

DOMINGO T. MENDOZA, PETITIONER, VS. MARIA MENDOZA NAVARETTE, EMETERIO NAVARETTE, BENEDICTA NAVARETTE AND GEMI-NIANO NAVARETTE AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 82531. September 30, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The threshold issue in this case is whether or not respondent Court of Appeals committed a reversible error in setting aside the trial court's denial of a motion to dismiss and in ordering the dismissal of the complaint on the ground of prescription.

The material operative facts and procedural antecedents as disclosed by the pleadings are not disputed.

On 25 July 1985, petitioner filed a complaint[1] for Annulment of Title, Partition and Damages against private respondents with Branch 15 of the Regional Trial Court (RTC) of Bulacan. The case was docketed as Civil Case No. 8307-M. Petitioner alleges therein:

x x x

"2. That the plaintiff and defendant Maria Mendoza-Navarette are the only legitimate children of Spouses Tedoro (sic) Mendoza of Sto. Rosario, Paombong, Bulacan;

3. That, after the death of the said mother, Narcisa Jumaquio, the said Teodoro Mendoza contracted a second marriage with Eugenio (sic) Aquino, and they were blessed (sic) with two (2) children, but both of them died before they became of age;

4. That Teodoro Mendoza died intestate and without any debt whatsoever in Paombong, Bulacan on March 19, 1952, leaving a parcel of land more particularly described as follows, together with the improvement thereon, to wit:

‘A parcel of residential Lot (unregistered) located in Sto. Rosario, Paombong, Bulacan. Bounded in the N., by Calsada del Barrio; on the E., by Daniel delos Santos and Fortunato Dionisio; on the S., by Sapang Camachile; and on the W., by Carmen Crisostomo x. x. x. x. Containing an area of (1,288) Square meters, more or less, and assessed at P520.00 according to Tax Declaration No. 2941 of the land records of Bulacan’, a certified true copy of which is hereto attached as Annex "A".

This parcel of land was surveyed during the Cadastral survey of Paombong (Paombong Cad-297) as Lot 668 with an actual area of (934) square meters and Lot 1024 (Road widening) with an area of 45 square meters, or a total of 979 square meters, and not 1,288 square meters as stated in its tax declaration (Annex "A").

5. That the surviving legal heirs of the said Teodoro Mendoza at the time of his death are his wife, Eugenia Aquino, and his two (2) children; the herein plaintiff Domingo Mendoza and defendant Maria Mendoza, married to Leoncio Navarette;

6. That, on or about April 18, 1963, the aforementioned legal heirs of Teodoro Mendoza executed on (sic) Extra-Judicial Settlement of the Estate of the deceased Teodoro Mendoza, where they had agreed to inherit and partition the property left by him and described above as follows: three fourths (3/4) to herein Domingo Mendoza, plaintiff, (966 Sq. Mtrs. per document but only 734 sq. meters if based on actual survey), and the remaining one-fourth (1/4) to surviving wife Eugenia Aquino (322 square meters per document but only 245 sq. meters if based on actual survey), with the herein Maria Mendoza, defendants, 'fully renouncing and waiving her right to any share or shares that she may be entitled in (sic) the said property', xerox copy of which document is hereto attached as Annex "B" and hereby made an integral part of this complaint;

7. That, in accordance with the said extra-judicial settlement, the old tax declaration of the late Teodoro Mendoza (Annex "A") was cancelled and two (2) new ones were issued; namely, Tax Declaration No. 4728 for 966 square meters in favor of plaintiff Domingo Mendoza and Tax Declaration No. 4729 for 322 square meters in favor of Eugenia Aquino, certified true copies of which are hereto attached as Annex "C" and "D", respectively;

8. That, it appears that on May 27, 1963 the said Eugenia Aquino, before she died, had sold her said one-fourth share in the lot in question which she inherited under Annex "B" and declared in her name for Taxation purposes under Annex "D", consisting of 322 square meters per document (but only 245 square meters if based on actual survey), to the herein defendant Maria Mendoza and his (sic) husband Leoncio Navarette, certified xerox copy of which document is hereto attached as Annex "E";

9. That, subsequently thereto, the said Leoncio Navarette and defendant Maria Mendoza caused the transfer and declaration of the said one-fourth (1/4) they acquired from Eugenia Aquino in their names, certified true copy of which tax declaration (No. 4738) is hereto attached as Annex "F";

10. That Leoncio Navarette died and is survived by his wife, defendant Maria Mendoza-Navarette, and three (3) children; namely, Emeterio, Benedicta and Geminiano, all surnamed Navarette, who are the defendants named in this complaint;

11. That it was recently discovered early this year by the plaintiff that the late Leoncio Navarette and herein defendant Maria Mendoza-Navarette, knowingly (sic) well that they are not the owners of the whole lot in question (Lot No. 668, Case I, Paombong Cad-297), consisting of 934 square meters, but only one-fourth (1/4) portion thereof consisting of 245 square meters, based on the actual survey, and the (sic) plaintiff is the owner of the three-fourths thereof consisting of 734 square meters, illegally, fraudulently and evident (sic) show of bad faith, filed an application for Free Patent (No. III-6-000886) with the Bureau (sic) of Lands and caused the said whole lot to be titled and declared in the name of Leoncio Navarette, married to Maria Mendoza, as evidenced by O.C.T. NO. P-93-45 of the Registry of Deeds for the Province of Bulacan and Tax Declaration No. 3157, certified true copies of which application, title and tax declaration are hereto attached as Annexes "G", "H" and "I", respectively;

12. That the said title and tax declaration (Annexes "H" and "I") are null and void ab initio and should be annulled or cancelled, for the said registered owners are not the real owners of the land covered by them, and the plaintiff has been in the open, public, adverse and exclusive possession, in the concept of an owner, of the three-fourths (3/4) portion thereof consisting of 734 square meters since the death of his father in 1952 continuously (sic) and publicly up to the present."[2]

and prays for judgment:

"1. Ordering the annulment (sic) or cancellation of O.C.T. NO. P-9345 and Tax Declaration No. 3157 in the name of Leoncio Navarette, married to Maria Mendoza;

2. Ordering the partition of the lot in question (Lot No. 668 and No. 1024 (road widening) in the following manner; three-fourths (3/4) thereof to plaintiff Domingo Mendoza, married to Regina Santos, and one-fourth

(1/4) thereof to the defendants;

3. Ordering the defendants, jointly and severally, to pay plaintiff actual, moral and exemplary damages in such amount or amounts hereby left to the sound discretion of the Court; and

4. Ordering the defendants, jointly and severally, to pay attorney's fees in the stipulated amount of P10,000.00, plus P300.00 for every day of hearing.

Plaintiff prays for such other relief (sic) consistent with law and equity under the premises, including cost of suit.”[3]

On 15 November 1975, private respondents filed a motion to dismiss[4] the case on the ground that the plaintiff's cause of action, if any, is barred by the statute of limitations because the application for Free Patent and the Original Certificate of Title, copies of which are annexed to the complaint, are dated 18 March 1974 and 6 May 1974, respectively -- more than ten (10) years prior to the filing of the complaint. It is contended that an action for annulment of title and/or reconveyance of real property resulting from fraud must be filed within four (4) years from the discovery of the fraud, pursuant to *Gerona vs. De Guzman*,[5] *Balbin vs. Medalla*,[6] and *Cordova vs. Cordova*. [7] Such discovery is deemed to take place at the time an Original Certificate of Title, through either a homestead or free patent, is awarded, because the registration of said patents constitutes constructive notice to the whole world. Accordingly, the four-year period during which the petitioner could bring the said action expired in 1978.

On 21 November 1985, petitioner filed his opposition to the motion to dismiss[8] alleging therein that (a) as clearly alleged in paragraph 11 of the complaint, since the fraud was discovered in the early part of 1985, the four-year period had not yet expired when the complaint was filed; (b) as alleged in paragraph 12 thereof, since private respondents are not the owners of the three-fourths (3/4) portion of the parcel of land covered by both the Free Patent and Original Certificate of Title, they do not have just title thereto; for purposes of prescription, just title must be proved; there should then be a hearing on the merits for them to prove just title; and (c) as also alleged in said paragraph 12, the petitioner is in the open, public, adverse and exclusive possession, in the concept of an owner, of the said three-fourths (3/4) portion; private respondents could not have acquired ownership over the entire lot.

The trial court set the motion to dismiss for hearing on 23 July 1986.[9]

On 14 July 1986, private respondents filed a Manifestation and Motion alleging, inter alia, that the Motion to Dismiss can be resolved and decided by the court on the basis of the pleadings of the parties.[10] Thereupon, the trial court issued an order stating that the "'Motion to Dismiss', 'Opposition', and 'Rejoinder' filed by the parties are deemed submitted for resolution.”[11]

On 1 September 1986, the trial court, per Judge Eugenio S. Labitoria, issued an Order[12] denying for lack of merit the motion to dismiss. The denial is based on the principle that prescription does not run against co-owners in a co-ownership. The order states:

"The plaintiff in opposition to the motion to dismiss argued that the cases cited by the defendants are not applicable in the present case. First, the parties are co-owners. As a general rule prescription does not lie between the parties. Article 494, par. 5, New Civil Code provides:

'No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.'

To further buttress the legal basis for the denial by the court of the motion to dismiss, plaintiff cited the case of *Santos vs. Heirs of Crisostomo*, 41 Phil. 342, *Bargayo versus Camunof* (sic), 40 Phil. 857. Three conditions

must be present in order that a co-owner becomes an exclusive owner of the others' share by prescription. These conditions are: (1) He must make known to the other co-owners that he is definitely repudiating the co-ownership and that he is claiming complete ownership over the entire property; (2) The evidence of repudiation and knowledge on the part of the others must be clear and convincing; and (3) Continuous, open, public, adverse possession.

The defendants in their motion to dismiss never alleged that they are in open, continuous, public and adverse possession of the property in question as against the plaintiff. Likewise, in their manifestation and motion dated July 14, 1986 after they received the opposition to the motion to dismiss filed by the plaintiff never (sic) denied their participation in the extra-judicial participation (sic), Annex "P" of the complaint.

From the foregoing, it is clear that the doctrine laid down by the Supreme Court in the cases of Balbin and Gerona (supra) is the general rule on prescription with respect to the four years (sic) period to file action based on fraud which is not applicable to co-owners and co-heirs in the absence of the three conditions laid down in cases (sic) of Santos and Camunof (sic) (supra.)."

Private respondents filed a motion to set aside this order, which the trial court denied in its Order[13] of 1 October 1986, thus:

"The principal ground for setting aside the order of this Court denying the motion to dismiss is the misapplication of the law and jurisprudence on the matter. Defendants contend that Article 494, par. 5 of the New Civil Code is not applicable considering that there was an open repudiation of the co-ownership by the defendants way back on (sic) March 18, 1974 when they filed an application for free patent over the entire property. This was further confirmed on May 6, 1974 when OCT NO. P-9345 was issued in the name of Leoncio Navarette married to Maria Mendoza by the Register of Deeds of Bulacan.

The plaintiff, from his complaint clearly stated that he is in open, adverse, public and exclusive possession in the concept of an owner of the three-fourth (sic) (3/4) portion of the questioned property. x x x

The other grounds raised by the defendants as errors of the court is (sic) not granting the motion to dismiss are factual issues which are better resolve (sic) in a full blown trial on the merit (sic).

The defendants must prove their just title for it is never presumed if they contend that they derive title thereto by virtue of prescription (Art. 1131, New Civil Code).

x x x

There is no compelling legal basis for this Court to reconsider its order dated September 1, 1986."

On 24 October 1986, private respondents filed with the Court of Appeals a Petition for certiorari, prohibition and mandamus[14] seeking the nullification and the setting aside of both the 1 September and 1 October 1986 orders of the trial court. The petition was docketed as C.A.-G.R. SP No. 10389. As grounds therefor, they allege that:

"1. The cause of action of the plaintiff, if any, is barred by the Statute of Limitations and res adjudicata and as a consequence thereof, the complaint in Civil Case. No. 8307-M states no cause of action, and private respondent has no cause of action against the petitioners.

2. Prescription runs against a co-owner where there is a definite and open repudiation of the co-ownership, there is clear and convincing evidence of the said repudiation, and there is continuous, open, public and adverse possession by the one repudiating the co-ownership.

3. Respondent Judge committed grave abuse of discretion amounting to want or excess of jurisdiction in not dismissing the complaint in Civil Case No. 8307-M."[15]

In its Decision[16] promulgated on 27 July 1987, the respondent Court set aside the abovementioned orders and

directed the respondent trial judge to dismiss the complaint on the principal ground that since the action is based on fraud, it should have been filed within four (4) years from the issuance of the title on 6 May 1974. Thus, it declared:

"1. There is no controversion from respondents against the petitioners' assertion that on March 18, 1974, the late Leoncio Navarette (Maria Mendoza's late husband) filed an application for Free Patent over the disputed property (Lot 668, Case I, Paombong Cad. 297) and that on May 6, 1974 Original Certificate of Title No. T-9345 was issued in the name of 'Leoncio Navarette, married to Maria Mendoza, xx xx xx.' (p. 9, rec.)

Eleven years after the issuance and registration of the above title, the private respondent, Domingo J. Mendoza, filed his above complaint, for the annulment of title and partition of the above property. The title sought to be annulled was issued May 6, 1974 (sic), while the complaint to annul the same and for partition of the property covered by the said title, was filed July 24, 1985 (sic).

The titling of the property by the petitioners is denounced by the private respondents as having been done 'illegally, fraudulently and in evident bad faith.' (p. 37, rec.). The action for nullification of title and for partition of the property is based on fraud. The private respondent's theory is that Article 494, paragraph 5 of the Civil Code of the Philippines controls (sic) the situation. Article 494 reads, as follows:

x x x

'No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership. (400a)'

The private respondent's theory is without foundation.

Prescription can, and thus, run (sic) against a co-owner, particularly, where the property has been brought under the operation of the Land Registration Act. The Land Registration Act declares the title over a registered land to be incontrovertible. (Sec. 38. 'Gerona, et al. vs. De Guzman, et al.,' 11 SCRA 153, gives the reason why prescription can run against co-owner (sic) where one of them asserts title against the former, x x x).

x x x

It is clear then that not having brought the action for partition of the property within the reglementary period, the private respondents' cause of action has been barred by prescription.

The ground for the dismissal of the private respondents' complaint for annulment and partition is, therefore, indubitable and in line with jurisprudence, must be dismissed.

x x x

The statute of limitations commenced to run against the private respondent when the petitioners applied for free (sic) patent, secured the same, and then obtained a certificate of title over the property on May 6, 1974. From this date, which is a notice in rem of the repudiation of the co-ownership among the parties, by the petitioners, prescription commenced to run. The private respondents had four years from May 6, 1974 within which to file their action based on fraud.

Their action, filed July 24, 1985 (sic), came seven years too late."[17]

Hence, this petition which was filed on 30 March 1988. Petitioner raises the following issues:

"WHETHER OR NOT THE PATENT AND THE CORRESPONDING OCT ISSUED COVERING THE LOT IN CONTROVERSY ARE VALID.

WHETHER OR NOT PRESCRIPTION AS A MEANS OF ACQUIRING THE PROPERTY HAS ALREADY SET IN UNDER THE FACTUAL CIRCUMSTANCES OF THE CASE AT BAR."[18]

After the filing of the Comment, the Reply thereto and the Rejoinder to the Reply, this Court gave due course to the petition and required the parties to submit their respective Memoranda,[19] which they subsequently complied with.

As shown earlier, the trial court denied the motion to dismiss upon the theory that the general rule is that prescription does not run among co-owners and that the requisites for the application of the exception thereto, among which is the need for continuous, open, public and adverse possession of the property on the part of the party who claims prescription, are not apparent from a reading of the complaint; on the contrary, said complaint alleges that the petitioner is in such possession over three-fourths (3/4) thereof. Upon the other hand, respondent Court of Appeal's exposition is premised on the assumption that the complaint is based on fraud; therefore, the same should have been filed within four (4) years from the issuance of the original certificate of title. Anent the issue of prescription among co-owners, the respondent Court ruled that the filing of the application for a Free Patent amounted to a renunciation of the co-ownership.

The issue of prescription among co-owners is totally irrelevant; hence, the discussions thereon by both courts are exercises in futility which proceed from a misreading of the complaint. Co-ownership is not at all involved in this case. This is very clear from the allegations in the complaint which unmistakably show that whatever co-ownership existed among the heirs of Teodoro Mendoza over the estate he left behind was terminated on 11 April 1963 when said heirs executed the deed of extrajudicial settlement, with private respondent Maria Mendoza Navarette waiving all her rights to the said estate. As a consequence thereof, three-fourths (3/4) of the property was adjudicated to the petitioner while the remaining one-fourth (1/4) share went to the surviving spouse, Eugenia Aquino, both of whom secured separate tax declarations for their respective lots.

The complaint likewise suggests that the lot subject of the application for a Free Patent by Leoncio Navarette is private land and the three-fourths (3/4) portion thereof, which petitioner has been openly, publicly, adversely and exclusively possessing in the concept of owner, was included illegally, fraudulently and with evident bad faith by Leoncio in said application as he is not the real owner of said portion. Petitioner thus asks, inter alia, for the annulment or cancellation of the original Certificate of Title over the lot covered by the Free Patent.

What the lower court should have done then was to defer its resolution on the motion to dismiss for the reason that the ground invoked therein is not indubitable. This is one of the options a trial court may avail of whenever confronted with a motion to dismiss. The other options are (a) to grant the motion, (b) to deny it, and (c) to allow the amendment of the pleading. Section 3, Rule 16 of the Rules of Court provides:

"SEC. 3. Hearing and order. -- After hearing the court may deny or grant the motion or allow amendment of pleading, or may defer the hearing and determination of the motion until the trial if the ground alleged therein does not appear to be indubitable." [20]

Be that as it may, the end result was the same -- private respondents failed in their attempt to obtain a dismissal of the case. But whether such a rebuff resulted from an outright denial or a mere deferment, respondent Court of Appeals should have rejected private respondents' petition for certiorari because the trial court committed no grave abuse of discretion in aborting and frustrating the latter's move. Such petition merely formed part of a dilatory strategy which cleverly incorporated *res judicata* and lack of cause of action as additional grounds for the dismissal of the complaint. The latter, however, is based on the argument that since prescription has set in, petitioner cannot have a valid cause of action. As grounds for a motion to dismiss or as affirmative defenses, prescription and lack of cause of action are distinct and separate concepts. Since *res judicata* was not invoked in the motion to dismiss, it is deemed waived pursuant to Section 2, Rule 9 of the Rules of Court.

The averments in the complaint to the effect that (a) the lot in question being private land originally inherited

from Teodoro Mendoza and subsequently adjudicated among his heirs by the deed of extrajudicial settlement, it cannot be awarded to Leoncio Navarette by Free Patent, (b) petitioner is in open, public, adverse and exclusive possession of the three-fourths (3/4) portion adjudicated to him and (c) said three-fourths (3/4) portion was included illegally, fraudulently and in bad faith by Leoncio Navarette in his application for a Free Patent because he and his wife, private respondent Maria, knew all along that petitioner is the owner and actual possessor thereof, were deemed hypothetically admitted by private respondents for purposes of the motion to dismiss.[21]

Granting ex gratia that the above theory of petitioner embodied in the first averment is correct and he can thus support it with evidence -- which would necessarily call for a trial on the merits -- the Free Patent issued to Leoncio Navarette would be void as to petitioner's property which, as he had also alleged in the complaint, is possessed by him openly, publicly, adversely and exclusively in the concept of owner. Thus, he can recover it even beyond the expiration ten (10) years after the issuance of the Original Certificate of Title based on the Free Patent. A Free Patent issued over a private land is null and void. In the 1952 case of *Vital vs. Anore*,[22] this Court, speaking thru Mr. Justice Sabino Padilla, held:

"Whether a Torrens title, based on a free patent granted by the Government under the provisions of the Public Land Act (Act 2874) and issued under the provisions of the Land Registration Act (Act 496), has the validity and effect of a Torrens title issued as a result of judicial proceedings need not be passed upon. The rule laid down in *Ramoso vs. Obligado et al.*, 70 Phil. 86, that 'a homestead patent, once registered under the Registration Act, becomes as indefeasible as a Torrens Title, x x x' is only true and correct if the parcel of agricultural land patented or granted as homestead by the Government, after the requirements of the law had been complied with, was a part of the public domain. If it was not but a private land, the patent granted and the Torrens title issued upon the patent or homestead grant are a nullity.[23]

A Torrens title issued upon a free patent may not be cancelled after the lapse of ten years from the date of its registration because the statute of limitations bars such cancellation. But if the registered owner, be he the patentee or his successor-in-interest to whom the free patent was transferred or conveyed, knew that the parcel of land described in the patent and in the Torrens title belonged to another who together with his predecessors-in-interest has been in possession thereof, and if the patentee and his successor-in-interest were never in possession thereof, then the statute barring an action to cancel a Torrens title issued upon a free patent does not apply, and the true owner may bring an action to have the ownership or title to the land judicially settled, and if the allegations of the plaintiff that he is the true owner of the parcel of land granted as free patent and described in the Torrens title and that the defendant and his predecessor-in-interest were never in possession of the parcel of land and knew that the plaintiff and his predecessors--in-interest have been in possession thereof be established, then the court in the exercise of its equity jurisdiction, without ordering the cancellation of the Torrens title issued upon the patent, may direct the defendant, the registered owner, to reconvey the parcel of land to the plaintiff who has been found to be the true owner thereof.

The plaintiff in this case avers that he and his predecessors-in-interest have been in possession of the parcel of land from time immemorial to the date of the filing of the complaint; that the patentee, from whom the defendant Francisco Anore derived his title, had never been in possession of the parcel of land granted to him as free patent; and that the defendant Francisco Anore knew that his predecessor-in-interest had never been in possession of the parcel of land. If the averments be established, the defendant, as successor-in-interest of the patentee, could not claim to be a purchaser in good faith and for value to protect his title to the parcel of land acquired by him from the patentee. Justice and equity require that he should reconvey the parcel of land to the plaintiff. The prayer of the plaintiff in his complaint that he be declared the owner of the parcel of land described in the transfer certificate of title issued in the name of the defendant Francisco Anore, which had been granted as free patent to the late Ambrosio Arabit, together with the general prayer that he be granted such further relief and remedy as equity and justice warrant, would justify a judgment directing the defendant to reconvey the parcel of land to the plaintiff.

The statute of limitations which would bar an action by the plaintiff could not be availed of by the defendant, because a motion for dismissal being an admission of all the material allegations of the plaintiff's complaint -- the same role a demurrer in the old Code of Civil Procedure, Act 190, played in judicial proceedings -- the plaintiff's allegation that the defendant and his predecessor-in-interest have never been in possession of the parcel of land and knew that the plaintiff and his predecessors-in-interest have been in possession thereof since time immemorial is deemed admitted. If at the trial the defendant should prove that he and his predecessor-in-interest have been in possession of the parcel of land for 10 years or more, then the plaintiff's cause of action would be groundless and the complaint would have to be dismissed. The admitted allegations of the complaint constitute a cause of action."

Then, in the fairly recent case of *Agne vs. Director of Lands*,^[24] this Court, per Mr. Justice Florenz D. Regalado, ruled:

"We reiterate that private ownership of land is not affected by the issuance of a free patent over the same land because the Public Land Act applies only to lands of the public domain.^[25] Only public land may be disposed of by the Director of Lands.^[26] Since as early as 1920, the land in dispute was already under the private ownership of herein petitioners and no longer a part of the lands of the public domain, the same could not have been the subject matter of a free patent. The patentee and his successors in interest acquired no right or title to the said land. Necessarily, Free Patent No. 23263 issued to Herminigildo Agpoon is null and void and the subsequent titles issued pursuant thereto cannot become final and indefeasible. Hence, we ruled in *Director of Lands vs. Sisican, et al.*^[27] that if at the time the free patents were issued in 1953 the land covered therein were (sic) already private property of another and, therefore, not part of the disposable land of the public domain, then applicants-patentees acquired no right or title to the land.

Now, a certificate of title fraudulently secured is null and void ab initio if the fraud consisted in misrepresenting that the land is part of the public domain, although it is not. As earlier stated, the nullity arises, not from the fraud or deceit but, from the fact that the land is not under the jurisdiction of the Bureau of Lands.^[28] Being null and void, the free patent granted and the subsequent titles produce no legal effects whatsoever *Quod nullum est, nullum producit effectum.*^[29]

A free patent which purports to convey land to which the Government did not have any title at the time of its issuance does not vest any title in the patentee as against the true owner.^[30] The Court has previously held that the Land Registration Act and the Cadastral Act do not give anybody who resorts to the provisions thereof a better title than what he really and lawfully has.

'x x x The Land Registration Act as well as the Cadastral Act protects only the holders of a title in good faith and does not permit its provisions to be used as a shield for the commission of fraud, or that one should enrich himself at the expense of another (*Gustilo vs. Maravilla*, 48 Phil. 838). The above-stated Acts do not give anybody, who resorts to the provisions thereof, a better title than he really and lawfully has. If he happened to obtain it by mistake or to secure, to the prejudice of his neighbor, more land than he really owns, with or without bad faith on his part, the certificate of title, which may have been issued to him under the circumstances, may and should be cancelled or corrected (*Legarda and Prieto vs. Saleeby*, 31 Phil. 590). x x x.'^[31]

We have, therefore, to arrive at the unavoidable conclusion that the title of herein petitioners over the land in dispute is superior to the title of the registered owner which is a total nullity. The long and continued possession of petitioners under a valid claim of title cannot be defeated by the claim of a registered owner whose title is defective from the beginning.

The quality of conclusiveness of a Torrens title is not available for use to perpetrate fraud and chicanery. To paraphrase from *Angeles vs. Samia*, *supra*, the Land Registration Act does not create or vest title. It only confirms and records title already existing and vested. It does not protect a usurper from the true owner. It cannot be a shield for the commission of fraud. It does not permit one to enrich himself at the expense of

another. Stated otherwise, the Torrens system was not established as a means for the acquisition of title to private land. It is intended merely to confirm and register the title which one may already have on the land. Where the applicant possesses no title or ownership over the parcel of land, he cannot acquire one under the Torrens system of registration.[32] Resort to the provisions of the Land Registration Act does not give one a better title than he really and lawfully has.[33] Registration does not vest title. It is not a mode of acquiring property. It is merely evidence of such title over a particular property. It does not give the holder any better title than what he actually has, especially if the registration was done in bad faith. The effect is that it is as if no registration was made at all." [34]

Besides, the petitioner's open, public, adverse and exclusive possession of the three-fourths (3/4) portion of the property and its illegal inclusion in the Free Patent and Original Certificate of Title issued to Leoncio Navarette give the former a cause of action for quieting of title, which is imprescriptible in favor of a person in possession of the property. The allegations in his complaint before the trial court are sufficient for such a cause of action. In *Caragay-Layno vs. Court of Appeals*, [35] this Court, per Madame Justice Ameurфина Melencio-Herrera, ruled:

"Prescription cannot be invoked against JULIANA for the reason that as lawful possessor and owner of the Disputed Portion, her cause of action for reconveyance which, in effect, seeks to quiet title to the property, falls within settled jurisprudence that an action to quiet title to property in one's possession is imprescriptible.[36] Her undisturbed possession over a period of fifty two (52) years gave her a continuing right to seek the aid of a Court of equity to determine the nature of the adverse claim of a third party and the effect on her own title.[37]

Besides, under the circumstances, JULIANA's right to quiet title, to seek reconveyance, and to annul OCT No. 63 accrued only in 1966 when she was made aware of a claim adverse to her own. It was only then that the statutory period of prescription may be said to have commenced to run against her, following the pronouncement in *Faja vs. Court of Appeals*, supra, a case almost identical to this one."

In *Coronel vs. Intermediate Appellate Court*, [38] this Court, through Mr. Justice Hugo E. Gutierrez, Jr., held:

"The counterclaim of the private respondents which was in effect a reconveyance to them of their 1/3 undivided share over Lot No. 1950-A has not prescribed. As lawful possessors and owners of the lot in question their cause of action falls within the settled jurisprudence that an action to quiet title to property in one's possession is imprescriptible. Their undisturbed possession over a period of more than 25 years gave them a continuing right to seek the aid of a court of equity to determine the nature of the adverse claim of a third party and the effect of his own title. If at all, the private respondents' right to quiet title, to seek reconveyance and to annul Transfer Certificate of Title No. T-75543 accrued only in 1975 when they were made aware of a claim adverse to their own. It was only at that time that the statutory period of prescription may be said to have commenced to run against them. (*Sapto et al. v. Fabiana*, 103 Phil. 683; *Faja v. Court of Appeals*, 75 SCRA 441; *Caragay-Layno v. Court of Appeals*, 133 SCRA 718)."

In light of the foregoing, We fail to see how respondent Court of Appeals can justify its conclusion that petitioner's cause of action has prescribed.

WHEREFORE, the Decision of the respondent Court of Appeals of 27 July 1987 and its Resolution of 15 March 1988 in C.A.-G.R. SP No. 10389 are hereby SET ASIDE. The Orders of 1 September 1986 and 1 October 1986 of Branch 15 of the Regional Trial Court of Bulacan in Civil Case No. 8307-M are REINSTATED subject to the modification that the determination of the motion to dismiss shall only be considered as deferred for the reason that the ground invoked therein is not indubitable.

Costs against private respondents.

SO ORDERED.

Bidin, Romero, and Melo, JJ., concur.
Gutierrez, Jr., J., (Chairman), on official leave.

[1] Annex "A" of Petition; Rollo, 12-16.

[2] Annex "A" of Petition; Rollo, 12-16.

[3] Annex "A" of Petition; Rollo, 15-16.

[4] Id., 17-21.

[5] 11 SCRA 153 [1964].

[6] 108 SCRA 666 [1981].

[7] G.R. No. L-9936, 14 January 1968 [erroneously cited by the private respondent].

[8] Original Records of C.A.-G.R. SP No. 10389, 57-61.

[9] Original Records of C.A.-G.R. SP No. 10389, 62.

[10] Id., 63.

[11] Id., 68.

[12] Id., 30-31.

[13] Annex "C" of Petition; Rollo, 22-23.

[14] Original Records of C.A.-G.R. SP No. 10389, 2-29.

[15] Original Records of C.A.-G.R. SP No. 10389, 10.

[16] Annex "E" of Petition; Rollo, 52-63; per Associate Justice Nathaniel P. De Pano, Jr., concurred in by Associate Justices Antonio M. Martinez and Cecilio L. Pe.

[17] Rollo, 56-62.

[18] Id., 5.

[19] Id., 159.

[20] See *Mendoza vs. Court of Appeals*, 201 SCRA 343 [1991].

[21] *Jayme vs. Alampay*, 62 SCRA 131 [1975].

[22] 90 Phil. 855, 858-860 [1952].

[23] Citing *Rodriguez vs. Director of Lands*, 31 Phil. 272 [1915]; *Zarate vs. Director of Lands*, 34 Phil. 416 [1916]; *De los Reyes vs. Razon*, 38 Phil. 480 [1918]; *PNB vs. Ortiz Luis*, 53 Phil. 649 [1929]; *Monte de Piedad vs. Velasco*, 61 Phil. 467 [1935].

[24] 181 SCRA 793, 807-809 [1990].

[25] Citing *De la Concha vs. Magtira*, 18 SCRA 398 [1966]; *Baladjay vs. Castrillo*, 1 SCRA 1064 [1961]; *Villanueva vs. Portigo*, 29 SCRA 99 [1969].

[26] Citing *Cabonitalla vs. Santiago*, 27 SCRA 211 [1969].

[27] 13 SCRA 516 [1965].

[28] Citing *Ramirez vs. Court of Appeals*, 30 SCRA 297 [1969].

[29] Citing 3 *Castan*, 7th ed., 410.

[30] Citing *Vital vs. Anore*, supra.; *Director of Lands vs. Reyes*, 69 Phil. 497 [1940]; *Ramoso vs. Obligado*, 70 Phil. 86 [1940]; *Azarcon vs. Vallarta*, 100 SCRA 450 [1980].

[31] Citing *Angeles vs. Samia*, 66 Phil. 444 [1938]; *Gabriel vs. Court of Appeals*, 159 SCRA 461 [1988].

[32] Citing *Municipality of Victorias vs. Court of Appeals*, 149 SCRA 32 [1987].

[33] Citing *Vda. de Recinto vs. Inciong*, 77 SCRA 196 [1977].

[34] Citing *De Guzman vs. Court of Appeals*, 156 SCRA 701 [1987].

[35] 133 SCRA 718, 724-725 [1984].

[36] Citing *Sapto vs. Fabiana*, 103 Phil. 683, 687 [1958].

[37] Citing *Faja vs. Court of Appeals*, 75 SCRA 441 [1977].

[38] 155 SCRA 270, 279-280 [1987].

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