

PANTALEON DE LA PEÑA, PETITIONER, VS. COURT OF APPEALS AND HEROTIDO TAN, RESPONDENTS.*G.R. No. 81827. March 28, 1994*

Ponente: BELLOSILLO, J.

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PANTALEON DE LA PEÑA, petitioner herein, claiming preferential right to acquire ownership over a 3/4-hectare portion of Lot No. 5714-C, imputes, fraud and misrepresentation to private respondent Herotido Tan in securing Free Patent No. (XI-6) 1326 and OCT No. P-7923 over the same. The action for reconveyance earlier filed by de la Peña was denied both by the trial court and the Court of Appeals. For reasons herein set forth, the present petition must also fail.

Ciriaco Reducto was occupying a 24-hectare parcel of land in Sulongvale, Sulop, Davao del Norte (previously Padada, Tanwalang, Davao), designated as Lot No. 5714, for which he filed Homestead Application No. 192495 (E-100806) with the Bureau of Lands. A certain Potenciano Nazaret likewise filed an application for the same lot. As a result, a case docketed as B. L. Conflict No. 57 (N) arose in the Bureau of Lands wherein Nazaret's application and that of Ciriaco Reducto were "conflicted." Prior thereto however, by means of a "Deed of Relinquishment" dated 21 July 1946,[1] Ciriaco transferred his possessory rights over six (6) hectares (later increased to eight [8]) of Lot 5714 to petitioner Pantaleon de la Peña who thereafter entered his appearance in the administrative case when the portion transferred to him remained included in the homestead applications of Ciriaco Reducto and Potenciano Nazaret. After it was ascertained in a field verification that petitioner had a better right to acquire the portion claimed by him being its actual occupant and cultivator, the Director of Lands directed petitioner to apply for the portion himself within sixty (60) days after its survey or else "lose his preferential right thereto." [2] However, no such application was filed.

Meanwhile, on 7 March 1950, Ciriaco transferred his rights over another 1 1/2-hectare portion of Lot 5714 to Michael Doble[3] who in turn sold his rights in 1956 to Ricardo Tan,[4] herein private respondent's father. The portion sold to Michael Doble, and later on acquired by Ricardo Tan, became the western boundary of de la Peña's land.

On 24 and 25 August 1970, a survey was conducted by Engr. Pedro Sta. Cruz and Subdivision Plan Csd-11-001883-D[5] was prepared and approved by the Bureau of Lands wherein the portion acquired by petitioner was designated as Lot No. 5714-D, while that bought by Ricardo Tan was identified as Lot No. 5714-C. As a result of the survey, it was discovered that the land occupied by petitioner was bigger by 3/4 of a hectare than what he actually bought and paid for from Ciriaco. On the other hand, the land ceded to Doble (later acquired by Tan) was "very much smaller" than what he actually bought. Although the 3/4-hectare portion was part of the area acquired by Doble in 1950, it was petitioner de la Peña who cultivated the same without objection from Doble. However, when Ricardo Tan acquired the lot on 2 March 1956, he built a fence to reclaim the portion, but petitioner kept destroying it; hence, the start of a boundary dispute.

On 5 May 1975, Ricardo Tan transferred his rights over Lot 5714-C to his son, private respondent Herotido Tan, by means of an "Affidavit of Relinquishment." [6] But the conflict over the 3/4-hectare portion continued. In an effort to resolve the conflict, a relocation survey was agreed upon except that the parties failed to agree on a common surveyor. Consequently, each party had to hire his own. Petitioner's surveyor conducted a relocation survey on 18 April 1977, while respondent's surveyor conducted his own five (5) days later. After it was determined that the 3/4-hectare portion was within Lot 5714-C of private respondent, the latter built a fence around the property to prevent petitioner from entering. The sugarcane and bananas planted by petitioner were destroyed in the process.

On 29 April 1977, petitioner filed a complaint for forcible entry against Ricardo Tan in the Municipal Trial Court of Sulop. [7] When it was discovered that private respondent Herotido Tan was the registered owner of Lot 5714-C under OCT No. P-7923 [8] which was issued pursuant to Free Patent No. (XI-6) 1326 dated 15 September 1975, the complaint was accordingly amended to implead him.

The MTC ruled in favor of petitioner. [9] It concluded that petitioner had prior possession of the disputed 3/4-hectare portion and that he was prevented from entering the same by the fence constructed by private respondent. Stressing that "ownership is not the issue" but "only prior, physical and uninterrupted occupation and possession of the litigated area," the MTC ordered private respondent and his father, together with all other persons claiming under them, to vacate the litigated portion and restore possession to petitioner. The decision was affirmed on appeal by the then Court of First Instance (now Regional Trial Court) of Davao del Sur. [10]

On 18 July 1977, during the pendency of the forcible entry case, petitioner instituted the present action for reconveyance with damages against private respondent in the Regional Trial Court of Davao del Sur and Davao City. [11] Petitioner alleged that private respondent fraudulently registered the 3/4-hectare portion actually cultivated by him when the former stated in his free patent application that "the land applied for is not claimed or occupied by any other person." In addition, petitioner denied that a survey was conducted in 1970; if at all, it was merely a "table survey." Incidentally, it was discovered in the survey that the area of petitioner's actual occupation exceeded that which he bought from Ciriaco Reducto in 1946.

After trial, the court rejected petitioner's denial of the 1970 Survey on the ground that he was already estopped from contesting it when he offered Subdivision Plan CSD-11-001883-D in evidence. Therefore, since the disputed 3/4-hectare portion was not part of the area bought and paid for in 1946 by petitioner, the latter was not entitled to reconveyance. Petitioner was declared a mere trespasser and planter in bad faith who was "enjoying freely the use of government property" without even applying for the same nor paying taxes thereon. His prayer for P5,000.00 as actual damages for the sugarcane and bananas destroyed on the disputed portion was denied. Instead, private respondent's counterclaim was granted and petitioner was ordered to pay P6,000.00 in attorney's fees and expenses of litigation, P15,000.00 for moral damages, and the costs of the proceedings. [12]

Petitioner sought recourse to the Court of Appeals [13] reiterating his allegations of fraud and misrepresentation and, at the same time, contending that the judgment in the forcible entry case constituted *res judicata* on the action for reconveyance.

The Court of Appeals affirmed the appealed decision in toto [14] ruling that petitioner failed to substantiate his allegations of fraud and misrepresentation. On the contrary, as found by the lower court, the evidence showed that the requisites for the procurement of a free patent and original certificate of title were regularly complied with, i.e., a free patent application filed with the Bureau of Lands together with the affidavits of the applicant and two (2) witnesses, and giving notice of the application; the holding of an ocular inspection by the Land Examiner from the Bureau of Lands; the latter's recommendation for the approval of the application; and, the promulgation of the

order for the issuance of the free patent on the basis of which an original certificate of title can be issued.

On the issue of res judicata, respondent Court of Appeals ruled that the fact that petitioner obtained a favorable judgment in the forcible entry case was not conclusive and did not ipso facto entitle him to a similar favorable judgment in the reconveyance case for the reason that while prior physical possession was the sole issue in the forcible entry case, that of lawful ownership or possession de jure was the issue disputed in the reconveyance case. Hence, the petition before us.

We dismiss the petition and adopt as our own the conclusions reached by the trial court and respondent Court of Appeals. In addition, we hold that petitioner Pantaleon de la Peña has absolutely no standing to institute the present suit for reconveyance.

It is well-settled that reconveyance is a remedy granted only to the owner of the property alleged to be erroneously titled in another's name.[15] In the case at bench, petitioner does not claim to be the owner of the disputed portion. Admittedly, what he has is only a "preferential right" to acquire ownership thereof by virtue of his actual occupation since January 1947.[16] However, petitioner's possession is not one that could ripen into ownership. Title to alienable public lands can be established through open, continuous, and exclusive possession for at least thirty (30) years. It must be noted that the dispute regarding the 3/4-hectare portion started even before a free patent and an OCT could be issued to private respondent in 1975. As early as 1956, the controversy already began between petitioner and private respondent's father. Hence, petitioner's possession falls short of the required period. Not being the owner, petitioner cannot maintain the present suit.

Persons who have not obtained title to public lands could not question the titles legally issued by the State.[17] In such cases, the real party in interest is the Republic of the Philippines to whom the property would revert if it is ever established, after appropriate proceedings, that the free patent issued to the grantee is indeed vulnerable to annulment on the ground that the grantee failed to comply with the conditions imposed by the law.[18] Not being an applicant, much less a grantee, petitioner cannot ask for reconveyance.

However, we are inclined to delete the award for attorney's fees, moral damages and expenses of litigation. As correctly argued by petitioner, an award for attorney's fees and moral damages on the sole basis of an action later declared to be unfounded in the absence of a deliberate intent to cause prejudice to the other party is improper.[19] The right to litigate is so precious that a penalty should not be charged on those who may exercise it erroneously.[20]

WHEREFORE, premises considered, the Decision dated 21 December 1987 of respondent Court of Appeals sustaining that of the Regional Trial Court of Davao del Sur and Davao City dated 23 April 1984 is **AFFIRMED**, with the sole modification that the award for attorney's fees, expenses of litigation, and moral damages is **DELETED**.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Orig. Rec., p. 70.

[2] Id., pp. 72-73.

[3] See Exh. "1" ("Quitclaim Deed"), Folder of Exhibits for Defendant.

[4] See Exh. "2" ("Quitclaim Deed"), Folder of Exhibits for Defendant.

- [5] See Folder of Exhibits for Defendant.
- [6] See Exh. "5," Folder of Exhibits.
- [7] Civil Case No. 62.
- [8] Exh. "6," Folder of Exhibits for Defendant.
- [9] Decision penned by Judge Rosalina L. Montejo, dated 20 February 1979.
- [10] Decision penned by Judge Marcelino M. Francisco, dated 3 November 1980, in Civil Case No. 1448.
- [11] *De la Peña v. Tan*, Civil Case No. 1176.
- [12] Decision penned by Judge Juan L. Montejo, dated 23 April 1984; Orig. Rec., pp. 290 - 312.
- [13] *De la Peña v. Tan*, CA-G.R. CV No. 04379.
- [14] Decision penned by Associate Justice Lorna S. Lombos-de la Fuente, concurred in by Associate Justices Ricardo J. Francisco and Alfredo L. Benipayo, dated 21 December 1987; Rollo, pp. 29-35.
- [15] *Tomas v. Court of Appeals*, G.R. No. 79328, 21 May 1990, 185 SCRA 627, 633; *Esconde v. Barlongay*, G.R. No. 67583, 31 July 1987, 152 SCRA 603, 611; *Nebrada v. Heirs of Alivio et al.*, 104 Phil. 126 (1958); *Director of Lands v. Register of Deeds of Rizal*, 92 Phil. 826 (1953); *Azurin v. Quitoriano, et al.*, 81 Phil. 261 (1948).
- [16] Petition, p. 11; Rollo, p. 16.
- [17] *Reyes v. Rodriguez*, 62 Phil. 771, 776 (1936).
- [18] See Sec. 101 of CA 141 (Public Land Act); *Lucas v. Durian*, 102 Phil. 1157, 1158 (1957); *Sumail v. Judge of the Court of First Instance of Cotabato, et al.*, 96 Phil. 946, 953 (1955).
- [19] *Siasat v. Intermediate Appellate Court*, G.R. No. 67889, 10 October 1985, 139 SCRA 238, 250; *R & B Surety and Insurance Co., Inc. v. Intermediate Appellate Court*, G.R. No. 64515, 22 June 1984, 129 SCRA 736, 745; *Salao v. Salao*, No. L-26699, 16 March 1976, 70 SCRA 65, 86; *Ramos v. Ramos*, No. L-19872, 3 December 1974, 61 SCRA 284, 306; *Mercader v. Manila Polo Club*, 99 Phil. 981, 985 (1956).
- [20] *Albenson Enterprises Corporation v. Court of Appeals*, G.R. No. 88694, 11 January 1993, 217 SCRA 16, 30; *Garcia v. Gonzales*, No. L-48184, 12 March 1990, 183 SCRA 72, 81; *Filinvest Credit Corporation v. Mendez*, G.R. No. 66419, 31 July 1987, 152 SCRA 593, 601.

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