

SOUTH CITY HOMES, INC., PETITIONER, VS. REPUBLIC OF THE PHILIPPINES AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 76564. May 25, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

The subject of this dispute is a strip of land between two lots owned by the petitioner. It has an area of 613 square meters and is situated in Calabuso, Biñan, Laguna. It was discovered only in 1983 after a survey conducted by the Bureau of Lands and is now identified as Lot No. 5005 of the Biñan Estate.[1] Registration thereof in the name of the petitioner was decreed in 1984 by the trial court pursuant to the Property Registration Law.[2] On appeal, the order was reversed by a special division of the respondent court, with two members dissenting.[3] The petitioner is now before us, claiming that the reversal was erroneous.

The two lots bordering the subject property are Lot No. 2381, containing an area of 36.672 square meters, and Lot No. 2386-A, containing an area of 32,011 square meters. Both are now registered in the name of the petitioner. The history of these lots is described by the trial court as follows:

The record shows that Lot 2381 was purchased on installment basis by Basilia Dimaranan, and Lot 2386 was acquired under similar condition by Fernando Guico, both from the Friar Lands Division of the Bureau of Lands (Exhs "S" and "R") in the year 1910. Eight (8) years thereafter, installment-payment for Lot 2386 was completed in favor of Basilia Dimaranan. On the other hand, Lot 2381 was on September 12, 1911 assigned to Bartolome Peña who continued and completed the installment payments culminating into the issuance in his name of Patent No. 19138 on September 26, 1919. From Bartolome Peña, Lot 2381 was acquired by Fidel M. Cabrera, Sr. and the title was transferred to his name (Exh. "F") while Lot 2386 was acquired by the Garcias (Exh. "J-2"). On August 27, 1981, Lot 2386-A was sold by the Garcias to the applicant South City Homes, Inc. (Exh. "J"). Lot 2381 was on February 25, 1977 sold by Fidel M. Cabrera, Sr. to Koo Jun Eng (Exh. "G") who in turn assigned the property to the applicant in February of 1981 (Exh. "H").[4]

It is the position of the petitioner that Lot No. 5005 should be registered in its name for either of two reasons. The first is that the disputed strip of land really formed, part of Lots 2381 and 2386-A but was omitted therefrom only because of the inaccuracies of the old system of cadastral surveys. The second is that it had acquired the property by prescription through uninterrupted possession thereof in concept of owner, by itself and its predecessors-in-interest, for more than forty years.

For its part, the Republic of the Philippines argues that the elongated piece of land between the two lots now owned by the petitioner used to be a canal which could not have been appropriated by the purchasers of the adjacent lots or their successors-in-interest. Neither could it be deemed included in the lots now owned by the petitioner because their respective technical descriptions indicate otherwise. Prescription is also not applicable because the petitioner has not established the requisite possession of the lot, as to manner and length, to justify judicial confirmation of title in its name.

The parties also differ on the nature of the disputed lot. The petitioner insists it is patrimonial property of the

State, being part of the so-called Friar Lands, while the Republic maintains it is part of the public domain and cannot therefore be acquired by a private corporation. But this disagreement is irrelevant, as will appear later.

The Court has considered the issues and the arguments of the parties and finds that the petition has no merit.

To argue that Lot No. 5005 is really a part of the other two lots owned by the petitioner is to oppose the obvious. What is obvious is the technical descriptions of the two lots whose areas do not include the strip of land between them. The petitioner points to the original survey of the lands in 1906 which states that the two lots adjoin each other, without mention of what is now Lot No. 5005. But it, forgets that it has itself suggested that the old surveys were inaccurate, which could explain the omission.

If it is true that there was no canal between the two lots at the time of their survey, then the disputed strip of land should have been included as part of either of the two adjoining lots. It was not. The petitioner itself insists that the canal, if there ever was one, had disappeared after it had been filled with silt and dirt. The result was the segregation of a third and separate lot, now known as Lot No. 5005. Notably, the area of that dried-up canal is not negligible as to come under what the petitioner calls the allowable margin of error in the original survey.

The Republic submits that the petitioner and its predecessors-in-interest could not have appropriated the strip of land because it used to be a canal over which they could not have acquired any exclusive right. The applicable law is Act No. 1120, otherwise known as the Friar Lands Act, providing in its Section 19 as follows:

No purchaser or lessee under this Act shall acquire any exclusive rights to any canal, ditch, reservoir, or other irrigation works, or to any water supply upon which such irrigation works are or may be dependent, but all of such irrigation works and water supplies shall remain under the exclusive control of the Government of the Philippine Islands and be administered under the direction of the Chief of the Bureau of Public Lands for the common benefit of those interest dependent upon them. And the Government reserves as a part of the contract of sale in each instance the right to levy an equitable contribution or tax for the maintenance of such irrigation works, the assessment of which shall be based upon the amount of benefits received, and each purchaser under this Act, by accepting the certificate of sale or deed herein provided to be given, shall be held to assent thereto. And it is further provided that all lands leased or conveyed under this Act shall remain subject to the right of such irrigation canals, ditches, and reservoirs as now exist or as the Government may hereafter see fit to construct.

According to the respondent court, the fact that the canal had been filled up did not change its nature as a canal; it was still a canal although it had dried up. We do not think so. A canal without water is not a canal. The status of a canal is not perpetual. Consequently, the above provision is not applicable and cannot defeat the petitioner's claim to the disputed property either as part of two other lots or as a separate lot.

As we have already rejected the contention that the third lot was part of the other two lots, the petitioner must fall back on its claim of acquisitive prescription over it as a separate lot. Its submission is that its possession of the lot dates back to "time immemorial," by which tired phrase it is intended to convey the idea that the start of such possession can no longer be recollected. Indeed, it can be. The petitioner's possession does not in fact go back to "time immemorial" but only to the recent remembered past.

The petitioner presented only two witnesses whose testimony regarding its supposed possession of Lot No. 5005 is essentially hearsay and inherently inadequate. Thus, Rogelio Constantino, an employee of the petitioner, declared on the stand:

A Yes sir, as a matter of fact we were duly informed that since the beginning even from the time of their predecessors-in-interest, such strip of land was believed to be forming part of the two parcels of land and since the beginning they have been cultivating the same and treating the said strip of land as their own, publicly,

notoriously and in the concept of owner.[5]

The other witness, Meliton Casunuran, was more explicit but his testimony is largely hearsay also, let alone the fact that the possession he sought to establish is likewise insufficient. According to him, he worked as a tenant on the land for the previous owners of the other two lots afore these were acquired by the petitioner and that the subject property was regarded as part of their lots by their respective owners. Thus he declared:

Q Now, since you testified that you worked both on Lot 2381 and Lot 2386-A as tenant thereof, did you as a tenant recall that you cultivated these two particular parcels of land in its entirety?

A Yes, sir.

Q Do you know that between these two parcels of land that you were working then, there is a strip of land included in the area you were working which is not included in the title to the two parcels of riceland?

A Yes, sir, I came to know that. As a matter of fact, when I became tenant, my predecessor used to tell me that there is a strip in between the two parcels of riceland which I was working on. They even told me that the owners of the adjoining Lots 2381 and 2386 were lucky because there was added to their property a strip of land from which they produced also rice but which is not included in their title.

According to them, it happened this way - that from time immemorial, there was an irrigation canal constructed on this strip of land. After the cadastral survey of the lots in Biñan, this canal gradually disappeared by the filling up of dirt and silt, until such time that no one could notice anymore a canal on this strip of land, such that the same was taken possession of by both the owners of Lot 2381 and Lot 2386 and had it planted with rice in the same way that the two parcels of riceland were planted at that time. And I was likewise informed by my predecessor that I have also to till the strip of land, the same having been considered as properly owned and forming part and parcel of Lots 2381 and 2386 and owned by the respective owners.[6]

The underscored portions stress the unreliableness of these declarations, which, in the case of Constantino, is also suspect as self-serving.

The testimony falls short of establishing the manner and length of possession required by law to vest prescriptive title in the petitioner to Lot No. 5005. For one thing, as the Solicitor General points out in his Comment, the claim of adverse ownership to the strip of land between their respective lots was not exclusive but shared by the predecessors-in-interest of the petitioner. For another, and more importantly, the length of possession claimed by the petitioner is not sufficient to vest prescriptive title in it.

Casunuran's allegation that the claim of the petitioner's predecessors-in-interest to the disputed strip of land was "in the concept of owner, open, public and adversely against the whole world" was fed to him with a leading question during the ex parte hearing, thus:

MENDOZA

Q So you mean to convey to this Honorable Court that from the time of your predecessor up to your time as tenant, the owners of Lots 2381 and 2386-A have been in possession of this strip of land containing an area of 613 square meters more or less in the concept of owner, open, public and adversely against the whole world?

A Yes, sir.[7]

The witness was a farmer and could hardly be expected to understand the legal significance of the question, to which he could give only the short and simple answer "Yes." He did not and was not asked to elaborate. The statement was also not corroborated by other witnesses or supported by documents showing that, indeed, the former owners of the two lots also asserted claims of ownership over the land in question. In fact, the only other

evidence of such claim is the tax declaration on the said lot, which was made only in 1980.[8]

But the more telling consideration, as the Court sees it, is this. By the testimony of the two witnesses, the petitioner obviously meant to tack the possession of the two lots by the previous owners to its own possession. There was no need for this because the petitioner acquired ownership of Lot No. 2381 by assignment and Lot No. 2386-A by purchase; and such ownership includes the right of possession. The petitioner is not claiming prescriptive rights to these two lots, which had previously been registered in the name of the transferors. The lot it is claiming by prescription is Lot No. 5005, which it did not acquire from the owner of the other two lots, or from any previous private registered owner of the lot, as there was none.

Neither of the owners of Lots Nos. 2381 or 2386-A, in their respective deeds, transferred Lot No. 5005 to the petitioner; as already explained, Lot No. 5005 was not part of either of the two lots. The petitioner merely occupied the disputed strip of land believing it to be included in the two lots it had acquired from Koo Jun Eng and the Garcia spouses. However, even if it be conceded that the previous owners of the other two lots possessed the disputed lot, their possession cannot be tacked to the possession of the petitioner. The simple reason is that the possession of the said lot was not and could not have been transferred to the petitioner when it acquired Lots Nos. 2381 and 2386-A because these two lots did not include the third lot.

Article 1138 of the Civil Code provides that -

(1) The present possessor may complete the period necessary for prescription by tacking his possession to that of his grantor or predecessor-in-interest.

However, tacking of possession is allowed only when there is a privity of contract or relationship between the previous and present possessors. In the absence of such privity, the possession of the new occupant should be counted only from the time it actually began and cannot be lengthened by connecting it with the possession of the former possessors. Thus it has been held:

A deed, in itself, creates no privity as to land outside its calls. Nor is privity created by the bare taking of possession of land previously occupied by the grantor. It is therefore the rule, although sharply limited, that a deed does not of itself create privity between the grantor and the grantee as to land not described in the deed but occupied by the grantor in connection therewith, although the grantee enters into possession of the land not described and uses it in connection with that conveyed.[9]

Where a grantor conveys a specific piece of property, the grantee may not tack onto the period of his holding of an additional piece of property the period of his grantor's occupancy thereof to make up the statutory period. His grantor has not conveyed such property or his interest therein, and there is no privity. [10]

It is said, in *Hanlon v. Ten Hove*, supra, that this rule is not harsh, the court using the following language: "If A purchases and by adverse possession obtains title to an adjoining 40 acres, it would hardly be contended that a conveyance by him of the 40 acquired by deed would carry with it title to the 40 acquired by adverse possession. So if A acquires by deed a 40 acres and obtains an adjoining strip 2 rods wide or some interest in it, his conveyance of the 40 acquired by deed does not carry with it his interest in the adjoining strip. If the sole defense here was that of adverse possession, we would be obliged to hold that it had not been made out." [11]

It should also be noted that, according to Article 1135 of the Civil Code:

In case the adverse claimant possesses by mistake an area greater, or less, than that expressed in his title, prescription shall be based on the possession.

This possession, following the above quoted rulings, should be limited only to that of the successor-in-interest; and in the case of the herein petitioner, it should begin from 1981 when it acquired the two adjacent lots and

occupied as well the lot in question thinking it to be part of the other two.

It follows that when the application for registration of the lot in the name of the petitioner was filed in 1983, the applicant had been in possession of the property for less than three years. This was far too short of the prescriptive period required for acquisition of immovable property, which is ten years if the possession is in good faith and thirty years if in bad faith, or if the land is public.

The weakness of the petitioner's position prevents this Court from affirming the claim to the lot in question either as part of the two other lots or by virtue of acquisitive prescription. And having made this ruling, we find it unnecessary to determine whether the land is patrimonial in nature or part of the public domain.

The case of *Director of Lands v. Intermediate Appellate Court*,^[12] on which the petitioner relied so strongly (to the point of simply invoking it in a supplemental petition instead of filing its memorandum), is not applicable. That decision, which reversed the case of *Manila Electric Co. v. Castro-Bartolome*,^[13] involved a situation where the public land automatically became private as a result of prescription clearly and indubitably established by the claimant. In the case at bar, the petitioner's claim is rejected not because it is a private corporation barred from acquiring public land but because it has failed to establish its title to the disputed lot, whatever its nature.

WHEREFORE, the petition is DENIED, with costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), and Medialdea, JJ., concur.

Gancayco and Griño-Aquino, JJ., on leave.

[1] Rollo, pp. 7-8, 12.

[2] Decision penned by Judge Jose Mar Garcia.

[3] *Castro-Bartolome, J.*, ponente; *Camilon, Bidin, JJ.*, concurring; *Ejercito, Coquia, JJ.*, dissenting.

[4] Original Records, p. 48.

[5] TSN, August 13, 1984, p. 4. Emphasis supplied.

[6] *Ibid.*, p. 8. Emphasis supplied.

[7] *Id.*

[8] Exhibit "Q," Folder of Exhibits.

[9] 3 Am Jur 2d Adverse Possession 63, citing *Jenkins v. Trager* (CC) 40 F 726, error dismd 136 US 651, 34 L ed 557, 10 S Ct 1074; *Hanlon v. Ten Hove*, 235 Mich 227, 209 NW 169, 46 ALR 788; *Kramper v. St. John's Church*, 131 Neb 840, 270 NW 478; *Burns v. Crump*, 245 NC 360, 95 SE2d 906; *Newkirk v. Porter*, 237 NC 115, 74 SE2d 235; *Ramsey v. Ramsey*, 229 NC 270, 49 SE2d 476; *Boyce v. White*, 227 NC 640, 44 SE2d 49; *Masters v. Local Union No. 472*, 146 Pa Super 143, 22 A2d 70; *Erck v. Church*, 87 Tenn 575, 11 SW 794; *People v. Hagaman*, 31 Tenn App 398, 215 SW2d 827. Emphasis supplied.

[10] *Hanlon v. Ten Hove*, 235 Mich 227, 209 NW 169, 46 ALR 788. Emphasis supplied.

[11] *Ibid.* Emphasis supplied.

[12] 146 SCRA 509.

[13] 114 SCRA 799.

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