

CONSTANTINO ALVAREZ, JR., CASIL-DITA ALVAREZ DE MUERTEGUI, AND ROSALIA ALVAREZ VDA. DE TAN, PETITIONERS, VS. COURT OF APPEALS, AND HEIRS OF SEGUNDO GARCIA FERNANDEZ, RESPONDENTS.

G.R. No. 60443. February 29, 1988

Ponente: NARVASA, J.

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NARVASA, J.:

More than fifty years ago, in April, 1936, the Director of Lands filed with the Court of First Instance of Leyte^[1] a petition for the settlement and adjudication of titles over certain lands in the Ormoc Cadastre. Among the lands comprehended in the proceeding was Lot No. 689 located in the town (now City) of Ormoc, containing an area of 338 square meters, more or less.^[2] For several years, no one laid claim to this Lot No. 689 despite notice having been given in accordance with law, and despite several extensions granted by the Court *motu proprio*. So, on April 1, 1942, an order of general default, and dismissal of the cadastral proceeding as regards said lot, was ultimately entered.^[3]

The lifting of this order of general default was sought through a petition filed with the Court of Appeals on July 22, 1940^[4] by Cecilia, Alicia and Arturo, all surnamed Garcia Alvarez, who stated that they were the legitimate children and only heirs of the deceased spouses, Segundo Garcia Fernandez and Eulogia Alvarez. The petition, grounded on Section 513 of the Code of Civil Procedure, was however dismissed on technical grounds by decision rendered on September 27, 1940.^[5]

Fourteen years afterwards, or on or about July 9, 1956, Constantino Alvarez, Jr., Casildita Alvarez de Muertegui and Rosalia Alvarez Vda. de Tan filed a motion with the Cadastral Court for the reopening of the proceedings as regards Lot No. 689. They alleged that they were the voluntary heirs of the decedent spouses Segundo Garcia Fernandez and Eulogia Alvarez, owners in fee simple of said Lot No. 689, and should themselves be declared as holders of the title to the land by succession. The Court granted the motion, and set aside the order of general default of April 1, 1942. At the same time, the Court gave the heirs of Segundo Garcia Fernandez -- the aforementioned Cecilia, Alicia and Arturo, all surnamed Garcia Alvarez/Fernandez -- time to file their answers to set forth the basis of their own claims. The latter did so, after which the Court set the case for trial.

The trial was reset to various dates. On the last day scheduled for trial, Cecilia, Alicia and Arturo -- hereafter simply referred to as the Fernandez Children -- failed to appear. Consequently, Constantino Alvarez, Jr. and his co-movants were allowed to present their evidence *ex parte*, and on September 1, 1958, judgment was rendered adjudicating Lot No. 689 to them.^[6]

The Fernandez Children filed on October 2, 1958 a petition for review praying that the decision be set aside on the ground of fraud. They pointed out that Constantino Alvarez, Jr. and his co-movants had, in their motion to reopen the proceedings of July 9, 1956, claimed that they acquired the ownership of Lot No. 689 by inheritance from the Garcia-Alvarez Spouses; yet the evidence presented by them at the *ex parte* hearing established a

different factual basis for their acquisition of title: the supposed purchase of the land from the Garcia-Alvarez Spouses by Manuel Alvarez, who later sold it to their predecessor-in-interest, Constantino Alvarez, Sr.; moreover, no document of sale was ever presented to support that purchase. For their part, Constantino Alvarez, Jr., et al. argued that Segundo Garcia Fernandez, as an alien and a resident of Spain, had no valid claim of title over the lot in question because he did not have any resident agent in the Philippines as required by Section 22 of Act 496 in conjunction with Section 11 of Act 2259. Alvarez, Jr., et al. further asserted that Atty. Cleto P. Evangelista, the lawyer of the Fernandez Children, had no standing since he held no written appointment to represent them in the cadastral proceedings. The latter replied that Atty. Evangelista had been appearing for them in the proceedings from the beginning; and even if he did not have any written power of attorney, he was presumed to be properly authorized to represent them.[7]

The Cadastral Court denied the petition for review of the Fernandez Children by Order dated February 25, 1959. But on appeal,[8] the order was set aside by the Court of Appeals, by Decision promulgated on December 4, 1969. The Court pronounced as "highly doubtful" the claims of title of Constantino, Jr., et al., and rejected their theory that the Spouses Garcia-Alvarez, being Spanish citizens, were disqualified to own land since the record showed that they "were already owners of said lot (in issue) long before the approval of the Constitution (of 1935)." The Appellate Court directed the remand of the case to the Court a quo for reception of evidence of both parties in substantiation of their claims to the lot in question and for rendition of judgment thereafter on the basis of the evidence thus presented.[9] Pursuant to this decision, the Cadastral Court conducted another trial at which both sides adduced proofs of their respective contentions. Decision was then rendered declaring Constantino Alvarez, et al. to be the owners of Lot No. 689, the Cadastral Court ruling that the Fernandez Children's cause was barred by laches, and Constantino Alvarez, Jr., had acquired the land by prescription.[10]

The case went up to the Court of Appeals once again. The Fernandez Children appealed to it,[11] and succeeded in convincing it to reverse the judgment of the Cadastral Court. The Decision of the Appellate Court, promulgated on February 5, 1982,[12] pronounced the Fernandez Children to be the owners of Lot No. 689 and ordered its registration in their name. In that Court's view -

1)

there was no question that Lot No. 689 was owned by Segundo Garcia Fernandez; the claim that the lot had been sold by him to Constantino Alvarez, Sr. is grievously flawed by contradictions. The latter's heirs, the aforementioned Constantino Alvarez, Jr., et al., at first claimed to have inherited the land directly from the Spouses Segundo Fernandez and Eulogia Alvarez; but when the Fernandez Children declared themselves to be the rightful inheritors of the land, as the legitimate children and heirs of the spouses Fernandez/Alvarez, Constantino, Jr. et al. promptly altered their theory and pleaded a sale by said spouses to their father (Constantino, Sr.), and their subsequent succession to their father's estate as the bases of their ownership; the situation was "worse confounded" by the subsequent testimony of Constantino Alvarez, Jr. that Lot No. 689 had in truth been purchased from the spouses by Manuel Alvarez, the brother of Eulogia Alvarez.[13]

2)

moreover, it does not appear that Constantino Alvarez, Sr. ever did anything to assert any claim to the lot in the cadastral proceedings which commenced in 1936 although, as Constantino, Jr., et al. contend, he had occupied the property immediately after it was supposedly sold to him by Segundo Garcia Fernandez in 1928;

3)

indeed, the tax declarations filed by Constantino Alvarez, Jr. quite plainly indicate that he was merely the administrator of the property, the declared owner being Segundo Garcia; hence, the possession of Constantino, Jr., as such administrator, could not be deemed adverse to that of the owner and could not ripen into ownership by prescription,[14] and the repudiation of that status of administrator "may only be considered to have been made on July 9, 1956 when ** (Constantino, Jr. and his sisters) filed a motion to reopen the decision of the cadastral court." The claim of Constantino, Jr., et al. that the Fernandez Children's cause was barred by laches was also rejected. The Appellate Court pointed out that -

"The reopening of the cadastral case must necessarily be subject to the claims of all, including the herein appellants (Fernandez Children). Indeed, in our decision in the first case (CA-G.R. No. 27597-R, Dec. 4, 1969) we implied as much when we set aside the decision of the lower court and ordered it to conduct a new trial so as to allow the appellants an opportunity to be heard. For the trial court to hold that the appellants' cause of action is barred by laches is in effect to nullify the decision of this Court."

Constantino Alvarez, Jr. and his co-heirs are now before this Court on an appeal by certiorari, attributing to the Court of Appeals the following errors, to wit:

1)

failing to apply the provisions of Section 5 of Rule 10 of the Rules of Court (amendment to conform to or authorize evidence);

2)

not considering the judgment in CA-G.R. No. 7122 rendered on September 27, 1940[15] to have become long final and executory; and

3)

not holding the Fernandez Children guilty of laches and estoppel.

Petitioners' first argument, regarding the failure of the Court of Appeals to apply the provisions of Section 5 of Rule 10, is unintelligible. The point sought to be made seems to be that the evidence introduced by the petitioners, which is in obvious contradiction of the allegations of their motion to reopen the cadastral proceedings, should have been deemed to have superseded, obliterated and replaced said allegations and consequently caused the contradiction between those averments and their evidence to disappear. The less said of the argument the better.

The second argument, that the decision in CA-G.R. No. 7122, promulgated on September 27, 1940 should have been deemed to have long become final and executory, is as unintelligible as the first. For there is no pronouncement to the contrary in the decision of the Court of Appeals subject of the instant appeal. If the point is that said judgment is *res adjudicata* and should operate as a bar to all subsequent proceedings in the cadastral case, it needs simply to mention that the judgment is not one on the merits, and that, moreover, the doctrine was never invoked by the petitioners until now. It is axiomatic that for the doctrine of *res adjudicata* to apply, it is essential that the prior judgment, invoked as a bar to a subsequent action or proceeding, be *inter alia* one on the merits.[16] Equally preceptive is that if the doctrine is not set up as a defense or ground of objection seasonably, it is deemed waived; it cannot be asserted for the first time on appeal.[17]

The petitioners' final argument is anchored upon the fact, which they say is "admitted," "that ** (they) have been in actual, and adverse possession uninterruptedly and continuously as owners since very long before the last world

war up to the present." The fact is not however admitted. Indeed, it is the contrary that the Court of Appeals has concluded to be the fact, i.e., that Constantino Alvarez, Jr. had never held the property as owner but always as administrator. The Appellate Court's observations on the matter bear repeating:[18]

"Indeed, the tax declarations filed by Constantino Alvarez, Jr. himself indicate that he was merely the administrator of the property whose declared owner was Segundo Garcia. As administrator, Constantino Alvarez's possession was not adverse to that of the owner and therefore could not serve the purpose of prescription. * * Alvarez and his sisters' claim of ownership of the property may only be considered to have been made on July 9, 1956 when they filed a motion to reopen the decision of the cadastral court."

WHEREFORE, the petition for review on certiorari is DENIED, and the Decision of the Court of Appeals in CA-G.R. No. 52250-R promulgated on February 5, 1982, being entirely in accord with the facts and the law, is AFFIRMED in toto.

Teehankee, C.J., Cruz, Gancayco, and Grino-Aquino, JJ., concur.

[1] Maasin-Ormoc Branch

[2] Rollo, p. 24

[3] Id., p. 25

[4] Docketed as CA-G.R. No. 7122; Rec. on Appeal in C.A., p. 36

[5] Rollo, pp. 5, 11; Rec. on Appeal, pp. 31, 45, 55

[6] Id., pp. 25-26

[7] Id., p. 26

[8] Docketed as CA-G.R. No. 27597

[9] Id., pp. 26-27; Record on Appeal in C.A., pp. 2-10

[10] Rollo, pp. 28-29

[11] The appeal was docketed as CA-G.R. No. 52260.

[12] Mendoza, J., ponente, with whom concurred Alampay and Borromeo, JJ.; Rollo, pp. 29-31

[13] The ultimate claim of Constantino, Jr. et al. is that they had obtained title to the land in question by acquisitive prescription.

[14] Citing: De Borja v. De Borja, 59 Phil. 19 (1922); Ranjo v. Payomo, 89 Phil. 138, 151 (1951)

[15] See footnote No. 5, supra

[16] Manila Electric Co. v. Artiaga, 50 Phil. 144;1 S. Diego v. Ca;rmona, 70 Phil. 281, 283; Bayot v. Zurbito, 39 Phil. 650; Moldes, et al. v. Mullet, 55 O.G., 7343, all cited, with others, in Moran, Comments on the Rules, 1979 ed., Vol. 2, p. 353

[17] Sec. 2, Rule 9 and Sec. 8, Rule 15, Rules of Court; Moran, op. cit., Vol. 1, pp. 342-343

[18] Rollo, pp. 16-17

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