

LEONIDA CUREG, ROMEO, PEPITO, HERNANDO, MANUEL, ANTONIO AND ELPIDIO (ALL SURNAMED CARNIYAN), PETITIONERS, VS. INTERMEDIATE APPELLATE COURT, (4TH CIVIL CASES DIVISION), DOMINGO A...

G.R. No. 73465. September 07, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition under Rule 45 of the Rules of Court, seeks the reversal of the decision of the Intermediate Appellate Court (now Court of Appeals) dated October 15, 1985 in AC-G.R. CV No. 03852 entitled "Domingo Apostol, et al., Plaintiffs-Appellees, v. Leonida Cureg, et al., Defendants-Appellants", which affirmed the decision of the Regional Trial Court of Isabela, Branch XXII declaring private respondent Domingo Apostol the absolute owner of a parcel of land, situated in Barangay Casibarag-Cajel, Cabagan, Isabela, more particularly described as follows:

"x x x, containing an area of 5.5000 hectares, and bounded, on the north, by Cagayan River; on the east, by Domingo Guingab; on the south, by Antonio Carnivan; and on the west, by Sabina Mola, with an assessed value of P3,520." (par. 9 of complaint, p. 4, Record; emphasis ours)

On November 5, 1982, private respondents Domingo Apostol, Soledad Gerardo, Rosa Gerardo, Nieves Gerardo, Flordeliza Gerardo and Lilia Maquinad, filed a complaint for quieting of title and damages with preliminary injunction against herein petitioners Leonida, Romeo, Pepito, Hernando, Manuel, Antonio and Elpidio, all surnamed Carniyan with the Regional Trial Court of Isabela and docketed as Civil Case No. Br. 111-373. A temporary restraining order was issued by the trial court on November 12, 1982.

The complaint alleged that private respondents, except Domingo Apostol, are the legal and/or the forced heirs of the late Domingo Gerardo, who died in February 1944, the latter being the only issue of the late Francisco Gerardo, who died before the outbreak of the second world war that since time immemorial and/or before July 26, 1894, the late Francisco Gerardo, together with his predecessors-in-interest have been in actual, open, peaceful and continuous possession, under a bona fide claim of ownership and adverse to all other claimants, of a parcel of land (referred to as their "motherland"), situated in Casibarag-Cajel, Cabagan, Isabela, more particularly described as follows:

"x x x containing an area of 2.5000 hectares, more or less, and bounded on the North, by Cagayan River; on the East, by Domingo Guingab (formerly Rosa Cureg); on the south by Antonio Carniyan; and on the West by Sabina Mola, x x x." (p. 2, Record)

that said land was declared for taxation purposes under Tax Declaration No. 08-3023 in the name of Francisco Gerardo, which cancels Tax Declaration No. C-9669, also in the name of Francisco Gerardo; that upon the death of Francisco Gerardo, the ownership and possession of the "motherland" was succeeded by his only issue, Domingo Gerardo who, together with three (3) legal or forced heirs, namely Soledad Gerardo, one of private

respondents herein, Primo Gerardo and Salud Gerardo, both deceased, have also been in actual, open, peaceful and continuous possession of the same; that Primo Gerardo is survived by herein respondents, Rosa, Nieves and Flordeliza, all surnamed Gerardo and Salud Gerardo is survived by respondent Lilia Maquinad; that in 1979, respondents Soledad Gerardo, Rosa Gerardo, Nieves Gerardo, Flordeliza Gerardo and Lilia Maquinad verbally sold the "motherland" to co-respondent Domingo Apostol; that on September 10, 1982, the verbal sale and conveyance was reduced into writing by the vendors who executed an "Extra-Judicial Partition with Voluntary Reconveyance (Exhibit "Q", p. 206, Rollo); that about the time of the execution of the Extra-Judicial Partition, their "motherland" already showed/manifested signs of accretion of about three (3) hectares on the north caused by the northward movement of the Cagayan River; that Domingo Apostol declared the motherland and its accretion for tax purposes under Tax Declaration No. 08-13281 on September 15, 1982.

The complaint also stated that sometime about the last week of September and/or the first week of October 1982, when private respondents were about to cultivate their "motherland" together with its accretion, they were prevented and threatened by defendants (petitioners herein) from continuing to do so. Named defendants in said case are herein petitioners Leonida Cureg and Romeo, Pepito, Hernando, Manuel, Antonio and Elpidio, all surnamed Carniyan, surviving spouse and children, respectively, of Antonio Carniyan. Further, the complaint stated that Antonio Carniyan was the owner of a piece of land situated in Casibarag-Cajel, Cabagan, Isabela and more particularly described as follows:

"x x x containing an area of 2,790 sq. m., more or less bounded on the north by Domingo Gerardo; on the East, by Domingo Guingab; on the south, by Pelagio Camayo; and on the west by Marcos Cureg, declared for taxation purposes under Tax Declaration No. 13131, with an assessed value of P70.00." (p. 5, Record)

that deceased Antonio Carniyan revised on November 28, 1968 his Tax Declaration No. 13131 dated July 24, 1961 to conform with the correct area and boundaries of his Original Certificate of Title No. P-19093 issued on November 25, 1968; that the area under the new Tax Declaration No. 15663 was increased from 2,790 square meters to 4,584 square meters and the boundary on the north became Cagayan River, purposely eliminating completely the original boundary on the north which is Domingo Gerardo.

Petitioners' answer alleged that the "motherland" claimed by private respondents is non-existent; that Antonio Carniyan, petitioners' predecessor-in-interest, was the owner of a piece of land bounded on the north by Cagayan River and not by the land of Francisco Gerardo as claimed by private respondents; that the "subject land" is an accretion to their registered land and that petitioners have been in possession and cultivation of the "accretion" for many years now.

The application for the issuance of a writ of preliminary injunction was denied on July 28, 1983 (pp. 244-250, Rollo) on the ground that the defendants were in actual possession of the land in litigation prior to September 1982.

In a decision rendered on July 6, 1984, the trial court held that respondent Domingo Apostol, thru his predecessors-in-interest had already acquired an imperfect title to the subject land and accordingly, rendered judgment: 1. declaring Domingo Apostol its absolute owner; 2. ordering the issuance of a writ of preliminary injunction against herein petitioners; 3. ordering that the writ be made permanent; and 4. ordering herein petitioners to pay private respondents a reasonable attorney's fee of P5,000.00, litigation expenses of P1,500.00 and costs (pp. 143-145, Rollo).

On July 17, 1984, petitioners appealed to the then Intermediate Appellate Court which affirmed the decision of the trial court on October 15, 1985. Petitioners' Motion for Reconsideration was denied on January 8, 1986. Hence, this petition for review on the following assigned errors:

"A. It erred in ruling the subject land or "accretion" (which is bounded on the north by the Cagayan River) belongs to the private respondents and not to the petitioners when the petitioners' Original Certificate of Title No. 19093 states clearly that the petitioners' land is bounded on its north by the Cagayan River.

"B. It erred in construing the tax declarations against the interest of the herein petitioners who are only the heirs of the late Antonio Carniyan since the late Francisco (supposed predecessor of the respondents) could not have executed the recently acquired tax declarations (Exhibits "A" to "A-2") as he died long before World War II and since the late Antonio Carniyan could no longer stand up to explain his side.

"C. Contrary to the evidence and the finding of the Regional Trial Court, it wrongly ruled that petitioners have never been in possession of the land (p. 7 of Annex "A", *ibid.*).

"D. It erred in awarding the accretion of 3.5 hectares to the private respondents who incredibly claimed that the accretion occurred only in 1982 and is a "gift from the Lord." (pp. 24-25, Rollo)

This petition is impressed with merit.

The object of the controversy in this case is the alleged "motherland" of private respondents together with the accretion of about 3.5 hectares, the totality of which is referred to in this decision as the "subject land."

In this case, petitioners claimed to be riparian owners who are entitled to the "subject land" which is an accretion to the registered land while private respondents claimed to be entitled to the 3.5 hectares accretion attached to their "motherland."

It should be noted that the herein private respondents' claim of ownership of their alleged two and a half (2 & 1/2) hectare "motherland" is anchored mainly on four (4) tax declarations (Exhibits "A", "A-1", "A-2" and "B", pp. 191, 192, 193, 194, Rollo). This Court has repeatedly held that the declaration of ownership for purposes of assessment on the payment of the tax is not sufficient evidence to prove ownership. (*Evangelista v. Tabayuyong*, 7 Phil. 607; *Elumbaring v. Elumbaring*, 12 Phil. 384; cited in *Camo v. Riosa Bayco*; 29 Phil. 437, 444). For their part, petitioners relied on the indefeasibility and incontrovertibility of their Original Certificate of Title No. P-19093, dated November 25, 1968 (Exhibit "3", p. 189, Rollo) issued in the name of Antonio Carniyan (petitioners' predecessor-in-interest) pursuant to Free Patent No. 399431 dated May 21, 1968, clearly showing that the boundary of petitioners' land on the north is Cagayan River and not the "motherland" claimed by respondents. The said registered land was bought by the late Antonio Carniyan from his father-in-law, Marcos Cureg, on October 5, 1956, as evidenced by an Absolute Deed of Sale (Exhibit "8", p. 195, Rollo) which states that the land is bounded on the north by Cagayan River.

In the case of *Ferrer-Lopez v. Court of Appeals*, G.R. No. 50420, May 29, 1987, 150 SCRA 393, 401-402, We ruled that as against an array of proofs consisting of tax declarations and/or tax receipts which are not conclusive evidence of ownership nor proof of the area covered therein, an original certificate of title indicates true and legal ownership by the registered owners over the disputed premises. Petitioners' OCT No. P-19093 should be accorded greater weight as against the tax declarations (Exhibit "A", dated 1979; Exhibit "A-1" undated and Exhibit "A-2" dated 1967, pp. 191, 192, 193, Rollo) offered by private respondents in support of their claim, which declarations are all in the name of private respondents' predecessor-in-interest, Francisco Gerardo, and appear to have been subscribed by him after the last war, when it was established during the trial that Francisco Gerardo died long before the outbreak of the last war.

Anent Tax Declaration No. 13131, in the name of Antonio Carniyan (Exhibit "C", p. 203, Rollo), which the appellate court considered as an admission by him that his land is bounded on the north by the land of Domingo Gerardo and that he (Carniyan) is now estopped from claiming otherwise, We hold that said tax declaration, being of an earlier date cannot defeat an original certificate of title which is of a later date. Since petitioner's original

certificate of title clearly stated that subject land is bounded on the north by the Cagayan River, private respondents' claim over their "motherland," allegedly existing between petitioners' land and the Cagayan River, is deemed barred and nullified with the issuance of the original certificate of title.

It is an elemental rule that a decree of registration bars all claims and rights which arose or may have existed prior to the decree of registration (*Ferrer-Lopez v. CA*, supra., p. 404). By the issuance of the decree, the land is bound and title thereto quieted, subject only to exceptions stated in Section 39, Act 496 (now Sec. 44 of PD No. 1529). Moreover, the tax declarations of the late Antonio Carniyan subsequent to the issuance of OCT P-19093 (Exhibit "D", p. 204, Rollo) already states that its northern boundary is Cagayan River. In effect, he has repudiated any previous acknowledgment by him, granting that he caused the accomplishment of the tax declarations in his name before the issuance of OCT No. P-19093, of the existence of Francisco Gerardo's land.

Finally, the trial court concluded that petitioners have never been in possession of the "subject land" but the evidence on record proves otherwise. First, the trial court on page 11 of its Decision (p. 121, Rollo), stated the reason for denying private respondents' petition for the issuance of a preliminary injunction, that is, "x x x the defendants (petitioners herein) were in actual possession of the land in litigation prior to September, 1982" (p. 121, Rollo). Second, witness for private respondents, Esteban Guingab, boundary owner on the east of the land in question and whose own land is bounded on the north of Cagayan River, on cross-examination, revealed that when his property was only more than one (1) hectare in 1958, (now more than 4 hectares) his boundary on the west is the land of Antonio Carniyan (T.S.N., 5 May 1983, pp. 19-20). Third, witness Rogelio C. Albano, a geodetic engineer, on direct examination stated that in 1974, the late Antonio Carniyan requested him to survey the land covered by his title and the accretion attached to it, but he did not pursue the same because he learned from the Office of the Director of the Bureau of Lands that the same accretion is the subject of an application for homestead patent of one Democrata Aguila, (T.S.N., May 18, 1984, pp. 12-13) contrary to the statement of the trial court and the appellate court that Albano "made three attempts to survey the land but he did not continue to survey because persons other than defendants were in possession of the land," which statement appears only to be a conclusion (p. 7, Rollo). Fourth, We note Exhibit "20" (p. 273, Rollo) for petitioners which is an order by the Director of Lands dated August 14, 1980 in connection with the Homestead Application of Democrata Aguila of an accretion situated in Catabayungan, Cabagan, Isabela. Aguila's application was disapproved because in an investigation conducted by the Bureau of Lands of the area applied for which is an accretion, the same was found to be occupied and cultivated by, among others, Antonio Carniyan, who claimed it as an accretion to his land. It is worthy to note that none of the private respondents nor their predecessors-in-interest appeared as one of those found occupying and cultivating said accretion.

On the other hand, the allegation of private respondents that they were in possession of the "motherland" through their predecessors-in-interest had not been proved by substantial evidence. The assailed decision of the respondent court, which affirmed the decision of the trial court, stated that since the "motherland" exists, it is also presumed that private respondents were in possession of the "subject land" through their predecessors-in-interest since prior to July 26, 1894. The trial court relied on the testimony of Soledad Gerardo, one of the private respondents in this case, an interested and biased witness, regarding their possession of the "motherland." From her testimony on pedigree, the trial court presumed that the source of the property, the late Francisco Gerardo, was in possession of the same since prior to July 26, 1894 (pp. 137-140, Rollo).

The foregoing considerations indubitably show that the alleged "motherland" claimed by private respondents is non-existent. The "subject land" is an alluvial deposit left by the northward movement of the Cagayan River and pursuant to Article 457 of the New Civil Code:

"To the owners of land adjoining the banks of river belong the accretion which they gradually receive from the

effects of the current of the waters."

However, it should be noted that the area covered by OCT No. P-19093 is only four thousand five hundred eighty four (4,584) square meters. The accretion attached to said land is approximately five and a half (5.5) hectares. The increase in the area of petitioners' land, being an accretion left by the change of course or the northward movement of the Cagayan River does not automatically become registered land just because the lot which receives such accretion is covered by a Torrens title. (See *Grande v. Court of Appeals*, L-17652, June 30, 1962). As such, it must also be placed under the operation of the Torrens System.

ACCORDINGLY, the petition is hereby GRANTED. The decision appealed from is REVERSED and SET ASIDE and judgment is hereby rendered DISMISSING Civil Case No. Br. III-373 for quieting of title and damages.

Costs against private respondents.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino. JJ., concur.

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