

**BASILISA S. ESCONDE, PETITIONER, VS. HON. SAMILO N. BARLONGAY AND RAMON V. DELFIN, RESPONDENTS.**

*G.R. No. 67583. July 31, 1987*

Ponente: PARAS, J.

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**PARAS, J.:**

This is a petition for review on certiorari of the April 16, 1984 Order of the Regional Trial Court of Valenzuela, Bulacan, Branch CLXXII, dismissing petitioner's complaint.

The facts admitted by the parties are the following:

Private respondent Ramon V. Delfin is the applicant in the "Application for Registration of Title" dated April 14, 1969, docketed as LRC Case No. 710-V at the then Court of First Instance of Bulacan, Branch III, Valenzuela, Metro Manila (now RTC, NCJR, Branch 171, Valenzuela). The land subject of the Application, Reconveyance and the present petition is one and the same parcel of land containing an area of 2,273 sq. m. The application was granted in a "Decision" dated December 8, 1969, and private respondent received copy thereof on the same date. Said parcel of land is now covered by OCT No. 0-5002 issued on January 23, 1971 by the Register of Deeds of Bulacan. On February 13, 1978 said private respondent Ramon V. Delfin, as applicant in the LRC Case filed his "Petition for Writ of Possession" against the spouses Francisco and Basilisa Esconde (Brief for Petitioner, pp. 6-7, Rollo, p. 120).

On March 6, 1978, Judge Crispin V. Bautista issued an Order denying for lack of merit the opposition filed by the Esconde spouses to the petition for Writ of Possession.

On September 26, 1978, Judge Avelino M. Constantino, who took over the same branch presided over by Judge Bautista, issued an Order for a writ of possession against the said spouses.

Petitioner filed with the same court a Petition to Quash the Writ of Possession to which an Opposition was filed by the private respondent (Comment, Rollo, pp. 88-90).

On October 6, 1978, herein petitioner filed with the then Court of First Instance of Bulacan, 5th Judicial District, Branch VIII (now RTC, NCJR, Branch 172, Valenzuela, Bulacan) a complaint for reconveyance, against the herein private respondent, docketed therein as Civil Case No. 721-V-78 (Record, pp. 24-28).

On October 14, 1978, petitioner filed an Amended Complaint with prayer for stay of execution of judgment in LRC Case No. V-710 (Ibid., pp. 29-33).

Private respondent, in a Motion to Dismiss dated December 26, 1978, moved for the dismissal of the case on the grounds, among others, that (1) the cause of action, if any, is barred by res judicata; (2) the complaint fails to state sufficient cause or causes of action for reconveyance; and (3) the plaintiff is barred by prescription or laches from filing the case (Ibid., pp. 34-39).

On January 15, 1979, petitioner filed a Rejoinder to Motion to Dismiss and Motion for Leave of Court to Amend

Complaint to Include Plaintiff's Husband as Party-Plaintiff (Ibid., pp. 40-44). On the same date, the Amended Complaint was filed (Ibid., pp. 45-50).

Private respondent filed a Reply to Rejoinder (Opposition) to Motion to Dismiss with Opposition to the Motion For Leave of Court to Amend Complaint, dated January 18, 1979 (Ibid., pp. 51-54).

On June 5, 1979, Judge Constantino denied Petition to Quash Writ of Possession (Rollo, p. 108). The Sheriff then delivered possession to the private respondent, but then petitioner re-entered the premises and took possession thereof, hence private respondent filed a Motion for an Alias Writ of Possession on March 2, 1983.

On March 4, 1983, an Order directed the issuance of an alias writ of possession.

On March 29, 1983, the Sheriff turned over possession of the premises to the representative of the private respondent. This notwithstanding, when private respondent went to the premises, he was barred by the petitioner from entering the property. Consequently, private respondent asked for a writ of demolition for the removal of any construction of the Esconde family on the premises and to cite petitioner Basilisa Esconde for contempt of court.

On November 17, 1983, private respondent moved for a second alias writ of possession in view of the failure of the petitioner to turn over possession of the premises to private respondent and the same was granted in the Order of November 21, 1983.

Petitioner then filed with Judge Avelino M. Constantino of the Regional Trial Court of Bulacan a Motion to Quash and/or to Hold in Abeyance Execution of Second Alias Writ of Possession on the ground that they have filed a civil action for reconveyance.

On February 1, 1984, petitioner filed a Motion to Expedite Resolution of Pending Incidents and Motion For Issuance of Restraining Order and/or Preliminary Injunction (Ibid., pp. 57-59).

On February 13, 1984, private respondent filed a Manifestation With Opposition to Motion for Issuance of Restraining Order and/or Preliminary Injunction (Ibid., pp. 60-62).

Respondent Judge, in an Order dated April 16, 1984 (Ibid., pp. 63-64), dismissed the complaint for reconveyance on the grounds: (1) that plaintiff's cause of action is barred by res judicata; and (2) that the Motion to Admit Amended Complaint and for Issuance of Restraining Order and/or Preliminary Injunction is not proper as it seeks to enjoin the enforcement of a writ of possession issued by another branch of this Court which is not allowed.

Hence, the instant petition (Ibid., pp. 10-23).

The Second Division, in a Resolution dated August 29, 1984, resolved to require the respondents to comment (Ibid., p. 75).

On October 20, 1984, respondents, in compliance with the above-mentioned Resolution, filed their Comment (Ibid., pp. 87-101).

In a Resolution dated December 3, 1984, the Second Division resolved to give due course to the petition; and to consider respondents' comment to the petition as an answer (Ibid., p. 110).

In a letter dated January 21, 1985, counsel for the petitioner was required to file petitioner's brief (Ibid., p. 112). In compliance therewith, said brief was filed on March 23, 1985 (Ibid., p. 120).

On April 1, 1985, petitioner filed a Motion to Include Additional Party-Respondent and Motion for the Issuance of Preliminary Injunction, praying, among others, that the Sheriff be included as additional party-respondent

(Ibid., pp. 122--126).

The Second Division, in a Resolution dated April 17, 1985, resolved to require the respondents to comment on the motion by counsel for the petitioner to include an additional party-respondent and the motion for the issuance of a preliminary injunction (Ibid., p. 141).

On May 7, 1985, respondents filed their Opposition to Motion to Include Additional Party-Respondent and Motion for the Issuance of Preliminary Injunction (Ibid., pp. 142--146).

On June 21, 1985, Brief for the Respondents was filed (Ibid., p. 148).

The Second Division, in a Resolution dated November 11, 1985, resolved to consider the case submitted for deliberation (Ibid., p. 158).

On November 26, 1985, petitioner filed a Motion for Immediate Resolution of her motion of April 1, 1985 - motion to include the Sheriff as party-respondent and for the issuance of a preliminary injunction (Ibid., pp. 159-162). This motion of petitioner, in a Resolution dated December 11, 1985, was noted by said Division (Ibid., p. 165).

On February 1, 1986, petitioner filed an Urgent Motion, praying, among others, for the inclusion of the Sheriff as party-respondent, and thereafter, for an injunction directing the Sheriff to restore the peaceful possession of the land to petitioner (Ibid., pp. 166-171).

The Second Division, in a Resolution dated February 17, 1986, resolved to issue a temporary restraining order directing the Sheriff and private respondent to refrain from enforcing and/or carrying out the Third Alias Writ of Possession (Ibid., p. 176).

On March 4, 1986, petitioner filed a Motion to Amend Resolution and Temporary Restraining Order both dated February 17, 1986, either nullifying the Third Alias Writ of Possession served or in the alternative to issue a mandatory injunction (Ibid., pp. 179-183). This motion was denied by the Division in a Resolution dated May 21, 1986 (Ibid., p. 185).

The issues in this case are -

1. WHETHER OR NOT PETITIONER'S CAUSE OF ACTION IS BARRED BY RES JUDICATA; and
2. WHETHER OR NOT PETITIONER'S MOTION TO ADMIT AMENDED COMPLAINT AND FOR ISSUANCE OF RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION IS PROPER.

The petition is devoid of merit.

Land registration proceedings in this case commenced on April 14, 1969 and decision thereon was rendered on December 8, 1969. Hence, the law in force at the time was Act 496, P.D. 1529 (otherwise known as Property Registration Decree) having taken effect only on Jan. 23, 1979.[1] The pertinent provisions of said Act 496 read:

"SEC. 34. Any person claiming an interest, whether named in the notice or not, may appear and file an answer on or before the return day or within such further time as may be allowed by the court. The answer shall state all the objections to the application, and shall set forth the interest claimed by the party filing the same and apply for the remedy desired, add shall be signed and sworn to by him or by some person in his behalf. (As amended by Sec. 1, Act No. 3621)."

"SEC. 35. If no person appears and answers within the time allowed, the court may at once upon motion of the applicant, no reason to the contrary appearing, order a general default to be recorded and the application to be taken for confessed. By the description in the notice, 'To all whom it may concern,' all the world are made

parties defendant and shall be concluded by the default and order. After such default and order, the court may enter a decree confirming the title of the applicant and ordering registration of the same. (As amended by Sec. 8, Act No. 1699)."

On the other hand, under Rule 18 of the Rules of Court, the effect of such order is as follows:

"SEC. 2. Effect of order of default. -Except as provided in section 9 of Rule 13, a party declared in default shall not be entitled to notice or subsequent pro-ceedings, nor to take part in the trial."

Petitioner's claim that she came to know of the land registration case only upon receipt of a Petition for Writ of Possession is completely rebutted by private respondent's evidence. In the Notice of Initial Hearing (Rollo, p. 148-a) she is one of those cited to appear; in the Survey Notifica-tion Letter (Rollo, p. 148-c) her husband was notified of the scheduled survey of the land as indicated by his sig-nature opposite his name and in the Surveyor's Certificate (Rollo, p. 148-b) her husband was reported one of the adjoin-ing owners present. There is no question that notice to her husband is notice to her under the law, her husband being the administrator of the conjugal partnership (Art. 165, Civil Code). Otherwise stated, there was no concealment on the part of private respondent. In fact, the records show that private respondent stated in his application for registration of title that a portion of the land was being occupied by petitioner sometime in September 1967, by breaking the stone wall fence without his knowledge and consent (Application for Registration of Title; Rollo, p. 102). How-ever, petitioner and her husband, despite the chance given them to be heard in the land registraiton proceedings, opted not to appear.

Thus, as aptly stated by respondent Judge, "A land registration proceedings which is in rem, is valid and conclu-sive against the whole world. The failure of the plaintiff and her husband, despite the notice of the publication and posting by the sheriff of the notice of hearing, to oppose the defendant's application for registration will bar her from filing this action." (Order, dated April 16, 1984; Civil Case No. 721-V-78; Rollo, p. 64).

Under Section 38 of Act 496 'x x x Every decree of regis-tration shall bind the land, and quiet title thereto x x x. It shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice or citation or included in the general description 'To all whom it may con-cern'." That under said section, this decree became con-clusive after one year from the date of the entry, is not dis-puted (Severino v. Severino, 44 Phil. 354 [1923]). On the contrary, this Court has invariably ruled that "Land Regis-tration is a proceeding in rem and binds all persons known and unknown." (Moscoso v. C.A., 128 SCRA 70 [1984]). It is a settled doctrine that when a decree of registration has been obtained by fraud, the party defrauded has only one year from entry of the decree to file a petition for review before a competent court, provided that the land has not been trans-ferred to an innocent purchaser for value. Said Section 38 categorically declares that "upon the expiration of the said term of one (1) year, every decree or certificate of title issued in accordance with this section shall be incontrovert-ible (Albienda v. C.A., 135 SCRA 406-407 [1985]).

Hence, it was established that when no answer in writing nor any opposition is made to an application for registration of property in Court, all the allegations contained in the application shall be held as confessed by reason of the absence of denial on the part of the opponent. A person who has not challenged an application for registration of land even if the appeal afterwards interposed is based on the right of dominion over the same land, cannot allege damage or error against the judgment ordering the registration inasmuch as he did not allege or pretend to have any right to such land (Cabanas v. Director of Lands, 10 Phil. 393).

In the same manner, it has been held that a claimant having failed to present his answer or objection to the regis-tration of a parcel of land under the Torrens System or to question the validity of such registration within a period of one year after the certificate of title had been issued, had forever lost his right in said land even granting

that he had any right therein (*De los Reyes v. Paterno*, 34 Phil. 420).

However, an action for reconveyance is a legal and equitable remedy granted to the rightful owner of land which has been wrongfully or erroneously registered in the name of another for the purpose of compelling the latter to transfer or reconvey the land to him (*Bilog*, "Remedies Available to Aggrieved Parties As a Consequence of Registration Under the Torrens System"; *Property Registration* 1979; pp. 122-123). The prevailing rule in this jurisdiction does not bar a land-owner whose property was wrongfully or erroneously registered under the Torrens System from bringing an action, after one year from the issuance of the decree, for the reconveyance of the property in question. Such an action does not aim or purport to re-open the registration proceeding and set aside the decree of registration, but only to show that the person who secured the registration of the questioned property is not the real owner thereof (*Rodriguez v. Toreno*, 79 SCRA 357 [1977]). An ordinary civil action for reconveyance does not seek to set aside the decree but respecting the decree as incontrovertible and no longer open to review, seeks to transfer or reconvey the land from the registered owner to the rightful owner (*Director of Lands, et al. v. Register of Deeds, et al.* 92 Phil. 827 [1953]).

Under the circumstances in the case at bar, it is apparent that reconveyance is not the proper remedy. As earlier stated, there was no proof of irregularity in the issuance of title, nor in the proceedings incident thereto, nor was it established that fraud had indeed intervened in the issuance of said title, and the period of one year within which intrinsic fraud could be claimed had long expired. Under similar conditions, the Court ruled that the land should be adjudicated to the registered owner (*Paterno, et al. v. Salud*, 118 Phil. 933-934 [1963]). Even more implicitly, this Court held in *Rural Bank of Paranaque, Inc. v. Remolado* (135 SCRA 412 [1985]) that: "Justice is done according to law. As a rule, equity follows the law. There may be a moral obligation, often regarded as an equitable consideration (meaning compassion), but if there is no enforceable legal duty, the action must fail although the disadvantaged party deserves consideration or sympathy."

Moreover, petitioner's action for reconveyance had already prescribed. An action for reconveyance of real property on the ground of fraud must be filed within four (4) years from the discovery of the fraud. Such discovery is deemed to have taken place from the issuance of an original certificate of title (*Balbin v. Medalla*, 108 SCRA 666; and *Alarcon v. Bidin*, 120 SCRA 390).

The first issue being without merit and the second issue being a mere incident thereto, there appears to be no necessity to discuss the latter.

PREMISES CONSIDERED, the instant petition is hereby DENIED and the assailed Order of the Regional Trial Court of Valenzuela, Bulacan is hereby AFFIRMED.

### **SO ORDERED.**

Yap, (Chairman), Melencio-Herrera, Padilla, and Sarmiento, JJ., concur.

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[1] Published in the Official Gazette, January 8, 1979, 75 O.G. No. 2, 185 (*Tanada v. Tuvera*).

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