

ALBINO NICOLAS, ET AL., APPLICANTS AND RESPONDENTS, VS. THE DIRECTOR OF LANDS, OPPOSITOR, GUILLERMO CAMUNGAO, PETITIONER AND APPELLANT.*G.R. Nos. 19147-8. December 28, 1963*

Ponente: PAREDES, J.

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These cases were certified to this Court by the Court of Appeals, the issues involved being purely legal in nature. On October 20, 1951, Albino Nicolas, filed an application to register under the Torrens System, Lots 1 and 2, PSU-128816. On December 19, 1951, Eusebio Coloma, also applied for registration in his favor, under the system, Lots 1 & 2, PSU-129626. Before the initial hearings of the two applications, Guillermo Camungao (petitioner herein), presented with the Registration Court, a written appearance, opposing the registration of Lots 2, of both PSUS, alleging that said lots belonged to him, having been awarded to him in Sales Application No. 2091 (E-3989). The Provincial Fiscal, representing the Director of Lands, filed an opposition to the applications for registration, alleging that Lot No. 2, PSU-128816 and Lot 2, PSU-129626, are public lands and covered by Sales Application No. 2091 (E-3989) of Guillermo Camungao. On August 22, 1952, the lower court issued an Order of General Default in both cases, except as to the Director of Lands. A hearing was subsequently held, with notice thereof, sent only to the Provincial Fiscal, as representative of the Director of Lands. No notice to Guillermo Camungao, was given, inspite of his written appearance and opposition to the registration. Judgment was rendered on September 30, 1955, adjudicating the lands applied for, in favor of the applicants. The judgment having become final and executory the court a quo issued an order for the issuance of a decree of registration. On January 21, 1956, an Order of eviction was directed against appellant, and it was the first time he came to know that a decision and decree had been rendered and issued in the registration cases.

On April 25, 1956, Guillermo Camungao presented a petition to set aside the decision of the said Court, dated September 30, 1955, alleging among others, the following—

"8. That he has been in possession of the said two lots openly, notoriously, continuously in concept of owner since his filing of said application on Jan. 3, 1936;

9. That despite the knowledge of the respondents that the aforementioned lots are owned by the herein petitioner, the same was fraudulently included in their respective applications;

10. That despite his formal opposition and appearance, duly filed with the Court, petitioner was included in the order of general default, and was never notified of the hearings thereafter conducted so that he could have presented his evidence in opposition to the respondents claims;

11. That while it is admitted by the respondents in their applications that the petitioner is an adjoining owner, during the presentation of their respective evidences, respondents intentionally omitted in had faith to mention that petitioner's property was located between respondents' respective properties, and adjoins both, thus misleading the Court to believe that their respective properties, which they sought to register, were contiguous

to each other;

12. That respondents Albino Nicolas and Julia Suguitan, although knowing and well aware that the property which they bought from their predecessor, Juan Paguirigan had only an area of 21,150 square meters, with intent to defraud the herein petitioner, applied for the registration of a land with an area of 38.111 square meters, thus fraudulently depriving the petitioner of 16,961 square meters, of his property;

13. That respondents further failed to inform the Court that the aforementioned lots claimed by the herein petitioner is and has always been in the continuous, open and notorious possession of the petitioner under a claim of title from the year 1936; and for which reason, respondents had to get a writ of possession (execution) from the Court for the purpose of ejecting the petitioner;

14. That even granting, without admitting, that said two (2) lots are accretions to the properties of respondents, petitioner, by reason of his public, peaceful and uninterrupted possession in good faith with a just title, adversely and actually for more than ten (10) years, has acquired ownership thereto by acquisitive prescription, and if the Court had been properly notified and informed of such fact, it would have rejected and denied or dismissed their applications for registration over the same;

15. That from the foregoing it is clear that petitioner has been deprived of his interest and right of ownership over Lot No. 2 of PSU-128B16 and Lot No. 2 of PSU-129626 by means of fraud committed by the respondents in procuring the decision aforementioned."

On May 16, 1956, respondents moved to dismiss the petition to review, claiming that the same states no cause of action, and arguing that actual fraud is the only ground on which a review may be justified; that the absence of petitioner herein at the hearing, or lack of notice of the hearing to him, does not constitute actual fraud; that although it is alleged by petitioner that the lands in question belonged to him, pursuant to a Sales application and award given by the Director of Lands, no title to him has been shown to have been issued as yet.

Petitioner opposed the above motion to dismiss, maintaining that the instant petition was based upon the provisions of the Rules of Court (Rule 38, sec. 2), and upon the case of *Elviña vs. Filamor*, 56 Phil. 305, holding that an order of default and the decision wherein said order is included, entered in a registration proceeding, may be set aside after thirty days, from its promulgation, by reason of fraud, surprise, or excusable negligence, "if a motion is filed to that effect within six months from the date of the decision x x x and before the Chief of the General Land Registration Office issues the decree of registration in pursuance of the order to that end." Added to the above argument, is the claim that respondents herein concealed facts regarding the true status of the lots claimed by petitioner, by alleging in their applications that they were in the exclusive possession, occupation and cultivation of the lots in question, when in fact petitioner had always been in possession thereof as early as 1936.

On December 12, 1956, the lower court dismissed the petition to review, after making the following observations:

"x x x It may be well to state here by way of emphasis that the fraud that justifies review of the decree of registration must be actual and actual fraud as contemplated by Section 38 of Act 496, means intentional omission of a fact required by law to be stated in the application or wilful statement of a claim against the truth. Specific acts intended to deceive or deprive another of his right must be proved. x x x Neither could it be argued that movant Guillermo Camungao was deprived of his day in Court. In the first place, the opposition filed by him was not a valid opposition because it was not sworn to as required by the Land Registration Act. It was simply a written appearance. In other words, he filed his formal appearance but failed to file his answer in due form. x x x But be that as it may, said movant was virtually represented by the Director of Lands at the hearing and in fact the Provincial Fiscal in his memorandum had argued that the two lots in question were part of the public domain, covered by sales application of Guillermo Camungao, but the Court did not sustain the theory of the Provincial Fiscal. x x x"

The decision is now before Us, petitioner raising three (S) errors allegedly committed by the trial court, all of which center on the propriety of the dismissal based on lack of cause of action. It has been said that a "cause of action" consists of the legal right of the plaintiff, the correlative obligation of the defendant, and the violation of such right by said defendant (*Ma-ao Sugar Central Co., Inc. vs. Barrios*, 79 Phil. 666; *Community Investment, et al. vs. Garcia*, 88 Phil. 215.)

It is contended that, in cases of the nature of the one at bar, the only basis for the re-opening of the case, is actual fraud. There was allegation of actual fraud in the petition, such as the failure and intentional omission on the part of the respondents to disclose the fact of actual physical possession of the premises by petitioner herein. It is fraud to knowingly omit or conceal a fact, upon which benefit is obtained to the prejudice of a third person (*Estiva vs. Alvero*, 37 Phil. 498). In short, the series of allegations contained in the petition, portions of which are quoted heretofore, describe fraudulent acts, actual and otherwise. Perhaps, the trial judge had reasons to doubt the veracity of the supposed fraudulent acts, attributed to respondents. This doubt, however, should not have been made the basis of dismissal, because if a court doubts the veracity of the allegations in the petition, the best thing it could do, would have been to deny the motion to dismiss and proceed with the hearing on the merits, of the petition (*De Jesus, et al. vs. Belarmino, et al.*, 95 Phil., 365; 50 Off. Gaz., p. 3064). This is specially true in the instant case, where the ground for the motion to dismiss the petition for review, is lack of cause of action, which is not indubitable.

The written appearance with opposition presented by petitioner herein, on November 7, 1951 (R.A.) was a valid one, and sufficient to give him a legal standing in court and would entitle him to notice, as a matter of right. The lower court erred in having chosen to ignore the written appearance with opposition, which was a substantial compliance with the law that requires a formal answer. In his appearance-opposition, the petitioner asserted that the land involved in the application belonged to him by virtue of his awarded Sales Application covering the property of the applicant and of which an administrative case had been instituted and terminated in the Land Department on May 13, 1938, adjudicating the said property in his favor, a fact which had been categorically made known to the trial court, when petitioner presented said appearance-opposition, before the initial hearings of the petitions for registration filed by herein respondents. With these allegations appearing in the record, there was need for a formal hearing of the petition for review, wherein the parties should have been allowed to explain their respective claims. How respondents had come to court and said that they were in continuous, open and notorious possession of the properties since 1936, when upon the other hand, petitioner claimed that he was in possession, actual and physical, of the same properties, since its award to him, by virtue of a sales application, surely needs more than a summary dismissal of the petition.

In view hereof, the decision appealed from should be, as it is hereby set aside, and another entered, remanding the case to the Court of origin for proper proceedings and to render judgment accordingly. No costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador. Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala and Makalintal, JJ., concur.

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