

**ROMEO P. CO AND MARCELITA CO, PETITIONERS, VS. COURT OF APPEALS, EDUARDO R. MEMIJE AND ADELAIDA H. MEMIJE, RESPONDENTS.***G.R. No. 93687. May 06, 1991*

Ponente: REGALADO, J.

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From a coaptation of the records of this case,[1] it appears that sometime in 1965, petitioner Marcelita Co contracted to buy two parcels of land owned by Andres Gabriel at Malabon, Rizal. The sale was on installment basis and she paid the entire consideration. Upon completion of the installment payments in 1966, Andres Gabriel, who was to execute the final deed of sale of said properties, suggested that the titles to said properties be placed in the name of one who still had no real property registered in his name to avoid any difficulty in registering said properties. Consequently, Marcelita Co had the final deeds of sale executed in the name of her brother, Ruperto Padonan. This arrangement was to constitute Ruperto Padonan only as a trustee of said properties. One of the lots was later sold to one Hipolito Tamayo, while the other was titled in the name of Ruperto Padonan and a house was constructed thereon.

On January 28, 1973, in furtherance of said trust agreement, Ruperto Padonan simultaneously executed a deed of absolute sale in favor of petitioner Marcelita Co and a special power of attorney constituting petitioner Romeo Co as attorney-in-fact authorizing him to alienate and encumber said properties. It does not appear that the deed of sale in favor of petitioner Marcelita Co was registered.

On September 10, 1974, Ruperto Padonan executed a deed of absolute sale of the lot registered in his name, together with the house thereon, in favor of private respondent Eduardo Memije. Although Transfer Certificate of Title No. 457594 was issued for the lot in the names of private respondents, they were not able to take possession of said properties as they were occupied by petitioners. Hence, on March 5, 1975, private respondents sued petitioners in Civil Case No. C-3489 of the then Court of First Instance of Rizal, Branch XIV, Caloocan City, for recovery of possession and quieting of title involving said properties. That case was apparently not prosecuted but was dismissed.

Sometime in 1976, private respondents filed a petition for the issuance of a writ of possession in the original land registration proceedings (GLRO Rec. No. 1230 of the former Court of First Instance of Rizal) so that they could be placed in possession of the properties which they bought from Ruperto Padonan. Said writ was issued by the lower court but on March 18, 1983 the same was, however, set aside by this Court in G.R. No. L-46239.[2]

Petitioners then filed Civil Case No. C-11063 in the Regional Trial Court, Branch 120, Caloocan City, for the annulment of the deed of sale and title involving the lot and house in question, with damages against private respondents. This case, however, was dismissed on the ground of improper venue.

On November 14, 1983, private respondents filed Civil Case No. 370-MN in the Regional Trial Court of Malabon, Branch 170, against petitioners for the recovery of possession of the aforesaid residential lot and house

registered in their names. Petitioners raised the affirmative defenses of fraud and their ownership over the land, and interposed the same as a compulsory counterclaim, instead of refiling a separate action for annulment of the deed of sale and title executed and issued in favor of private respondents.

After trial, the court a quo ruled against herein petitioners, as defendants, and rendered judgment on May 18, 1987 as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the defendants to vacate the property in question and deliver possession to plaintiffs as the lawful owners thereof; to pay plaintiffs the sum of P500.00 a month from September 15, 1974 as reasonable compensation for the use and occupation of said property until they shall have vacated the same, and to pay plaintiffs P5,000.00 as attorney's fees and the costs of the suit.

Defendants' counterclaims are dismissed for lack of merit.[3]

On appeal to the Court of Appeals in CA-G.R. Civil Case No. 15050, said respondent court affirmed, with modifications, the aforequoted judgment of the court below in Civil Case No. 370-MN. It held that in an action to recover possession of realty, attacking the transfer certificate of title by way of affirmative defenses on the ground that there was fraud committed by Ruperto Padonan when he sold the property in question to private respondents, is an improper procedure as this amounts to a collateral attack on the indefeasibility of a Torrens title; that petitioners should have pursued their original complaint for the annulment of the deed of sale and title which was dismissed without prejudice; and that private respondents appear to have a better right of possession considering that they are the registered owners of the property in question.

Accordingly, respondent Court of Appeals rendered judgment which reads:

WHEREFORE, the appealed decision is MODIFIED to read thus: In view of the foregoing, judgment is hereby rendered ordering the appellants (defendants) to vacate the property in question and deliver the possession thereof to the appellees (plaintiffs); to pay appellees P500.00 monthly from November 14, 1983 as reasonable compensation for the occupancy of said property until they shall have vacated it; and to pay the costs of the suit. The counterclaims are dismissed. No pronouncement as to costs.[4]

Their motion for reconsideration having been denied,[5] petitioners are now before us, contending that respondent court acted without or in excess of its jurisdiction or with grave abuse of discretion in -

- a) totally disregarding the compulsory counterclaims of ownership and fraud even if undisputed, and in effect, limits the relief of a party-defendant in a recovery of possession case;
- b) finding that the affirmative defense of fraud and at the same time raised as a compulsory counterclaim is a collateral attack on the indefeasibility of the transfer certificate of title;
- c) summarily dismissing the counterclaims of the petitioner without stating the legal grounds for its dismissal;
- d) disregarding the existence of bad faith in the registration of the subject property; and
- e) holding that there is a double sale in this case contrary to the evidence presented by the parties."[6]

The counterclaim filed by petitioners in the aforesaid case was correctly dismissed by the trial court. A compulsory counterclaim is one which arises out of or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party's claim. In the case at bar, there appears to be two distinct transactions, namely, the sale in favor of petitioners which was not registered and the sale in favor of private respondents which was duly registered. The only apparent peculiarity is that the petitioners are in possession of the property in question.

Obviously, it would not be procedurally unsound for petitioners to resort to a separate case for the annulment of the deed of sale in question. They did file such a case but did not proceed with it to its ultimate conclusion. That is the plausible and available remedy at law which is open to them, not a counterclaim in a case based on a discrete cause of action. This is evident from the requisites of a compulsory counterclaim, viz.: (1) it arises out of, or is necessarily connected with, the transaction or occurrence which is the subject matter of the opposing party's claim; (2) it does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction; and (3) the court has jurisdiction to entertain the claim.[7]

Anent the issue on whether the counterclaim attacking the validity of the Torrens title on the ground of fraud is a collateral attack, we distinguish between the two remedies against a judgment or final order. A direct attack against a judgment is made through an action or proceeding the main object of which is to annul, set aside, or enjoin the enforcement of such judgment, if not yet carried into effect; or, if the property has been disposed of, the aggrieved party may sue for recovery.[8] A collateral attack is made when, in another action to obtain a different relief, an attack on the judgment is made as an incident in said action. This is proper only when the judgment, on its face, is null and void, as where it is patent that the court which rendered said judgment has no jurisdiction.[9]

In their reply dated September 11, 1990, petitioners argue that the issues of fraud and ownership raised in their so-called compulsory counterclaim partake of the nature of an independent complaint which they may pursue for the purpose of assailing the validity of the transfer certificate of title of private respondents. That theory will not prosper.

While a counterclaim may be filed with a subject matter or for a relief different from those in the basic complaint in the case, it does not follow that such counterclaim is in the nature of a separate and independent action in itself. In fact, its allowance in the action is subject to explicit conditions, as above set forth, particularly in its required relation to the subject matter of the opposing party's claim. Failing in that respect, it cannot even be entertained as a counterclaim in the original case but must be filed and pursued as an altogether different and original action.

It is evident that the objective of such claim is to nullify the title of private respondents to the property in question, which thereby challenges the judgment pursuant to which the title was decreed. This is apparently a collateral attack which is not permitted under the principle of indefeasibility of a Torrens title. It is well settled that a Torrens title cannot be collaterally attacked. The issue on the validity of title, i.e., whether or not it was fraudulently issued, can only be raised in an action expressly instituted for that purpose.[10] Hence, whether or not petitioners have the right to claim ownership of the land in question is beyond the province of the instant proceeding. That should be threshed out in a proper action. The two proceedings are distinct and should not be confused.[11]

Keeping in mind that in CA-G.R. Civil Case No. 15050 herein petitioners were the appellants and herein respondents were the appellees, we quote the further disquisitions of respondent Court of Appeals on the position espoused by petitioners:

The rest of the affirmative defenses (pars. 13 to 16 of the answer), quoted above, are allegations attacking the validity of the deed of absolute sale over the subject property executed by Ruperto Padonan in favor of the appellees Memije, as well as attacking the validity of TCT No. 457594, covering the same property, issued by the Registry of Deeds of Rizal in appellees' name by virtue of said deed of sale.

Obviously, in an action to recover possession of a realty, in the present case, attacking the TCT covering said property by way of affirmative defenses is an improper procedure. Appellants should have pursued the case they filed with the RTC Br. 120 at Caloocan City for "annulment of deed of sale and title with damages" after that court dismissed it on the ground of improper venue. In other words, after dismissal of their complaint, appellants

should have filed the same action, as observed by that court, with the RTC at Malabon, Metro Manila, where the property is situated.

The affirmative defenses raised by appellants in the present case alleging fraudulent connivance between Ruperto Padonan and appellees in the sale of the subject property by the former cannot overcome the evidence of appellees' ownership over said property, i.e., a torrens title designated as TCT No. 457594 in their name. Hence, in the present case to recover possession of the realty as its registered owner, i.e., accion publiciana, appellees certainly have a better right to its possession than appellants.

In fine, whatever right of possession appellants may have over the subject property cannot prevail over that of appellees for the simple reason that appellants are not the registered owner, while appellees are. If, as appellants alleged, fraud had vitiated the sale between Ruperto Padonan and appellees, and consequently the issuance of said TCT No. 457594 in appellees' name by virtue of such sale is void, then their remedy was not to attack collaterally by way of affirmative defenses but to institute a proceeding purposely to attack directly such sale and torrens title.

It is a well-known doctrine that a torrens title, as a rule, is irrevocable and indefeasible, and the duty of the court is to see to it that this title is maintained and respected unless challenged in a direct proceeding. (*Natalla Realty Corporation vs. Vallez*, G.R. 78290-94, May 23, 1989; *Gonzales vs. IAC*, G.R. 69622, Jan. 29, 1988, 157 SCRA 587; *Cimafranca vs. IAC*, L-68687, Jan. 31, 1987, 147 SCRA 611; *Barrios vs. Court of Appeals*, L-32531, Aug. 31, 1977, 78 SCRA 427; *Magay vs. Estandian*, L-28975, Feb. 27, 1976, 69 SCRA 456; *Director of Lands vs. Gan Tan*, L-2664, May 30, 1951, 89 Phil. 184). This, appellants failed to do.[12]

Petitioners raise the issue of whether or not private respondents were in bad faith in registering the subject property. It has been held that a purchaser in good faith is one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price for the same at the time of such purchase or before he has notice of the claim or interest of some other person in the property.[13] Also, in order that a purchaser of land with a Torrens title may be considered as a purchaser in good faith, it is enough that he examines the latest certificate of title which in this case was issued in the name of the immediate transferor. The purchaser is not bound by the original certificate but only by the certificate of title of the person from whom he has purchased the property.[14]

Petitioners maintain that although respondent spouses are the registered owners of the subject property, they were, however, in bad faith when the land was purchased and subsequently registered. But, as found by the trial court, the only evidence petitioners have to buttress their position is the self-serving statement of petitioner Marcelita Co that it is a known fact in Malabon that she is the owner of the said property, and the circumstance that Eduardo Memije was always with Ruperto Padonan during the trial of the criminal case filed against herein petitioners.[15] These do not suffice to prove prior knowledge of petitioners' claim as would attribute bad faith to respondent spouses.

Furthermore, as established by respondent Eduardo Memije without contradiction, the property was already paid in full and the deed was registered before respondent spouses learned of the supposed adverse claim of petitioners. In his testimony, said respondent declared that he and Padonan, after agreeing on the projected sale, went and paid the mortgage on the property and, thereafter, Padonan executed the deed of sale prepared by the counsel of said private respondent. On the basis of said deed of sale and the release of mortgage over the property, the Register of Deeds for the Province of Rizal issued Transfer Certificate of Title No. 457594 in the names of respondent spouses. It was subsequent thereto when the keys to the house had been given to respondents by Padonan and the former went to occupy the house that they were prevented from doing so by petitioners. Although respondent spouses duly reported that matter to Padonan and the latter promised to settle the matter, no further action was

taken on their protest.[16] Consequently, private respondents had to take judicial recourse.

Finally, on the question of double sale, the pertinent provision of the Civil Code states:

Art. 1544. If the same thing should have been sold to different vendors, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

.....

As earlier narrated, the final deed of sale of the land was executed in 1966 in the name of Ruperto Padonan. On January 28, 1973, Ruperto Padonan executed a deed of absolute sale in favor of petitioner Marcelita Co. Again on September 10, 1974, Ruperto Padonan executed a deed of absolute sale of the same property in favor of respondent Eduardo Memije. These facts disclose that there was indeed a double sale, hence the above-quoted provision of law finds application.

Petitioners, however, contend that no double sale may arise due to the fact that an implied trust was created between them and the alleged vendor, Ruperto Padonan. The trust agreement was indeed recognized by the trial court in its decision, thus:

Defendants' evidence that the purchase price for the acquisition of the property in question was paid by them has not been controverted. Consequently, said property, which was registered in the name of Ruperto Padonan was held in trust by the latter for the benefit of defendants. Thus, defendants claim that it was in compliance with the trust agreement that Ruperto Padonan executed a deed of sale covering the subject house and lot in favor of defendant Marcelita Co on January 28, 1983 (sic, 1973) in order that the title to said property could be transferred in the latter's name as the real owner thereof."[17]

Nonetheless, despite the existence of a trust agreement, the conflict is between the Co spouses, on the one hand, and the Memije spouses, on the other. The trust agreement is between Ruperto Padonan and herein petitioner Marcelita Co. Private respondents are not in privity with petitioners or Ruperto Padonan as far as the trust agreement is concerned. Private respondents relied on a clean transfer certificate of title in the name of Padonan, which title does not contain any annotation concerning the trust agreement.

Under the present posture of this case, therefore, it appearing that private respondents are the duly registered owners of the land, without sufficient proof of any flaw in their title thereto having been adduced by petitioners, the right of the former to the possession thereof and to be protected therein has to be conceded and respected.

WHEREFORE, without prejudice to such appropriate remedies as petitioners may avail themselves of with respect to their claim of ownership of the property in question, the instant petition is DENIED and the judgment of respondent Court of Appeals is hereby AFFIRMED.

### **SO ORDERED.**

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

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[1] Original Record, 170-171, 278-281, 286-287, 437-439; Rollo, 4-5.

[2] Spouses Co vs. Salvador, etc., et al., 121 SCRA 61 (1983).

[3] Per Judge Marina L. Buzon; Original Record, 442.

[4] Penned by Associate Justice Jesus M. Elbinias, with the concurrence of Presiding Justice Rodolfo A. Nocon and- Associate Justice Pedro A. Ramirez; Rollo, 30.

[5] Rollo, 34.

[6] Ibid., 8.

[7] Javier vs. Intermediate Appellate Court, 171 SCRA 605 (1989).

[8] El Banco Español-Filipino vs. Palanca, etc., 37 Phil. 921 (1918).

[9] Macabingkil vs. People's Homesite and Housing Corporation, et al., 72 SCRA 326 (1976).

[10] Spouses Cimafranca, et al. vs. Intermediate Appellate Court, et al. 147 SCRA 611 (1987); Magay vs. Estandian, 69 SCRA 456 (1976); Samonte, et al. vs. Sambilon, et al., 107 Phil. 198 (1960).

[11] Director of Lands vs. Tan, 89 Phil. 184 (1951).

[12] Rollo, 29-30.

[13] Cui, etc., et al. vs. Henson, etc., et al., 51 Phil. 606 (1928).

[14] Lim vs. Court of Appeals, 182 SCRA 564 (1990); Hernandez vs. Katigbak Vda. de Sales, 69 Phil. 744 (1940).

[15] Original Record, 440.

[16] TSN, July 1, 1985, 5-8; Original Record, 298-301.

[17] Original Record, 439.

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