

**REPUBLIC OF THE PHILIPPINES (DIRECTOR OF LANDS),
PETITIONER, VS. COURT OF APPEALS AND TEDITA INFANTE-TAYAG,
RESPONDENTS.**

G.R. No. 61462. July 31, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

This is an application for registration of land with an area of more than 11 hectares located at Barrio Tambo, Buhi, Camarines Sur which was opposed by the Director of Lands.

Tedita Infante-Tayag (40 in 1977), the applicant, a resident of Quezon City, testified that the land was first possessed by her father, Froilan Infante, who died in 1937. He was succeeded by his three children and widow, Gertrudis M. Vda. de Infante. The four heirs settled in 1969 his estate consisting of twenty-two (22) parcels of agricultural and residential lands (Exh. G).

That 11-hectare land was adjudicated to Soledad Infante-Yago who exchanged it in 1975 for another parcel of coconut land (Lot No. 6652) with an area of 23 hectares belonging to her sister, Mrs. Tayag, the applicant (Exh. H).

Mrs. Tayag filed the instant application in 1976. She possessed the land in question for barely a year. She knows that the land is coconut land but she does not know the number of coconut trees planted therein nor the person who planted the same. Of the boundary owners, she knows only one, her aunt, Severa Peñoso. She does not know the actual area of the land (17-18 tsn June 9, 1977).

The only other witness, Abraham Morandarte (56 in 1977), testified that he came to know the land in 1935 because his father was the overseer of Froilan Infante, Mrs. Tayag's father. He lived in the land and planted coconuts thereon some of which are 80 years old. The land has been administered by Mrs. Tayag's brother, Antonio. He and the overseer, Solomon Buena-flor, did not testify in this case. Morandarte became the overseer only in 1973.

The land was declared for tax purposes in 1973 by Pablo Yago, applicant's brother-in-law (Exh. I). The realty taxes for 1946 to 1976 were paid only on April 23, 1976 by Mrs. Tayag (Exh. J), or five months before the application for registration was filed.

The application is in the form prescribed in section 21 of Act No. 496 but it does not contain the paragraph included in Judicial Form No. 20 of the Land Registration Commission which reads:

"(8) Should the Land Registration Act invoked be not applicable to the case, he hereby applies for the benefit of Chapter VIII of Commonwealth Act No. 141 as he has been in possession of the land since__xxx" (See Torrens System by Ponce, p. 158; 1 Tañada and Rodrigo, Legal Forms; p. 542).

The instant application, like similar applications is for judicial confirmation of an imperfect title under section

48(b) of the Public Land Law, as amended by Republic Act No. 1942.

Under that law, the applicant must prove that he, by himself and through his predecessors in interest, have been in the open, continuous, exclusive and notorious possession and occupation of public agricultural land, under a bona fide claim of acquisition of ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title except when prevented by force majeure.

The trial court and the Appellate Court granted the application. The Director of Lands appealed to this Court. The Solicitor General's first contention, that the application should be denied because Mrs. Tayag failed to present the original tracing cloth plan, cannot be sustained.

It is indubitably indicated that the "cloth plan of Psu-112106" was attached to the application (p. 3, Record on Appeal). It was detached and kept by the Land Registration Commission. It could not be marked as an exhibit.

The second contention is that Mrs. Tayag "miserably failed to prove ownership or possession in the concept of owner for thirty years" prior to September 7, 1976 when the application was filed.

After a study of the records, we find that contention to be meritorious. The testimonies of Mrs. Tayag (who does not know the boundary owners and the area of the land) and Morandarte, her overseer since 1973, are not sufficient to prove the alleged thirty years' possession in the concept of owner by the applicant, her sister, mother and father.

The taxes for 31 years, 1946 to 1976, were paid only in 1976, a few months prior to the filing of the application.

It is true that the plan (Exh. A) shows that the said land, Psu-112106 (an abaca and coconut land) was surveyed in 1940 by Rafael Tayag for the heirs of Froilan Infante. Mentioned in that plan as one of the boundary owners are the heirs of Froilan Infante, owner of the 31-hectare parcel of land, Lot 1-B, Psd-16074 which was adjudicated in 1969 to Mrs. Infante, the widow of Froilan Infante. It is item A in the deed of partition, Exhibit G, Curiously enough, item A does not mention at all the Infante heirs as boundary owners.

The applicant failed to satisfy the requirements for judicial confirmation of her alleged title (*Maloles vs. Director of Lands*, 25 Phil. 548). The said land must be presumed to be still a part of the public domain (*Oh Cho vs. Director of Lands*, 75 Phil. 890).

WHEREFORE, the judgment of the Court of Appeals is reversed and set aside and the application for registration is dismissed. No costs. SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, Escolin, and Cuevas, JJ., concur.

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