

MANUEL ALMAGRO JOINED BY HIS SPOUSE, ELIZABETH ALMAGRO, PETITIONERS, VS. SALVACION C. KWAN, WILLIAM C. KWAN, VICTORIA C. KWAN, ASSISTED BY HER HUSBAND, JOSE A. ARBAS, AND CECILI...

G.R. Nos. 175806 and 175810. October 20, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

This is a consolidation of two separate petitions for review,[1] assailing the 4 April 2006 Decision[2] and the 31 October 2006 Resolution[3] of the Court of Appeals in CA-G.R. SP Nos. 71237 and 71437.

This case involves Lot No. 6278-M, a 17,181 square meter parcel of land covered by TCT No. T-11397. Lot No. 6278-M is located at Maslog, Sibulan, Negros Oriental and is registered in the name of spouses Kwan Chin and Zosima Sarana. Respondents are the legitimate children of spouses Kwan Chin and Zosima Sarana, who both died intestate on 2 November 1986 and 23 January 1976, respectively, in Dumaguete City. Upon the death of their parents, respondents inherited Lot No. 6278-M through hereditary succession.

On 18 September 1996, respondents filed with the Municipal Trial Court (MTC) an action for recovery of possession and damages against spouses Rogelio and Lourdes Duran, spouses Romulo Vinalver and Elsa Vinalver,[4] spouses Marte[5] Bati-on and Liz E. Bati-on, spouses Pablo Deciar and Marlyn Deciar, spouses Salvador Palongpalong and Bienvenida Palongpalong, spouses Sabas Kiskis and Eduvigis Kiskis, spouses Pio Tubat, Jr. and Encarnita Tubat, spouses Andres Tubat and Leonides Tubat, spouses George Tubat and Noela Tubat, spouses Dodong Go and Alice Go, spouses Delano Bangay and Maria Bangay,[6] spouses Simeon Pachoro and Margarita Pachoro, spouses Cepriano[7] Tubat and Elsa Tubat, spouses Jovito Remolano and Editha Orlina Remolano, spouses Nelson Miravalles and Erlene Miravalles, Dronica Orlina,[8] Clarita Barot Lara, Conchita Orlina, Antonia Malahay and the Philippine National Police (PNP),[9] Agan-an, Sibulan, Negros Oriental. Subsequently, spouses Manuel Almagro and Elizabeth Almagro intervened as successors-in-interest of spouses Delano Bangay and Maria Bangay.

During pre-trial, the parties agreed to refer the case to the Chief of the Land Management Services Division, PENRO-DENR, Dumaguete City, to conduct a verification survey of Lot No. 6278-M. When the PENRO personnel failed to conduct the verification survey, the court and the parties designated Geodetic Engineer Jorge Suasin, Sr. (Engr. Suasin) as joint commissioner to do the task. Engr. Suasin conducted the verification and relocation survey of Lot No. 6278-M on 12-13 September 2000 in the presence of the parties, some of their lawyers, and the MTC Clerk of Court. Thereafter, Engr. Suasin submitted a written report with the following findings:

WRITTEN REPORT

Comes now, the undersigned Geodetic Engineer Jorge S. Suasin, Sr., to this Honorable Court, most

respectfully submit the following written report of the verification and relocation survey of the lot 6278-M located at Maslog, Sibulan, Negros Oriental with T.C.T. No. T-11397 owned by Salvacion G. Kwan, et al.

A. That a big portion of the lot is submerged under the sea and only a small portion remain as dry land.

B. That some of the defendants have constructed their buildings or houses inside the dry land while others have constructed outside or only a small portion of their buildings or houses are on the said dry land.

The defendants and their buildings or houses are as follows:

- Sps. Rogelio Duran inside
- Sps. Romulo Vinalver. inside
- Sps. Marto Bati-on inside
- Sps. Salvador Palongpalong inside
- Sps. Pablo Deciar inside
- Sps. Sabas Kiskis inside
- Sps. Pio Tubat, Jr. 2 houses,
the first house a portion, and the second one - inside
- Sps. Andres Tubat inside
- Sps. George Tubat portion
- Sps. Dodong Go inside
- Sps. Delano Bangay-Almagro portion
- Sps. Simeon Pachoro inside
- Sps. Cipriano Tubat inside
- Sps. Jovito Remolano inside
- Sps. Nelson Miravalles cottage and house - outside
- Monica Orlina cottage inside and house - portion
- Clarita Barot outside
- Conchita Orlina outside
- Antonia Malahay outside

The verification and relocation survey was executed last September 12-13, 2000 with the presence of both parties and of the Clerk of Court. The cost of the survey was FIFTEEN THOUSAND PESOS (P15,000) shouldered by the plaintiffs and the defendants equally.

Enclosed are a blue print of the sketch plan and a xerox copy of the land title of the said lot.

Respectfully submitted by:

(Sgd) JORGE SUASIN, SR.
Geodetic Engineer[10]

After the court admitted Engr. Suasin's report and the pleadings of the parties, respondents filed a motion for judgment on the pleadings, which the MTC granted.

In its Judgment dated 11 May 2001, the MTC dismissed the complaint on the ground that the remaining dry portion of Lot No. 6278-M has become foreshore land and should be returned to the public domain. The MTC explained:

The term "foreshore" refers to that part of the land adjacent to the sea which is alternately covered and left dry by the ordinary flow of the tides. "Foreshore lands" refers to the strip of land that lies between the high and low water marks and that is alternately wet and dry according to the flow of the tide. The term "foreshore land" clearly does not include submerged lands.

From these definitions, it is safe to conclude that the remaining dry portion of Lot No. 6278-M is now "foreshore land." A big portion of the said lot is presently underwater or submerged under the sea. When the sea moves towards the estate and the tide invades it, the invaded property becomes foreshore land and passes to the realm of public domain. The subject land, being foreshore land, should therefore be returned to the public domain. Besides, Article 420 of the Civil Code provides:

"Art. 420. The following thin[g]s are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

Plaintiff cannot use the doctrine of indefeasibility of their Torrens title, as property in question is clearly foreshore land. At the time of its registration, property was along the shores. In fact, it is bounded by the Tañon Strait on the NW along lines 2-3-4. The property was of public dominion and should not have been subject of registration. The survey showed that the sea had advanced and the waves permanently invaded a big portion of the property making the land part of the shore or the beach. The remaining dry land is foreshore and therefore should be returned to the public domain.[11]

Respondents appealed to the Regional Trial Court (RTC). The RTC conducted ocular inspections of Lot No. 6278-M on two separate dates: on 5 October 2001 during low tide and on 15 October 2001 when the high tide registered 1.5 meters. All the parties and their lawyers were notified before the two ocular inspections were conducted. During the ocular inspections, in which some parties and their lawyers were present, the RTC observed that the small portion referred to by Engr. Suasin as dry land in his report actually remained dry even during high tide.[12] Thus, the RTC concluded that the disputed remaining portion of Lot No. 6278-M is not foreshore land. The RTC stated:

It is the Court's considered view that the small portion of plaintiff's property which remains as dry land is not within the scope of the well-settled definition of foreshore and foreshore land as mentioned above. For one thing, the small dry portion is not adjacent to the sea as the term adjacent as defined in Webster's Dictionary means "contiguous or touching one another or lying next to." Secondly, the small dry portion is not alternately wet and dry by the ordinary flow of the tides as it is dry land. Granting, as posited by defendants, that at certain times of the year, said dry portion is reached by the waves, then that is not anymore caused by the ordinary flow of the tide as contemplated in the above definition. The Court then finds that the testimony of Engr. Suasin dovetails with the import and meaning of foreshore and foreshore land as defined above.

Anent the case of Republic vs. Court of Appeals, 281 SCRA 639, also cited in the appealed judgment, the same has a different factual milieu. Said case involves a holder of a free patent on a parcel of land situated at Pinagtalleran, Caluag, Quezon who mortgaged and leased portions thereof within the prescribed five-year period from the date of issuance of the patent. It was established in said case that the land subject of the free patent is five (5) to six (6) feet deep under water during high tide and two (2) feet deep at low tide. Such is not

the situation of the "remaining small dry portion" which plaintiffs seek to recover in the case at bar.[13]

On 8 January 2002, the RTC rendered its Decision,[14] the dispositive portion of which reads:

WHEREFORE, all told and circumspectly considered, the appealed judgment is hereby reversed and set aside insofar as it states that plaintiffs are not entitled to recover possession of the property in question.

Plaintiffs-appellants have the right to recover possession of the remaining small dry portion of the subject property in question. It is further ordered to remand this case to the court of origin for the reception of further evidence to determine who among the defendants-appellees are builders or possessors in good faith and who are not and once determined, to apply accordingly the pertinent laws and jurisprudence on the matter.

SO ORDERED.[15]

Petitioners moved for reconsideration, which the RTC denied in its Order[16] dated 6 May 2002.

Petitioners filed separate petitions for review with the Court of Appeals, alleging that the disputed portion of Lot No. 6278-M is no longer private land but has become foreshore land and is now part of the public domain.

The Ruling of the Court of Appeals

On 4 April 2006, the Court of Appeals promulgated its decision, affirming with modification the RTC Decision. The dispositive portion of the Court of Appeals Decision[17] reads:

WHEREFORE, the instant petitions for review are DENIED. And the Decision dated January 8, 2002 of Branch 38 of the Regional Trial Court of Dumaguete City is hereby AFFIRMED with MODIFICATION as regards the dispositive portion only. Based on the written report of Geodetic Engr. Suasin categorically indentifying who among herein petitioners are illegally occupying a portion of Lot No. 6278-M, the following petitioners are ordered to vacate the premises and/or remove the houses and/or cottages constructed on Lot No. 6278-M within thirty (30) days from finality of judgment, namely: 1)Sps. Rogelio Duran, 2) Sps. Romulo Vinalver, 3) Sps. Marto Bati-on, 4) Sps. Salvador Palongpalong, 5) Sps. Pablo Deciar, 6) Sps. Sabas Kiskis, 7) Sps. Pio Tubat, Jr. (first house - portion, second house- inside), 8) Sps. Andres Tubat, 9) George Tubat (portion), 10) Sps. Dodong Go, 11) Sps. Delano Bangay-Almagro (portion), 12) Sps. Simeon Pachoro, 13) Sps. Cipriano Tubat, 14) Sps. Jovito Remolano and 15) Monica Orlina (cottage-inside and house- portion).

Costs against petitioners.

SO ORDERED.[18]

In modifying the RTC Decision, the Court of Appeals explained:

Lastly, the argument that the RTC decision was "vague and indefinite" is utterly bereft of merit. We have found no reversible error in the appreciation of the facts and in the application of the law by the RTC which will warrant the reversal of the questioned decision. However, litigation must end and terminate sometime and somewhere, and it is essential to the administration of justice that the issues or causes therein should be laid to rest. Hence, in keeping with this principle, We modify the assailed decision insofar as the dispositive portion is concerned. It is our considered view that there is no longer a need to determine who among the petitioners are builders in good faith or not considering that it has been established in the MTC that they knew all along that the subject lot is a titled property. As such, petitioners should vacate and/or demolish the houses and/or cottages they constructed on Lot No. 6278-M as stated in the written report of Geodetic Engineer Jorge S. Suasin, Sr. Remanding this case to the court of origin would not only unduly prolong the resolution of the issues of this case, but would also subject the parties to unnecessary expenses.[19]

Hence, these consolidated petitions.

The Issue

The primary issue in this case is whether the disputed portion of Lot No. 6278-M is still private land or has become foreshore land which forms part of the public domain.

The Ruling of the Court

We find the petitions without merit.

Petitioners contend that the disputed portion of Lot No. 6278-M is already foreshore land. In fact, most of them allegedly have foreshore lease permits from the Department of Environment and Natural Resources (DENR) on the said foreshore land.

However, petitioners failed to present evidence to prove their claim that they are holders of foreshore lease permits from the DENR. Thus, the RTC Order dated 6 May 2002 stated:

Defendants-appellees have been harping that they have been granted foreshore leases by DENR. However, this is merely lip service and not supported at all by concrete evidence. Not even an iota of evidence was submitted to the lower court to show that defendants-appellees herein have been granted foreshore leases.[20]

Although the MTC concluded that the subject land is foreshore land, we find such conclusion contrary to the evidence on record.

It is undisputed that the subject land is part of Lot No. 6278-M, which is covered by TCT No. T-11397, registered in the name of respondents' parents, Kwan Chin and Zosimo Sarana. In fact, as found by the Court of Appeals, even the Provincial Environment and Natural Resources Officer (PENRO) declared in May 1996 that Lot No. 6278-M is a private property covered by a Torrens Title and that petitioners should vacate the disputed property or make other arrangements with respondents.[21]

Furthermore, from the report of Engr. Suasin, the geodetic engineer designated by the court and the parties as joint commissioner to conduct the survey, it can be clearly gleaned that the contested land is the small portion of dry land of Lot No. 6278-M. Even in his testimony, Engr. Suasin was adamant in stating that the remaining portion of Lot No. 6278-M is not foreshore because "it is already dry land" and is "away from the shoreline."[22] Because of this apparent contradiction between the evidence and the conclusion of the MTC, the RTC conducted ocular inspection twice, during low tide and high tide, and observed that the disputed portion of Lot No. 6278-M actually remained dry land even during high tide. Thus, the RTC concluded that the said land is not foreshore land. On appeal, the Court of Appeals adopted the findings and conclusion of the RTC that the disputed land is not foreshore land and that it remains as private land owned by respondents.

We are in accord with the conclusion of the Court of Appeals and the RTC that the disputed land is not foreshore land. To qualify as foreshore land, it must be shown that the land lies between the high and low water marks and is alternately wet and dry according to the flow of the tide.[23] The land's proximity to the waters alone does not automatically make it a foreshore land.[24]

Thus, in *Republic of the Philippines v. Lensico*,[25] the Court held that although the two corners of the subject lot adjoins the sea, the lot cannot be considered as foreshore land since it has not been proven that the lot was covered by water during high tide.

Similarly in this case, it was clearly proven that the disputed land remained dry even during high tide. Indeed, all the evidence supports the conclusion that the disputed portion of Lot No. 6278-M is not foreshore land but remains private land owned by respondents.

WHEREFORE, we DENY the petitions. We AFFIRM the 4 April 2006 Decision and the 31 October 2006 Resolution of the Court of Appeals in CA-G.R. SP Nos. 71237 and 71437.

SO ORDERED.

Nachura, Leonardo-De Castro,[*] Peralta, and Mendoza, JJ., concur.

[*] Designated additional member per Special Order No. 905 dated 5 October 2010.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo (G.R. Nos. 175806 and 175810), pp. 28-43. Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Isaias P. Dicdican and Apolinario D. Bruselas, Jr., concurring.

[3] Id. at 50-51.

[4] Also spelled as Biñalber in the title of the case.

[5] Also spelled as Marto.

[6] Stated as Sps. Delano Bangay-Almagro in the Written Report of Engr. Suasin.

[7] Also spelled as Cirpiano.

[8] Also spelled as Monica Orlina in the Written Report of Engr. Suasin.

[9] The PNP, through its Provincial Director Paneda, filed a manifestation, acknowledging and respecting the ownership of respondents over Lot No. 6278-M and stating that demolition of its building would be done before the year 1996 ended. Thus, the PNP prayed that the case against them be dismissed; rollo (G.R. Nos. 175806 and 175810), p. 63.

[10] Rollo (G.R. Nos. 175806 and 175810), pp. 67-68; MTC Judgment dated 11 May 2001, pp. 5-6.

[11] Rollo (G.R. Nos. 175806 and 175810), pp. 68-69.

[12] Id. at 80.

[13] Id. at 81. (Underscoring in the original)

[14] Id. at 71-84.

[15] Id. at 84.

[16] Id. at 85-89.

[17] Id. at 28-43.

[18] Id. at. 42. (Emphasis in the original)

[19] Id. at 41.

[20] Id. at 88.

[21] Id. at 37.

[22] Id. at 79.

[23] Republic v. Leonor, G.R. No. 161424, 23 December 2009, 609 SCRA 75.

[24] Id.

[25] 503 Phil. 967 (2005).

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