

THE DIRECTOR OF LANDS, PETITIONER, VS. SAMUEL BUYCO AND EDGAR BUYCO, REPRESENTED BY THEIR ATTORNEY-IN-FACT, RIEVEN H. BUYCO AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. 91189, November 27, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In its Decision of 5 February 1985,[1] Branch 82 of the Regional Trial Court (RTC) at Odiongan, Romblon granted the application of the private respondents, who are American citizens, to bring within the operation of the Land Registration Act a parcel of land with an area of 3,194,788 square meters (319.4788 hectares) which spreads across the barangays of Canduyong, Anahao and Ferrol in the municipality of Odiongan, Province of Romblon, and to confirm their title thereto.

Petitioner appealed the decision to the Court of Appeals; he alleged therein that the trial court erred (a) in not declaring the private respondents barred by the Constitution from applying for registration because they are American citizens and are thus disqualified from acquiring lands in the Philippines, (b) in holding that private respondents had established proprietary rights over the land even before acquiring American citizenship through naturalization, and (c) independently of the issue of alienage, in not dismissing the application for registration on the basis of the private respondents' failure to overthrow, by conclusive or well-nigh incontrovertible proof, the presumption that the land applied for is public land belonging to the State.[2]

In its Decision of 21 November 1989 in CA-G.R. CV No. 05824,[3] public respondent dismissed the appeal "for lack of merit."[4]

Petitioner consequently filed this petition on 11 January 1990 under Rule 45 of the Rules of Court. Reiterating the issues he raised before the respondent Court, he seeks a review and reversal of the latter's decision.[5]

In the Resolution of 11 July 1990, this Court gave due course to the petition after the filing by the private respondents of their Comment to the same and by the petitioner of his reply thereto.[6] On 17 April 1991, the parties were required to file their respective Memoranda.[7]

The records disclose the following material operative facts and procedural antecedents:

A certain Charles Hankins, an American who was married to Laura Crescini and who resided in Canduyong, Odiongan, Romblon, died on 31 May 1937 leaving a will (Exhibit "N"). He was survived by his widow; his sons Alexander and William; and his grandchildren Ismael, Samuel and Edgar, all surnamed Buyco, who are the legitimate issues of his deceased daughter Lilia and her husband Marcelino Buyco. The will was submitted for probate before the then Court of First Instance (now Regional Trial Court) of Romblon. Charles Hankins' son Alexander was appointed administrator of the estate in Special Proceedings No. 796.

Laura Crescini died on 22 December 1941.

It appears that in a Project of Partition dated 25 June 1947 (Exhibit "O") and submitted to the probate court in the aforesaid Special Proceedings No. 796, one of the properties of Charles Hankins described as "a parcel of pastureland, riceland and coconut land containing an area of about 250 hectares, 21 ares and 63 untares x x x assessed at for P6,950.00 as per Tax Declaration No. 15853," was partitioned among his heirs as follows:

"x x x

TO LAURA C. HANKINS, x x x

(a) 157 acres x x x comprised in what is known as Carabao Pastureland and Milk-Cow Pasture. (This land is a portion of the land described in tax declaration No. 15853 x x x).

x x x

TO ALEXANDER HANKINS, x x x

(a) 80 acres of land (pasture) which is a portion of the land described in Tax declaration No. 15853 x x x.

x x x

TO LILIA HANKINS, x x x

(a) 100 acres of pastureland situated in the barrio of Canduyong and which is a portion of the entire parcel described in tax declaration No. 15853 x x x.

(b) 25 acres of pasture land situated in the barrio of Canduyong and which is a portion of the entire parcel described in tax declaration No. 15853.

x x x

TO WILLIAM B. HANKINS, x x x

(a) 100 acres of pastureland situated in the barrio of Canduyong and which is a portion of the entire parcel described in tax declaration No. 15853 x x x

(b) 25 acres of pasture land situated in barrio Anajao and which is a portion of the entire parcel described in tax declaration No. 15853 x x x."[8]

The total area so adjudicated is 487 acres, or 197.086 hectares (1 hectare = 2.471 acres).

On 30 July 1948, Laura's share in the estate of her husband Charles was partitioned among her children, Alexander and William, and her grandchildren, Ismael, Samuel and Edgar who were represented by their father Marcelino Buyco (Exhibit "P"). Thereafter, on the same date, William sold his hereditary shares in the estate of his parents to Marcelino Buyco (Exhibit "R").

On 20 August 1962, Marcelino Buyco donated to his children the property acquired from William together with other properties (Exhibit "S").

On 8 September 1970, the Buyco brothers partitioned among themselves the properties acquired by inheritance from their grandparents and by donation from their father (Exhibit "T"). However, Ismael waived his right to his share therein in favor of Samuel, one of the private respondents in this case.

Edgar and Samuel Buyco became naturalized American citizens on 29 January 1972 and 12 September 1975, respectively.

On 14 October 1976, Edgar and Samuel, through their attorney-in-fact, Rieven H. Buyco, filed before the then

Court of First Instance of Romblon an application for the registration of a parcel of land, described as follows:

"A parcel of land (Lot I, under surveyed for the heirs of Lilia Hankins situated in the barrios of Canduyong, Anahao and Ferrol, Municipality of Odiongan, province of Romblon, Tablas Island under PSU 127238) LRC Record No. _____: Bounded on the North by properties of the heirs of Rita Fiedacan and Alexander Hankins; on the Northeast, by Canduyong River and property of Alexander Hankins; on the East, by properties of Andres Cuasay, Escolastica Feruelo, Candido Mendoza, Raymundo Goray, Pedro Goray, Manuel Yap, Feliza Fedri and Silverio Mierculecio; on the Southeast, by properties of Candido Mendoza, the Heirs of Benita Formilleza, Silverio Mierculecio, Zosimo Llorca, Lot 2, and properties of Beatrice Hankins and Zosimo Llorca; on the West, by properties of Maria Llorca and Miguel Llorca; and on the Northwest, by property of Catalino Fabio. Point 'I' is S. 33 deg. 24", 4075.50 m. from B.L.L.M. 1, Odiongan, Romblon. Area THREE MILLION ONE HUNDRED NINETY FOUR THOUSAND SEVEN HUNDRED EIGHTY EIGHT (3,194,788) SQUARE METERS, more or less as Exhibit 'C'." [9]

which they claim to own in fee simple as they acquired the same by inheritance and donation inter vivos. However, they allege in paragraph 9 of the application that should the Land Registration Act be inapplicable, the benefits provided for under C.A. No. 141, as amended, be made to extend to them since both they and their predecessors-in-interest have been in possession thereof since time immemorial. The application was docketed as Land Registration Case No. N-48 LRC Record No. N-51706.

The above description is based on a survey plan prepared by private land surveyor Santiago Español in 1950 (Exhibit "C") and subsequently approved by the Director of Lands. While in their application, private respondents invoked the provisions of the Land Registration Act, [10] they eventually sought for a confirmation of imperfect title pursuant to paragraph (b), Section 48 of the Public Land Act [11], as further amended by P.D. No. 1073.

While only the herein petitioner filed an opposition thereto, the Development Bank of the Philippines (DBP) manifested that the portion of the property pertaining to Samuel Buyco is covered by a mortgage in its favor. After the jurisdictional facts had been established during the initial hearing and a general order of default entered against all other parties, the lower court designated the Judge of the Municipal Trial Court of Odiongan as commissioner to receive the evidence for the parties. Samuel Buyco, William Hankins, Manuel Firmalo and Jacinta Gomez Gabay (who was 83 years old when she took the witness stand in October of 1979) testified for the applicants. The first two (2) recounted the history of the tract of land up to the time of the abovementioned partitions and the alleged possession of the entire area by the applicants (private respondents herein).

On 5 February 1985, the land registration court handed down a Decision [12] the dispositive portion of which reads:

"PREMISES CONSIDERED, this Court hereby orders the registration of title to the parcel of land designated as Lot No. 1 Psu-127238 and its technical description together with all the improvements thereon, in the name of the herein applicants, recognizing the interest of the Development Bank of the Philippines to be annotated on the certificate of title to be issued as mortgagee for the amount of P200,000.00 with respect to the share of applicants (sic) Samuel H. Buyco.

Upon the decision become (sic) final let the corresponding decree and certificate of title be issued accordingly."

The favorable decision is based on the court's conclusion that:

"The oral and documentary evidence indubitably show applicants and their predecessors-in-interest -- their grandparents Charles Hankins and Laura Crescini, to their uncle Alexander Hankins, to them thru their administrators Gregorio Gabay and later Manuel Firmalo -- have possessed the property herein sought to be

registered in the concept of owners thereof, and such possession has been continuous, uninterrupted, adverse, open and public for a period of more than eighty years. And their right over the property is duly recognized by the adjoining owners in their individual affidavits marked as Exhibits "V", "V-1" to "V-21", inclusive. Moreover, none of the adjoining owners filed any opposition to the herein land registration case, thereby indubitably showing their recognition of the correctness of the boundary (sic) between their individual lots and that of applicants' land subject of this registration.

The late Charles Hankins declared said land for taxation purposes under Tax Declaration No. 15853 (please see description of lot in Exh. "N") and thereafter in the name of applicants and/or their father Marcelino Buyco since 1949 up to the present time (Exhs. "W", "W-1" to "W-19").

Applicants have also paid the real estate taxes thereon since 1948 up to the present time (Exhs. "X", "X-1" to "X-194").

In 1950, the land of applicants was surveyed by Private Surveyor Santiago Español and its exact metes and bounds were determined with accuracy in his survey plan PSU-127238 (Exh. "C"). This survey corrected the impreciseness of the land area as mentioned in the several instruments -- the will, project of partition, deed of partition, deed of sale (Exhs. "N", "O", "P", and "R") -- under which applicants acquired the land in question. The correctness of this survey is further shown by the fact that none of the other heirs, like Alexander Hankins nor (sic) the adjoining owners ever made a claim over any portion of the lot shown in said Psu--127238.

The land in question has been primarily devoted to cattle graxing (sic) and to the cultivation of rice and coconut and it was (sic) the applicants and their predecessors-in-interest have (sic) been reaping the fruits thereof.

The evidence further show (sic) that applicants can rightfully and did validly acquire title and ownership over the land in question because they were then Filipino citizens, their father Marcelino Buyco being a Filipino citizen himself (please see personal circumstances of Marcelino Buyco in Exhs. "P" and "R") and their modes of acquisition -- -by inheritance, intestate succession, and donation inter-vivos -- are all legally recognized modes to transfer ownership to them from their predecessors-in-interest.

Since time immemorial, applicants and their predecessors-in-interest have exercised all the attributes of dominion and absolute ownership over the land in question, and have therefore established their vested proprietary rights and registrable (sic) title over the land in question, rights which they have acquired long before they became citizens of the United States (Edgar Buyco became a U.S. citizen only on January 29, 1972; while Samuel H. Buyco, only on September 12, 1975. As a matter of fact, applicant Samuel H. Buyco mortgaged in favor of the Development Bank of the Philippines (Exhs. "U", "U-1" and "U-2") the portion belonging to him in Lot 1, Psu-127238.

From the foregoing evidence it has been satisfactorily established that the applicants have acquired an imperfect and incomplete title over the parcel of land subject of this registration proceedings in their own right as citizens of the Philippines so as to entitle them to a confirmation and registration of said lot in their names. Consequently Section II, Article XVII of the 1973 Constitution does not apply to this case, neither (sic) does this case fall under the provisions of Presidential Decree No. 713."^[13]

More specifically, the conclusion regarding possession is based on the testimonies of Manuel Firmalo, William Hankins and Jacinta Gomez Gabay which, as summarized by the court, are as follows:

X X X

"Witness Manuel Firmalo testified that from 1970 to 1978 he was the administrator, of the property of applicants; that the said property is located in the Barrios of Anahao, Canduyong, and Tubigon (now forming part of the

municipality of Ferrol) and the same is shown in the survey map marked as Exh. "C" (Psu-127238); that said lot is separated from the adjacent properties by concrete monuments, big trees and some barb (sic) wire fence (sic); that previous to his administration thereof, the same property was administered by his father-in-law, Gregorio Gabay; x x x that during his administration, a large part of the land was devoted to cattle grazing and a little portion, to coconut (sic) which are now fruit bearing; that when he took over the administration of the ranch, there was a total of 120 heads of cattle and at the time of termination of his administration there were 300 heads; that from time to time, some cattle in the ranch were sold by him and he rendered an accounting to the applicants, the owners of the ranch; that he employed cowhands to help him ran (sic) the ranch of applicants and the salaries of said cowhands were paid out of the funds of applicant Samuel Buyco from the sale of the cattle; that the proceeds of the coconuts harvested, the money was (sic) deposited with the bank and a portion was used for the payment of the real estate taxes on the land; that during his administration no third person ever claimed ownership over applicants' land; that he was the one who procured the execution of the affidavits of adjoining owners (Exhs. "V", "V-1" to "V-21") which were used to support the real estate mortgage with the DBP over said land; that from the proceeds of the sale of the copra harvested from the land of applicants, he paid the real estate taxes thereon specifically the taxes covered by Exhs. "X-83" to "X-144"; x x x that his administration over said land was adverse, open continuous and public.

William Hankins, then 72 years old and resident (sic) of Odiongan, Romblon, testified x x x; that ever since he was still a small kid, he know (sic) that the big tract of land subject of their partition was already owned by his father (Charles Hankins); that the possession of his father was in the concept of owner, continuous, adverse, public, and open, up to his (Charles Hankins) death; that after receiving his hereditary share from the estates of his father and mother, he sold his said shares to Marcelino Buyco, father of applicants by executing a Deed of Sale (Exh. "R") dated July 30, 1948; that during the lifetime of Charles Hankins, the big tract of land was devoted primarily to cattle grazing and to coconut and rice; that after he sold his hereditary share of (sic) Marcelino Buyco, the latter took possession of his said portion; that after Marcelino Buyco died, the property of Marcelino Buyco (including his share (sic) hereditary share sold under Ex. (sic) "R") was transmitted to his children, namely: Edgar H. Buyco, Ismael Buyco and Samuel H. Buyco (Samuel and Edgar Buyco, the (sic) applicants herein); that he knows that at present the owners in possession of the property subject of this registration proceedings are applicants Samuel Buyco and Edgar Buyco; that the said land is devoted to cattle grazing and planted with coconuts and rice.

x x x

Jacinta Gomez Gabay, 83 years (as of October, 1979) x x x testified that she knew the spouses Charles Hankins and Laura Crescini because since the time she can remember, she stayed with said spouses up to the (sic) their death (sic); that having stayed with the Hankins couple, she knew of their properties because she lived with them in Canduyong where the property was situated; that the property is a big tract of land; x x x that when she was living with the Hankins spouses, said spouses already owned and were in possession of this big tract of land, and this land was fenced off with barbed wires, and that said big tract of land has been used for grazing purposes since she reached the age of reason up to the present time; that during all the time that she has been with said Hankins spouses, nobody ever claimed any portion thereof; that this property extended from barrio Canduyong up to barrio Anahao; that after Charles Hankins died, his property was divided among his children Alexander Hankins, William Hankins and Lilia Hankins and the latter's share was received by her children named Ismael, Samuel and Edgar all surnamed Buyco; that before Charles Hankins' estate was partitioned it was placed under the administration of Alexander Hankins (one of the heirs); that after the partition, the portion (sic) that went to the Buyco children (as heirs of Lilia Hankins) were administered by her husband Gregorio Gabay; that her husband's administration over said property started 3 or 4 years after the war which (sic) lasted about 25 years or until

Gregorio Gabay died; that his son-in-law Manuel Firmalo took over the administration of applicants' property; that the land she was referring to is utilized as a pasture land and it has been a pasture land since the time it was owned by spouses Charles Hankins and Laura Crescini up to the present time; that Edgar, Samuel and Ismael, all surnamed Buyco have been receiving the fruits of the portion that went to Lilia Hankins; that Charles Hankins' possession of that big tract of land was in the concept of owner, continuous, adverse, open and public; that a portion of this big tract of land went to Edgar H. Buyco, Samuel H. Buyco and Ismael H. Buyco as the heirs of Lilia Hankins; that the possession of the said heirs of the late Lilia Hankins over the portion that went to them was in the concept of owner, continuous, adverse, open and public up to the present time; that as far as she can remember the Hankins family possessed said property for more than eighty (80) years."[14]

The land registration court also summarized the testimony of private respondent Samuel H. Buyco as to possession in this wise:

"Applicant Samuel H. Buyco testified that he was 51 years of age, x x x; that prior to the death of his grandfather Charles Hankins, that big parcel of pastureland was about 500 to 550 hectares, the boundaries of which were marked off by concrete monuments, some big trees, some big stones until it was partitioned in 1948, and to fix the actual boundaries, the land was surveyed by private surveyor Español (Exh. "D"); that during the lifetime of their grandfather Charles Hankins this big land was primarily used as a ranch and it was fenced off by barb (sic) wires to prevent the cattle from getting out; that after the death of his grandfather Charles Hankins, the property was administered by his uncle Alexander Hankins, and such administration was terminated when there was a partition in 1948 in accordance with the will of his grandfather; that during the administration of the property by Alexander Hankins, this property was used as a cattle ranch, even during the Japanese time; that after receiving their share from the partition of the estate, they initially planted rice and coconut and later on they reverted to cattle ranch operation (sic); that after he and his brother Edgar became the possessor (sic) of said land, they were the one (sic) who have been harvesting the fruits of the land; that they did not personally managed (sic) the land but hired in 1949 the services of Mr. Gregorio Gabay to administer the estate for them until 1970 when the latter died, and Manuel Firmalo was hired to take over the administration until 1977 when applicant took over active management of the property because he obtained a loan of P200,000.00 from the Development Bank of the Philippines; x x x that the land was declared in their name (sic) for taxation purposes by their administrator Gregorio Gabay in 1949 (Exhs. "W", "W-1" to "W-19", inclusive) and that the taxes thereon were paid out of their own money since 1948 up to the present (Exhs. "X", "X-1" to "X-194", inclusive); that applicants' possession in the concept of owner over the property sought to be registered has been open, continuous, uninterrupted, adverse and public."[15]

As earlier adverted to, petitioner's appeal from the said decision was dismissed by the public respondent for lack of merit. As to the private respondents' title to the land subject of the application, public respondent makes the following findings:

"Undisputably, applicants-appellees anchored their title to the land in question by means of hereditary succession as well as donation from their own father, Marcelino Buyco, who purchased the entire hereditary share of William Hankins (Exh. "R"). Subsequently, applicants-appellees and their brother, Ismael, partitioned their hereditary share from their grandparents, the spouses Hankins, including the property donated by their father, Marcelino Buyco, in an instrument dated September 8, 1970 (Exh. "T"). In this partition, the share of Ismael H. Buyco went to applicant-appellee Samuel H. Buyco (Exh. "T-1").

From the records extant in this case, it is Our considered view that from almost (sic) time immemorial or a period of eighty (80) years, applicants-appellees through their predecessors-in-interest have been in actual, continuous, and peaceful possession of the property in question so that the inescapable conclusion is that all along it is private land and had been segregated from the dominium (sic) of the State. Thus, We sustain the conclusion reached by

the court a quo that the latter (applicants-appellees) thru their predecessors-in-interest have acquired title by acquisitive prescription over the same, x x x.”[16]

As to the issue of the private respondents' citizenship, public respondent held that:

"x x x it is beyond peradventure (sic) of doubt that applicants-appellees were still Filipinos when they acquired their title thereto. From the death of their grandfather Charles Hankins on May 31, 1937, applicants-appellees' right of succession was already vested. Moreover, as early as the year 1962, their father Marcelino Buyco transferred his title thereto by donation inter-vivos so that on September 8, 1970, when the Buyco brothers partitioned the property in question among themselves, they could validly register the same as they already possess the necessary qualifications to have their title perfected under the Torrens system of registration.”[17]

The petition is meritorious.

As could be gleaned from the evidence adduced, the private respondents do not rely on fee simple ownership based on a Spanish grant or possessory information title under Section 19 of the Land Registration Act; the private respondents did not present any proof that they or their predecessors-in-interest derived title from an old Spanish grant such as (a) the "titulo real" or royal grant; (b) the "concesion especial" or special grant; (c) the "composicion con el estado" title or adjustment title; (d) the "titulo de compra" or title by purchase; and (e) the "informacion posesoria" or possessory information title, which could become a "titulo gratuito" or a gratuitous title.[18] The primary basis of their claim is possession, by themselves and their predecessors-in-interest, since time immemorial. The land registration court and the public respondent are of the opinion, and so held, that the private respondents had this in their favor. Thus, both courts declared that the land applied for had been segregated from the public domain and had become private land.

If indeed private respondents and their predecessors have been in possession since time immemorial, the rulings of both courts could be upheld for, as this Court stated in *Oh Cho vs. Director of Lands*: [19]

"x x x All lands that were not acquired from the Government, either by purchase or by grant, belong to the public domain. An exception to the rule would be any land that should have been in the possession of an occupant and of his predecessors in interest since time immemorial, for such possession would justify the presumption that the land had never been part of the public domain or that it had been a private property even before the Spanish conquest. (*Cariño vs. Insular Government*, 212 U.S., 449; 53 Law. ed., 594.) [20] The applicant does not come under the exception, for the earliest possession of the lot by his first predecessor in interest began in 1880."

This exception was reiterated in *Susi vs. Razon*, [21] where the first possessor was in possession for an undetermined period of time prior to 1880. We stated therein:

"x x x In favor of Valentin Susi, there is, moreover, the presumption juris et de jure established in paragraph (b) of section 45 of Act No. 2874, [22] amending Act No. 926, that all the necessary requirements for a grant by the Government were complied with, for he has been in actual and physical possession, personally and through his predecessors, of an agricultural land of the public domain openly, continuously, exclusively and publicly since July 26, 1894, with a right to a certificate of title to said land under the provisions of Chapter VIII of said Act. x x x If by a legal fiction, Valentin Susi had acquired the land in question by a grant of the State, it had already ceased to be of the public domain and had become private property, at least by presumption, of Valentin Susi, beyond the control of the Director of Lands."

Although this additional pronouncement was rippled by the ruling in *Manila Electric Co. vs. Castro-Bartolome* [23] to the effect that land would cease to be public only upon the issuance of a certificate of title to any Filipino citizen claiming it under Section 48(b) of the Public Land Act, [24] and that a piece of land

over which an imperfect title is sought to be confirmed remains public, this Court, speaking through then Associate Justice, now Chief Justice Andres R. Narvasa, in *Director of Lands vs. Intermediate Appellate Court*,^[25] reiterated the *Cariño* and *Susi* doctrines, thus:

"The Court, in the light of the foregoing, is of the view, and so holds, that the majority ruling in *Meralco* must be reconsidered and no longer deemed to be binding precedent. The correct rule, as enunciated in the line of cases already referred to,^[26] is that alienable public land held by a possessor, personally or through his predecessors-in-interest, openly, continuously and exclusively for the prescribed statutory period (30 years under The Public Land Act, as amended) is converted to private property by the mere lapse or completion of said period, *ipso jure*."

It is obvious from the foregoing rule that the applicant must prove that (a) the land is alienable public land and (b) his possession, in the concept abovestated, must be either since time immemorial, as ruled in both *Cariño* and *Susi*, or for the period prescribed in the Public Land Act. As to the latter, this Court, in *Gutierrez Hermanos vs. Court of Appeals*,^[27] adopted the rule enunciated by the Court of Appeals, per then Associate Justice Hugo E. Gutierrez, Jr., now a distinguished member of this Court, that an applicant for registration under Section 48 of the Public Land Act must secure a certification from the Government that the lands which he claims to have possessed as owner for more than thirty (30) years are alienable and disposable. It is the burden of the applicant to prove its positive averments.

In the instant case, private respondents offered no evidence at all to prove that the property subject of the application is an alienable and disposable parcel of land of the public domain. On the contrary, based on their own evidence, the entire property which is alleged to have originally belonged to Charles Hankins was pasture land. According to witness Jacinta Gomez Gabay, this land has been pasture land, utilized for grazing purposes, since the time it was "owned" by the spouses Charles Hankins and Laura Crescini up to the present time (i.e., up to the date she testified). In *Director of Lands vs. Rivas*,^[28] this Court ruled:

"Grazing lands and timber lands are not alienable under section 1, Article XIII of the 1935 Constitution and sections 8, 10 and 11 of Article XIV of the 1973 Constitution. Section 10 distinguishes strictly agricultural lands (disposable) from grazing lands (inalienable)."

The instant application was filed, heard and decided under the regime of the 1973 Constitution.

As to the second matter to be proved, the applicant must present evidence of an imperfect title such as those derived from the old Spanish grants. He may also show that he has been in continuous, open and notorious possession and occupation of agricultural lands of the public domain under a *bona fide* claim of acquisition of ownership and for the period prescribed under Section 48(b) of the Public Land Act.^[29] Simply put, a person who seeks the registration of title to a piece of land on the basis of possession by himself and his predecessors-in-interest must prove his claim by clear and convincing evidence; he should not rely on the weakness of the evidence of the oppositors.^[30] This rule is certainly not new. In the 1913 case of *Maloles vs. Director of Lands*,^[31] this Court already held that in order that a petitioner may be entitled to have a parcel of land registered under the Torrens system, he has to show that he is the real and absolute owner, in fee simple, of the said land; moreover, it is the duty of the court, even in the absence of any oppositor, to require the petitioner to show, by a preponderance of the evidence and by positive and absolute proof, so far as it is possible, that he is the owner in fee simple of the land in question.

In *Santiago vs. de los Santos*,^[32] this rule was to find anchorage in policy considerations based no less on one of the fundamental objectives of the Constitution, namely the conservation and utilization of our natural resources. We held in the said case that there would be a failure to abide by its command if the judiciary does not scrutinize

with care applications to private ownership of real estate. This Court then set the quantum of evidence needed to be established by the applicant, to wit: well-nigh incontrovertible evidence.

In the instant case, private respondents' evidence miserably failed to establish their imperfect title to the property in question. Their allegation of possession since time immemorial, which was conceded by the land registration court and the public respondent, is patently baseless. There is an evident failure to comprehend the meaning and import of the term immemorial. As defined, immemorial simply means beyond the reach of memory,[33] beyond human memory, or time out of mind.[34] When referring to possession, specifically "immemorial possession," it means possession of which no man living has seen the beginning, and the existence of which he has learned from his elders.[35] Such possession was never present in the case of the private respondents. The trial court and the public respondent based the finding of the more than eighty (80) years of possession by the private respondents and their predecessors-in-interest on the sole testimony of Mrs. Gabay who was eighty-three (83) years old when she testified in October of 1979. Thus, she must have been born in 1896. If the asserted possession lasted for a period of more than eighty (80) years at the time she testified, the same must have commenced sometime in 1899, or at the time that she was barely three (3) years old. It is quite impossible that she could fully grasp, before coming to the age of reason, the concept of possession of such a big tract of land and testify on the same some eight (8) decades later. In short, therefore, she cannot be relied upon to prove the possession by Charles Hankins of the said property from 1899.

Charles Hankins was an American citizen. There is no evidence to show the date of his birth, his arrival in the Philippines -- particularly in Odiongan, Romblon -- or his acquisition of the big tract of land; neither is there any evidence to prove the manner of his acquisition thereof. Thus, there does not even exist a reasonable basis for the finding that the private respondents and their predecessors-in-interest possessed the land for more than eighty (80) years, much less since time immemorial. In *Oh Cho vs. Director of Lands*,[36] possession which began in 1880 was not considered as possession "since time immemorial."

There is, as well, no evidence on record to show that Charles Hankins cultivated, had control over or used the whole or even a greater portion of the big tract of land for grazing purposes. None of the witnesses testified as to the number of heads of cattle which were brought by Charles into the land. There is likewise no competent proof that he declared the land in his name for taxation purposes or that he had paid the taxes thereon. Although his will (Exhibit "N") made mention of Tax Declaration No. 15853, neither the said declaration nor any tax receipt was presented in evidence. Because of such non-production, it cannot be determined when Charles initially declared his alleged land for taxation purposes and what exactly were its natural boundaries, if any. It is clear that the non-production of this tax declaration accounted for the obvious inability of the witnesses to testify with certainty as to the extent of the area of the property. As correctly observed by the petitioner, none of the private respondents' witnesses could give the court a definite idea thereon. Thus, Samuel Buyco declared:

"I really don't know the exact area, but it is between 500 to 550 hectares." [37]

while William Hankins admitted:

"I cannot exactly tell because that is a very big estate." [38]

On the other hand, witness Jacinta Gomez Gabay averred:

"I could not exactly tell but I have heard that it was a big tract of land because we were staying there." [39]

In any event, even if Charles had indeed declared the property for taxation purposes and actually paid taxes, such facts are still insufficient to justify possession thereof, much less a claim of ownership thereon. This Court has repeatedly held that the declaration of ownership for purposes of assessment on the payment of the tax is not

sufficient to prove ownership.[40]

To this Court's mind, private respondents failed to prove that Charles Hankins had possessed the property -- allegedly covered by Tax Declaration No. 15853 and made the subject of both his last will and testament and the project of partition of his estate among his heirs -- in such a manner as to remove the same from the public domain under the Cariño and Susi doctrines. Thus, when he died on 31 May 1937, he transmitted no right whatsoever, with respect to the said property, to his heirs. This being the case, his possession cannot be tacked to that of the private respondents for the latter's benefit pursuant to Section 48 (b) of the Public Land Act, the alternative ground relied upon in their application. It would have been entirely different if the possession of Charles was open, continuous, exclusive, notorious and under a bona fide claim of ownership as provided under Section 48 of the Public Land Act. Even if he were an American citizen at that time, he would have had the same civil rights as Filipino citizens pursuant to the original ordinance appended to the 1935 Constitution. The pertinent portion of said ordinance reads:

"(17) Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippines all the civil rights of the citizens and corporations, respectively, thereof."

The import of said paragraph (17) was confirmed and reinforced originally by Section 44 of Act No. 2874 and Section 127 of C.A. No. 141 (The Public Land Act of 1936); the latter provided that:

"SEC. 127. During the existence and continuance of the Commonwealth, and before the Republic of the Philippines is established, citizens and corporations of the United States shall enjoy the same rights granted to citizens and corporations of the Philippines under this Act."

This right, however, vanished with the advent of the Philippine Republic on 4 July 1946.[41]

Verily, private respondents had to rely exclusively on their own possession. Under the applicable law at the time, it was incumbent upon them to prove that they had been in open, continuous, exclusive and notorious possession and occupation of agricultural land of the public domain, under a bona fide claim of acquisition of ownership for at least thirty (30) years immediately preceding the filing of the applications for confirmation of title, except when prevented by war or force majeure.[42]

By their own evidence, private respondents admitted that they were never in actual possession of the property prior to the filing of their application. During the pendency of Special Proceedings No. 796, the estate of Charles Hankins appeared to have been administered by his son Alexander. This administration was terminated in 1948 upon the execution of the Project of Partition. Private respondents and their brother Ismael did not take possession of the share which pertained to their mother, Lilia; instead, they allegedly hired Gregorio Gabay to administer the same. There is, however, no competent evidence to show the extent of such administration. Moreover, notwithstanding the fact that Gregorio had the property declared for taxation purposes, the correct area and boundaries of the same have not been proven. As evidenced by the Project of Partition, the share of Lilia was only 125 acres or 50.59 hectares, which is clearly not the portion applied for. The area applied for consists of 319.4788 hectares of land based on a survey plan prepared by private land surveyor Español on the basis of a survey conducted in 1950. Obviously, therefore, the plan was not prepared to determine Lilia's share alone for, as admitted by the private respondents themselves, this plan includes William Hankins' share which was sold to Marcelino Buyco, private respondents' father, and the other properties which the latter donated to the private respondents and Ismael Buyco on 20 August 1962 (Exhibit "S"). However, there is no competent evidence as to the respective boundaries and areas of the properties constituting the said share of William Hankins; neither are there reliable descriptions of the other alleged properties belonging to Marcelino Buyco. Be that as it may, when the survey was conducted by Español, private respondents and their brother Ismael did not immediately acquire

the portion originating from William Hankins and the other alleged properties of Marcelino Buyco; hence, there was no valid basis for the inclusion of said properties in the survey. And even if both William's share and Marcelino Buyco's properties were included, there would still be nothing to support the application for the entire 319.4788 hectares considering that as per the Project of Partition, the share pertaining to William consisted only of 50.59 hectares. There was, moreover, no evidence to show the extent of the alleged "other properties" of Marcelino Buyco. Given such circumstances, it would be reasonable to presume that what was surveyed in 1950 was the entire pasture land alleged to form part of the estate of Charles Hankins, covered by Tax Declaration No. 15853, and which necessarily included the share of Alexander Hankins. Significantly, per Exhibit "O", the latter's share is specified as part of the property covered by Tax Declaration No. 15853. The inclusion then of Alexander's share in the survey and the plan may provide the clue to this unusual increase in the area covered by the survey plan.

Nevertheless, even if We are to assume for argument's sake that there was nothing irregular in the inclusion in the survey plan of the share of William Hankins and the other properties of Marcelino Buyco, the fact remains that the "ownership" thereof could have been acquired by the private respondents and Ismael Buyco only on 20 August 1962 upon the execution of the deed of donation in their favor. To be thus benefited by the possession of William or Marcelino for purposes of Section 48 (b) of the Public Land Act, there should be proof that said predecessors had been in open, continuous, exclusive and notorious possession and occupation thereof. Unfortunately, no such proof was offered.

It is palpably obvious then that at the time Land Registration Case No. N-48 was filed in the Regional Trial Court of Romblon on 14 October 1976, private respondents did not have in their favor an imperfect title over that which they claimed to have inherited, by representation, from the estate of Charles Hankins. With greater force does this conclusion likewise apply with respect to the properties donated to them in 1962 by their father Marcelino Buyco. This is because they were not able to prove open, continuous, exclusive and notorious possession and occupation thereof under a bona fide claim of acquisition of ownership for at least thirty (30) years immediately preceding the filing of the application,[43] or from 12 June 1945.[44]

Considering that the private respondents became American citizens before such filing, it goes without saying that they had acquired no vested right, consisting of an imperfect title, over the property before they lost their Philippine citizenship.

WHEREFORE, the Petition is GRANTED. The challenged Decision of the public respondent of 21 November 1989 in CA-G.R. CV No. 05824 is hereby SET ASIDE and the Decision of 5 February 1985 of Branch 82 of the Regional Trial Court of Romblon in Land Registration Case No. N-48, LRC Record No. N-51706 is REVERSED.

Costs against the private respondents.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Rollo, 88-97.

[2] Brief for Appellant, 4-5; Rollo, 37-38.

[3] Id., 99-110; per Associate Justice Hector C. Fule, ponente, concurred in by Associate Justices Lorna S. Lombos-De la Fuente and Regina G. Ordoñez-Benitez.

[4] Id., 110.

[5] Id., 11.

[6] Id., 159.

[7] Id., 161.

[8] Original Records, 140-141.

[9] Rollo, 88; 100.

[10] Act No. 496.

[11] C.A. No. 141.

[12] Rollo, 88-97; per Judge Faustino E. Juntereal, Jr.

[13] Rollo, 95-97.

[14] Rollo, 91-94.

[15] Rollo, 89-91.

[16] Rollo, 105.

[17] Rollo, 108, citing *Director of Lands vs. Court of Appeals*, 158 SCRA 568 [1988].

[18] *Director of Forestry vs. Muñoz*, 23 SCRA 1183, 1202 [1968].

[19] 75 Phil. 890, 892 [1946].

[20] This case was reported in 41 Phil. 935 [1909].

[21] 48 Phil. 424 [1925].

[22] Act No. 926, enacted on 7 October 1903 by the Philippine Commission, prescribed the rules and regulations governing the homesteading, selling and leasing of portions of the public domain and the forms and conditions to enable persons to perfect their titles to public lands. Act No. 2874, enacted by the Philippine Legislature and approved on 29 November 1919, was an act to amend and compile the laws relative to lands of the public domain. Section 45 of Act No. 2874 corresponded to Section 48(b) of C.A. 141 (The Public Land Act); however, the benefits in the former, which were extended to citizens of the United States of America (Section 44), could only be availed of not later than 31 December 1928.

[23] 114 SCRA 799 [1982].

[24] C.A. No. 141.

[25] 146 SCRA 509, 522 [1986]; reiterated further in *Director of Lands vs. Bengzon*, 152 SCRA 369 [1987]; *Republic vs. De Porkan*, 151 SCRA 88 [1987]; *Director of Lands vs. Court of Appeals*, 158 SCRA 568 [1988]; *De Ocsio vs. Court of Appeals*, 170 SCRA 729 [1989]; *Pineda vs. Court of Appeals*, 183 SCRA 602 [1990].

[26] Namely: *Cariño vs. Insular Government*, supra.; *Susi vs. Razon*, supra.; *Lacaste vs. Director of Lands*, 63 Phil. 654 [1936]; *Mesina vs. Vda. de Sonza*, 108 Phil. 251 [1960]; *Manarpaac vs. Cabanatan*, 21 SCRA 743 [1967]; *Miguel vs. Court of Appeals*, 29 SCRA 760 [1969]; *Herico vs. Dar*, 95 SCRA 437 [1980].

[27] 178 SCRA 37, 55 [1989].

[28] 141 SCRA 329, 335 [1986].

[29] Under the original law, possession had to be reckoned from 26 July 1894; as amended by R.A. No. 1942, the required period of possession was reduced to thirty (30) years immediately preceding the filing of the application. As further amended by P.D. No. 1073, possession is to be reckoned from 12 June 1945. See *Heirs of Jose Amunategui vs. Director of Forestry*, 126 SCRA 69 [1983]; see also *Director of Lands vs. Court of Appeals*, 38 SCRA 634 [1971]; *Director of Lands vs. Intermediate Appellate Court*, G.R. No. 68946, 22 May 1992.

[30] *Reyes vs. Sierra*, 93 SCRA 472 [1979].

[31] 25 Phil. 548 [1913].

[32] 61 SCRA 146, 151-152 [1974].

[33] *Susi vs. Razon*, *supra*.

[34] *Black's Law Dictionary*, Fifth ed., 675.

[35] *Susi vs. Razon*, *supra*.; citing Article 766 of the Civil Code of Louisiana.

[36] *Supra*.

[37] TSN, 4 October 1979, 12.

[38] TSN, 4 October 1979, 36.

[39] *Id.*, 42-43.

[40] *Evangelista vs. Tabayuyong*, 7 Phil. 607 [1907]; *Elumbaring, vs. Elumbaring*, 12 Phil. 384 [1909]; *Camo vs. Riosa Buyco*, 29 Phil. 437 [1915]; *Cureg vs. Intermediate Appellate Court*, 177 SCRA 313 [1989].

[41] *Republic vs. Quasha*, 46 SCRA 160 [1972]; *Moss vs. Director of Lands*, 80 SCRA 269 [1977].

[42] Section 48(b), C.A. No. 141, as amended by R.A. No. 1942 and P.D. No. 1073 which was promulgated on 25 January 1977. This paragraph was amended to make it applicable only to alienable and disposable lands of the public domain which have been in the open, continuous, exclusive and notorious possession and occupation by the applicant himself or through his predecessors-in-interest under a bona fide claim of acquisition of ownership since 12 June 1945.

[43] Section 48(b), C.A. No. 141, as amended by R.A. No. 1942.

[44] *Id.*, as further amended by P.D. No. 1073.

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