the President had no jurisdiction over the subject matter of the appeal.^[36] Thus, the court below could have confronted directly the issue of whether or not the contract between the Lamorenas and Caburian was one of *pacto de retro sale* or an equitable mortgage, for it is within a cadastral court's power to determine the nature of said document to avoid multiplicity of suits. Instead of doing so, however, the court skirted the issue and focused on the facts that Lamorena actually occupied and could have sold only eight hectares of the land and that Lamorena cleverly filed the 1940 land registration proceeding only to have it dismissed later upon her own manifestation that the land is public so that she could file a free patent application therefore.

The inapplicability of the doctrine of *res judicata* in effect allowed the courts below the discretion to pass upon the issue of whether or not the private respondents herein, including Mrs. Mitre and her predecessor-in-interest, are *bona fide*, possessors of the portions of land they are claiming. Although the power and authority of a cadastral court are circumscribed by law, it correctly passed upon said issue.

Parenthetically, P.D. No. 1529, the Property Registration Decree, has eliminated the distinction between the general jurisdiction vested in the regional trial court and the limited jurisdiction formerly conferred upon it when acting merely as a cadastral court. Thus, the court may resolve issues other than those strictly pertaining to land registration in cases (1) where the parties mutually agreed or have acquiesced in submitting controversial issues for determination; (2) where they have been given full opportunity to present their evidence; and (3) where the court has considered the evidence already of record and is convinced that the same is sufficient for rendering a decision upon such controversial issues.^[37] Consequently, under the third circumstance, the court below could

have properly determined the nature of the document executed by Caburian and the Lamorenas if only to avoid multiplicity of suits.

In any case, the lower court correctly adjudicated to the private respondents the portions of the land subject of their claims. With regard to Mrs. Mitre, the lower court did not err in adjudicating to her only eight hectares, the actual area possessed and occupied by the Lamorenas through a tenant and, which is the area over which the latter could legally transfer their rights. Inasmuch as Baldomera Caburian believed that she was buying eighty-one hectares from the Lamorenas, her effort, as well as that of her successor-in-interest, in exhausting all remedies, judicial and administrative, is understandable. Sadly for her, a sizeable portion of the subject of the sale did not belong to the vendors.

The petitioner correctly objected to the legality of the adjudication of two hectares of the land in favor of the Municipality of Mati. The finding of the cadastral court that Paterno Madanlo "conceded" or "donated"[38] the two hectares to the municipality does not justify its adjudication to the latter. Madanlo could not have legally donated a portion of the land the ownership of which was not yet vested in him.[39] Apparently, such adjudication was based on the municipality's long, continuous and adverse possession of the area which it used as a school site. Under Art. 1108 of the Civil Code, however, prescription, both acquisitive and extinctive, does not run against the State and its subdivisions.

To enable it to obtain legal authority on its continued use of the two-hectare land as a school site, the Municipality of Mati should take the necessary steps outlined by law. Under Sec. 69 of the Public Land Act, the President of the Philippines may execute contracts in favor of any province, municipality or branch or subdivision of the government needing any portion of the land of the public domain open to concession for educational, charitable or other similar purposes in the form of donation, sale, lease, exchange or any other form.[40] Hence, the municipal government of Mati would do well to take the necessary appropriate action towards legally retaining the two-hectare area as a school site.

WHEREFORE, the decision of the Court of Appeals is **AFFIRMED** subject to the modification that the adjudication of the two-hectare land in favor of the Municipality of Mati be nullified. Instead, said municipality should be directed to take the necessary steps to attain legal title over the said area for educational purposes. No costs.

SO ORDERED.

Bidin, Davide, Jr., and Melo, JJ., concur.

Gutierrez, Jr., J., (Chairman), on official leave.

[1] The Solicitor General for the petitioner; Atty. Victor A. Clapano for respondents Neri, et al., and Atty. Jose P. Arro for respondent Guillermina C. Vda. de Mitre.

[2] Penned by Justice Rodolfo A. Nocon and concurred in by Associate Justices Crisolito Pascual and Juan A. Sison.

[3] Presided by Judge Domingo Zuño, Sr.

[4] Exh. "26," Mitre.

[5] Annex C to Petition; Rollo, p. 79.

[6] B.L. Claim No. 82(N), B.L.Claim No. 83 (N), B.L. Claim No. 84 (N), B.L. Claim No. 201 and B.L. Claim No.

206(N) labelled as Exhs. 12 to 16-Lamorena.

[7] Rollo, p. 83.

[8] Exh. 17-Lamorena.

[9] Annex E to Petition; Rollo, p. 85.

[10] Exh. 11-Lamorena.

[11] Annex M to Petition; Rollo, p. 102.

[12] Civil Case No. 41071.

[13] CA-G.R. No. 38615-R.

[14] Penned by Justice Hermogenes Concepcion and concurred in by Justices Andres Reyes and Luis B. Reyes.

[15] Record on Appeal, p. 4.

[16] Ibid., p. 12.

[17] Ibid., pp. 53-58.

[18] Ibid., p. 59.

[19] 45 Phil. 848 [1924].

[20] Record on Appeal, p.73.

[21] Ibid., p. 84.

[22] Ibid., p. 87.

[23] Ibid., p. 90.

[24] She died on August 25, 1963. Ibid., p. 100.

[25] Ibid., p. 91.

[26] Ibid., p. 101.

[27] The decision, which was penned by Justice Jose P. Bengzon and concurred in by Justices Salvador V. Esguerra and Antonio G. Lucero, expressed the "possibility" that Lamorena's manifestation that the land in question is public land and upon which the 1940 decision was based, was "a legal strategy to dislodge the petitioners (Justo Charmen, Rufo Neri, Adriano Arche, Agapito Gurnot and Paterno Madanlo) as possessors and/or owners of the land in question." The appellate court ruled that since the cadastral court dismissed the claims over the land without adjudicating any title or issuing any decree, the writ of possession was without any legal basis and the petitioners as possessors could not simply be ousted by the writ without due process of law. (Record on Appeal, p. 135)

[28] Record on Appeal, pp. 156-157.

[29] Ibid., on Appeal, p. 157. Justice Jose S. Rodriguez, ponente, and Justices Antonio G. Lucero and Nicasio A. Yatco, concurring.

[30] Record on Appeal, p. 234.

[31] This was established in the lower court through Lamorena's tenant Jose Astrande (Rollo, pp. 66-69).

[32] G.R. No. 79538, October 18, 1990, 190 SCRA 673, 680.

[33] Rollo, p. 36.

[34] Alvarez, Jr. v. Court of Appeals, G.R. No 60443, February 29, 1988, 158 SCRA 401.

[35] Republic v. Alagad, G.R. No. 66807, January 26, 1989, 169 SCRA 455.

[36] The requisites of res judicata are the following: (a) the presence of a final former judgment; (b) the former Judgment was rendered by a court having jurisdiction over the subject matter and the parties; (c) the former judgment is a judgment on the merits; and (d) there is between the first and the second actions, identity of parties, of subject matter, and of cause of action (*Heirs of the late Santiago Maningo v. Intermediate Appellate Court*, G.R. Nos. 73559-62, March 26, 1990, 183 SCRA 691).

[37] *Vda. de Arceo v. Court of Appeals*, G.R. No. 81401, May 18, 1990, 185 SCRA 489.

[38] CFI Decision, p. 28; Rollo, p. 78.

[39] *Beaterio del Santisimo Rosario de Molo v. Court of Appeals*, L-44204, July 11, 1985, 137 SCRA 459.

[40] *City of Iligan v. Director of Lands*, L-30852, February 26, 1988, 158 SCRA 158.

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