

ANTONIO L. TOTTOC, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT AND SATURNINO DOCTOR, RESPONDENTS.

G.R. No. 69969. December 20, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

This is an appeal by certiorari from the decision of the former Intermediate Appellate Court in AC-G.R. CV No. 00034,[1] reversing in toto the decision in Civil Case No. 2212 of the then Court of First Instance, Branch II, Nueva Vizcaya, the disposition of respondent court being as follows:

"WHEREFORE, finding the decision appealed from not consistent with the facts and the law applicable, the same is hereby set aside and another entered ?

1. Declaring Patent No. 124175 and Original Certificate of Title No. 3428 issued by the Register of Deeds of Nueva Vizcaya in the name of plaintiff Saturnino Doctor valid and existing;
2. Ordering the defendant-appellee to restore possession of the subject property unto the plaintiff-appellant and to respect such possessions;
3. Ordering defendant-appellee to pay the plaintiff the sum of P1,000.00 annually from the filing of the complaint until possession is fully restored as actual damages.
4. Ordering defendant-appellee to pay the sums of P2,000.00 as exemplary damages and P1,000.00 as and for attorney's fees.

Costs against the defendant-appellee.

"SO ORDERED.

"REVERSED."[2]

The antecedent facts which led to the filing of the original action below are undisputed and are hereinunder set forth as synthesized by the court a quo and adopted by respondent court.[3]

On April 9, 1949, petitioner applied for the lease of a pasture land consisting of 78.6 hectares, situated at Lacangan, Barrio Madiangat, Solano, Nueva Vizcaya, before the Bureau of Forestry, Department of Agriculture and Natural Resources, thru the office of the Provincial Forester at Bayombong, Nueva Vizcaya. By virtue of said application, petitioner was granted Ordinary Pasture Permit Ps-993 after a survey of the area involved. Thereafter, petitioner occupied said 78.6 hectares of pasture land and fenced the same, without anybody disturbing his possession thereof. Private respondent, being a neighbor of petitioner, was aware of such occupation of the land by petitioner since 1949.

On September 21, 1951, petitioner was again granted Ordinary Pasture Permit Ps-993 Extension by Director of Forestry Florencio Tamesis, authorizing the former to occupy the same area, the first permit having expired on

June 30, 1952. Finally, on August 6, 1958, petitioner entered into a lease agreement with the Secretary of Agriculture and Natural Resources, Juan de G. Rodriguez, under Pasture Lease Agreement No. 1228 covering the identical area for a period of 11 years.

Meanwhile, private respondent, upon verification from the Bureau of Forestry supposedly before 1963 that the pasture land in question was reportedly untouched and outside the pasture land of petitioner, filed his application for a homestead with the Bureau of Lands and entered the northern portion of the land, clearing and cultivating an area of less than 4 hectares in 1963.

On January 7, 1965, private respondent secured a certification from Assistant Chief Maximo A. Abuan of the Bureau of Forestry office in Bayombong, Nueva Vizcaya, certifying to the fact that the land in question is alienable and disposable. Private respondent further claims to have secured another certification from an employee of the Bureau of Lands who based the same on a certification on file in the Bureau of Lands office as furnished by the Bureau of Forestry.

On February 25, 1966, petitioner caused the relocation survey of his pasture land in the presence of Bureau of Lands Inspector Marcelino Hernaez and private respondent. It was found in said survey that a portion of the land subject of private respondent's application was within the pasture land of petitioner and within the so-called Forest Zone. In view thereof, petitioner requested Inspector Hernaez to send a telegram to the Director of Lands in Manila reading: "Lands Director Jorge, Manila. Please hold action homestead application Saturnino Doctor and Luis Carub, Solano, Nueva Vizcaya. Re-investigation in progress. Land claimed by Mayor Tottoc. Investigator Hernaez."

Aside from this survey, petitioner requested in a letter to the office of the Bureau of Forestry at Nueva Vizcaya the relocation survey of his pasture land pursuant to which the district forester sent Forester Nicasio Pascua to relocate the same on April 26, 1966. A cartographer of the Bureau of Lands, Eladio Miranda, herein petitioner and private respondent, as well as several laborers, were present during said relocation survey. Thereafter, Forester Pascua submitted his memorandum, dated May 3, 1966, to the bureau director indicating the different positions of the lots that had encroached on the pasture land of petitioner. Consequent to such findings, Forester Pascua recommended that all certifications and/or patents issued in favor of the lot owners or claimants of said encroaching lots be nullified for the good of the public service.

On March 8, 1967, petitioner was granted another ordinary pasture permit by Acting Director of Forestry Antonio Quejado to occupy and use for pasture another 42 hectares of public forest land situated in Inatub, Lacangan, Carolet and Buliwao, Quezon, Nueva Vizcaya which made a total of 120.6 hectares of land granted to petitioner for pasture purposes. Said additional area was likewise fenced by petitioner.

On June 17, 1968, Original Certificate of Title No. P--3428 under Homestead Patent No. 124175 was issued to private respondent over a parcel of land situated in Inatub, Quezon, Nueva Vizcaya, containing an area of approximately 20 hectares. Thereafter, private respondent and one Luis Carub requested the Bureau of Forestry to relocate the pasture land of petitioner to determine any encroachment on his land.

Forester Buenaventura Caguioa, on the instructions of the Director of Forestry dated November 25, 1971 thru District Forester Geronimo Falloran, conducted the relocation survey. On March 1, 1972, Forester Caguioa submitted his memorandum to the district forester indicating that the area in the title granted to private respondent traversed a portion of the pasture land of petitioner and that only 3.5 hectares, more or less, was verified to be within the alienable and disposable area. In view thereof, a recommendation was made that the application filed by petitioner for the renewal of the pasture lease agreement, which expired on June 30, 1969, be approved and that only 3.5 hectares of land be retained by private respondent.

On March 23, 1972, said memorandum report of District Forester Falloran, was forwarded to the Director of Forestry, Manila, through the Regional Director of the Bureau of Forestry, Region No. 2, Tuguegarao, Cagayan, who in turn indorsed the same on June 23, 1972. On November 29, 1972, Mr. Aniceto Bueno, Officer-in-Charge of the Parks, Range and Wildlife Division of the Bureau of Forest Development, furnished petitioner a copy of the renewed Pasture Lease Agreement No. 1228, dated November 9, 1972, entered into by the petitioner with the Secretary of Agriculture and Natural Resources, Jose D. Drilon, Jr. The lease was for a period of 25 years, to expire on June 30, 1994, and covered the 120 hectares of pasture land in Lacangan, Inatub, Carolet, Madiangat and Buliwao, Quezon, Nueva Vizcaya.

With these documents in favor of petitioner, private respondent was prevented from occupying and cultivating the disputed portion of 16.5459 hectares. As a consequence, private respondent, filed an action for recovery of possession with damages. After trial, the court a quo rendered judgment on May 28, 1981 in favor of therein defendant and against the plaintiff, and ordering the plaintiff to pay the defendant the amount of P1,400.00 as actual and litigation expenses, P3,000.00 for attorney's fees, and to pay the costs of the suit.[4]

On a "Partial Motion for Reconsideration" filed by petitioner, and a "Motion for Reconsideration and/or New Trial" of private respondent, as defendant and plaintiff, respectively, said decision was amended by a resolution issued on January 7, 1982, the decretal portion whereof reads:

"WHEREFORE, in view of all the foregoing, this Court hereby:

1. Denies the plaintiff's Motion for Reconsideration and/or New Trial, dated June 29, 1981, for lack of merit; and
2. Grants the defendant's Partial Motion for Reconsideration, dated May 29, 1981. The dispositive portion of the decision is, therefore, amended to read as follows:

‘WHEREFORE, judgment is hereby rendered in favor of the defendant and against the plaintiff, this Court:

1. Declaring Patent No. 124175 and Original Certificate of Title No. 3428 issued by the Register of Deeds of Nueva Vizcaya, in favor of the plaintiff, covering the land in dispute which is within the Forest Zone as null and void ab initio for lack of jurisdiction;
2. Ordering the plaintiff not to molest the defendant in his peaceful and public occupation in the land in dispute the same being still a part of the Forest Zone and a part of his pasture land; and
3. Condemning the plaintiffs to pay the defendant the amounts of P1,400.00 as actual and litigation expenses and P3,000.00 as attorney's fees, and to pay the costs of the suit.”[5]

As stated at the outset, said decision and resolution were appealed to respondent court which reversed and set aside the same. A motion for reconsideration, dated October 15, 1984, was filed by petitioner with respondent court with a supplemental memorandum in support thereof, but the same was denied in respondent court's resolution of January 28, 1985.

The present recourse is before us as a consequence. Succinctly reduced to salient terms, petitioner's submissions are that respondent court committed errors of law (1) in concluding that the land in dispute is alienable by relying on the certification issued by District Forester Abuan and in disregarding the contrary testimonies and certifications of Foresters Pascua and Caguioa; (2) in concluding that petitioner, a pasture lease permittee, has no legal personality to question the patent and title of private respondent Doctor over the disputed area; and (3) when it ruled that private respondent is entitled to the award of damages.[6]

On the first assignment of error, petitioner maintains that respondent court should not have relied on the

certification issued by District Forester Abuan, it being hearsay evidence by reason of Abuan's failure to testify thereon. Moreover, petitioner assails respondent court's disregard of the testimonies of Foresters Pascua and Caguioa who certified that the land was within the Forest Zone after having conducted an actual verification survey of the area.

We agree with petitioner, but not only for the reason that the evidence-in-chief of private respondent may, in point of strict law, be constitutive of hearsay. The question as to whether a particular portion of land is forestal or any other class of land is a question of fact to be settled by the proof in each particular case.[7] Thus, the mere classification or certification made by the Bureau of Forestry that a part of the public domain is timberland is not controlling in all cases.[8]

We have reviewed the testimonies of the witnesses for private respondent and nowhere do we find any cogent basis for the certification made by District Forester Abuan. The testimony of Sabino Delizo, District Land Officer of Bayombong, Nueva Vizcaya, which could possibly have energized private respondent's case, is itself plagued with not a few vacuities. Aside from his assertion and admission that the sole basis for his certification was merely an office copy of the certification also of Forester Abuan himself, Delizo further admitted that he had not made any actual verification of the subject area.[9] Neither could he even conclusively establish that the lot mentioned in his certification was identical to the lot in question.[10]

In diametrical contrast, the pasture lease permit granted to petitioner was issued after a series of actual investigations, ocular and technical, of the subject area by Foresters Pascua and Caguioa conducted in the presence of all the interested parties, including private respondent. While private respondent denies having received any copy of the memoranda executed by the foresters despite his admitted presence during the surveys and investigations,[11] the same does not relieve him of the consequences of imputed knowledge of the findings therein considering the facility in obtaining copies of the same. Besides, it is an affront to credulity that a person like private respondent who, despite his zeal and desire to possess and own the land in controversy, would prefer to remain in deliberate ignorance of the results of said surveys through his unexplained inaction and inexplicable indifference.

Notably, even before the relocation survey made by Forester Caguioa, Bureau of Lands Inspector Hernaez conducted his own survey and found that the land subject of private respondent's application for a homestead patent was within the pasture land of petitioner and within the Forest Zone. Precisely, an advice to hold said application was sent to the Director of Lands in Manila upon petitioner's request.[12]

It will also be recalled that consequent to Forester Pascua's survey and findings, a further recommendation was made to the Director of Forestry for the nullification of all certifications and/or patents issued in favor of the owners and/or claimants whose lots had intruded upon petitioner's land area, including private respondent himself, such invalidation being necessitated for the good of the public service.[13] All these on-the-spot surveys, the findings wherefrom are unassailed and uncontradicted, more than preponderate over and definitely override the enervated evidentiary value of the certification of Abuan and Delizo.

While we admit an exception to the rule that the Bureau of Forestry has the power to set aside for forestry or mineral purposes a particular land in question,[14] and that is when there was prior intervention of private interests, said exception cannot find application in private respondent's favor since petitioner's interests commenced and vested very much earlier than any claim thereon by the former.

Petitioner had open, uninterrupted and peaceful possession and occupation of the disputed land since 1949, being a grantee of pasture lease permits which expired in 1969. Private respondent, on the other hand, started his controversial cultivation of the lot only in 1963 and secured the questioned certification in 1965.[15] The long

period of time from 1949 to 1969 during which the land was under pasture lease permits granted to petitioner all the more lends credence to the fact that said land was within the Forest Zone as only lands of the category of public forest land can be the subject of such permits.[16]

The Court neither loses sight of the presumption, in lieu of contrary proof, that the land is agricultural in character, rather than forestal, as it is for the good of the country to have the large public domain come under private ownership.[17] It is to be emphasized, however, that such presumption obtains only when the conflict of interest is between a private citizen and the Government, not when it involves opposing rights of private citizens against each other.

On the second assigned error, private respondent makes the riposte that petitioner cannot question the validity of the title registered in the former's name. If there is any party who can question his title on the ground that it includes therein a forest land, private respondent posits that it should be the Bureau of Forest Development.[18] This counter-argument is an effete pretension.

In the case of *Gatchalian vs. Pavilin, et al.*,[19] the Court had the occasion to render the following ruling:

"As to the alleged lack of personality of defendants-appellants to assail appellee's land grant and certificate of title for the reason that said appellants are mere prospective homestead applicants, it is sufficient to remark that by reason of their prior occupancy and cultivation, these parties have already acquired possessory rights that they may vindicate and defend against intruders without better title. And if it be true that the Bureau of Lands had no jurisdiction to issue a patent in favor of appellee Francisco Gatchalian because the land involved was still inalienable forest land when granted, then it may be plausibly contended that her patent title would be ab initio void subject to attack at any time by any party adversely affected (Civil Code, Arts. 1409, 1421; *Vano vs. Insular Gov't.*, 41 Phil. 161; *Adorable vs. Dir. of Forestry*, L-13663, 25 March 1960). x x x."

Moreover, in *Vallarta, et al. vs. Hon. Intermediate Appellate Court, et al.*,[20] where the original proceeding was also between private citizens, we held:

"It is elementary in the law governing natural resources that forest land cannot be owned by private persons. It is not registrable. The adverse possession which can be the basis of a grant of title in confirmation of imperfect title cases cannot commence until after forest land has been declared alienable and disposable. Possession of forest land, no matter how long cannot convert it into private property. x x x If somehow forest land happens to have been included in a Torrens Title, the title is null and void insofar as the forest land is concerned. x x x."

Ironically, it was private respondent himself who initiated the original action below for recovery of possession with damages. As a consequence, petitioner was virtually compelled to litigate in order to protect his own right to possession which in part hinged on the nature of the land in dispute. Were we to uphold private respondent's theory that petitioner is devoid of personality to question the invalidity of the former's patent and title, that would be a procedural inequity since it would thereby prevent petitioner from fully protecting his interests or, at the very least, divest him of valid defenses.

On the third supposed error, suffice it to state that the records are bereft of any substantial evidence showing that private respondent was deprived by petitioner of the possession of the land through force, intimidation, threat, strategy or stealth. On the contrary, the evidence convinces us that petitioner was well within his rights in taking possession of the lot in question, a matter which we need not belabor with any further disquisition.

ACCORDINGLY, the assailed decision and resolution of respondent court are hereby REVERSED and SET ASIDE. The decision of the trial court, dated January 7, 1982, on the partial motion for reconsideration by herein petitioner as defendant therein, except as to the award of attorney's fees and the payment of the costs of suit both of which have no legal bases and are consequently ordered deleted, is hereby REINSTATED.

SO ORDERED.

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

- [1] Penned by Justice Porfirio V. Sison with Justices Abdulwahid A. Bidin and Marcelino R. Veloso concurring.
- [2] Rollo, 107-108.
- [3] Ibid., 98-106.
- [4] Ibid., 43; Civil Case No. 2212, Court of First Instance of Nueva Vizcaya, Branch II, Judge Cecilio F. Balagot, presiding.
- [5] Ibid., 71.
- [6] Petition, 12-13; Rollo, 13-14.
- [7] Republic vs. Court of Appeals, G.R. No. L-46048, November 29, 1988, citing *Ankron vs. Government of the Philippine Islands*, 40 Phil. 10, 16 (1919).
- [8] Peña, *Philippine Law on Natural Resources*, 4th Ed., 117.
- [9] TSN, July 25, 1975, 25.
- [10] Id., 34-36.
- [11] Id., January 29, 1976, 29, 33.
- [12] Exh. 19, Folder of Exhibits, 39.
- [13] Exh. 7, *ibid.*, 8.
- [14] *Ankron vs. Government of the Philippine Islands*, *supra*.
- [15] Rollo, 36.
- [16] Peña, *op. cit.*, 120, citing C.A. No. 452, Pasture Land Act.
- [17] *Ramos vs. Director of Lands*, 39 Phil. 175 (1918).
- [18] Rollo, 131-132.

[19] 6 SCRA 508 (1962).

[20] 151 SCRA 679 (1987).

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