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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 124605. June 18, 1999]

ENRIQUITO SERNA and AMPARO RASCA, *petitioners, vs.* **COURT OF APPEALS, SANTIAGO FONTANILLA, and RAFAELA RASING,** *respondents.*

SYNOPSIS

Dionisio Fontanilla was the original owner and possessor of a parcel of land located in Barangay Lucap, Alaminos, Pangasinan. In 1921, Turner Land Surveying Company (Turner) surveyed the land for Dionisio, with the agreement that the costs of the survey would be paid upon approval of the plan by the Bureau of Lands. In 1938, for failing to pay the survey costs and to prevent foreclosure, Dionisio sold the land to his daughter, Rosa Fontanilla. On August 21, 1955, Rosa sold the land to her nephew, respondent Santiago Fontanilla and his wife Rafaela Rasing. Sometime in 1955, respondents constructed their residential house on the lot in question. In 1978, they went to the United States and stayed there until 1981. On December 20, 1978, petitioner Amparo Rasca, first cousin of respondent Santiago, together with her husband Enriquito Serna, took advantage of the absence of respondents from the country and applied for registration of the said parcel of land in their name. In 1979, the Land Registration Court approved the application, and pursuant to Decree N-176768, the Register of Deeds of Pangasinan issued Original Certificate of Title

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No. 139 to petitioners. On May 27, 1981, respondents filed with the Court of First Instance an action for reconveyance with damages against petitioners and sought the annulment of O.C.T. No. 139. In the trial court, petitioners claimed ownership of the land based on the Deed of Sale executed by Turner, in favor of petitioner Amparo's father. Petitioners, however, could not produce the Deed of Sale in court. On the other hand, respondents proved that they were enjoying open, continuous and adverse possession of the subject property for more than sixty (60) years tacking in the possession of their predecessors in interest. Thereafter, the trial court rendered judgment declaring respondents as the absolute and legal owners of the land in question. On appeal, the Court of Appeals affirmed the decision of the trial court. The appellate court denied petitioners' motion for reconsideration. Hence, this petition.

In affirming the decision of the appellate court, the Supreme Court held that the right of a person deprived of land or interest therein by adjudication or confirmation of title obtained by actual fraud is recognized by law as a valid and legal basis for reopening and revising a decree of registration. The fraud contemplated by the law is actual and extrinsic fraud. Discovery of fraud must have taken place from the issuance of the certificate of title. In the present case, respondents came to know of the fraud in securing title to the land sometime after its registration. Extrinsic fraud attended the application for the land registration. It was filed when respondents were out of the country and they had no way of finding out that petitioners applied for a title under their name. Respondents' action for reconveyance was timely, as it was filed within ten (10) years from issuance of the torrens title over the property.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; DUE PROCESS NOT VIOLATED WHERE A JUDGE WHO WAS NOT PRESENT DURING THE TRIAL RELIED ON TRANSCRIPT OF STENOGRAPHIC NOTES AS BASIS OF HIS DECISION.** — "We have ruled in *People vs. Rayray*, that the fact that the judge who heard the evidence is not himself the one who prepared, signed and promulgated the decision constitutes no compelling reason to jettison his findings and

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conclusions, and does not *per se* render his decision void. While it is true that the trial Judge who conducted the hearing would be in a better position to ascertain the truth or falsity of the testimonies of the witnesses, it does not necessarily follow that a judge who was not present during the trial cannot render a valid and just decision. For a judge who was not present during the trial can rely on the transcript of stenographic notes taken during the trial as basis of his decision. Such reliance does not violate substantive and procedural due process."

2. **ID.; ID.; APPEAL; APPEAL BY *CERTIORARI*; QUESTION OF LAW; DISTINGUISHED FROM QUESTION OF FACT; QUESTION OF FACT, NOT REVIEWABLE ON APPEAL.** — As a general rule, findings of fact of the Court of Appeals are binding and conclusive upon us, and we will not normally disturb such factual findings. This is because in an appeal by *certiorari* to this Court, only questions of law may be raised. And "for a question to be one of law it must involve no examination of the probative value of the evidence presented by the litigants or any of them." "To reiterate the distinction between the two types of questions: there is a question of law in a given case when the doubt or difference arises as to what the law is pertaining to a certain state of facts, and there is a question of fact when the doubt arises as to the truth or the falsity of alleged facts." Petitioners claim ownership of the land based on the deed of sale executed by Turner Land Surveying Co. in favor of Alberto Rasca, which, however, they failed to present in court. The truth or falsity of this claim is a question of fact, which, as aforesaid, is not reviewable in this appeal.

3. **CIVIL LAW; PROPERTY; TAX DECLARATION AND RECEIPTS; WHEN CONSIDERED STRONG EVIDENCE OF OWNERSHIP OF PROPERTY.** — Though mere tax declaration does not prove ownership of the property of the declarant, tax declarations and receipts can be strong evidence of ownership of land when accompanied by possession for a period sufficient for prescription.

4. **ID.; ID.; DECREE OF REGISTRATION NOT SUBJECT TO REVIEW AFTER THE LAPSE OF ONE YEAR FROM ENTRY THEREOF; EXCEPTION.** — Going to the second issue that the appellate court's decision is not supported by law and jurisprudence, we find this to be vague and without

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merit as well. At the time material hereto, registration of untitled land was pursuant to Act No. 496, as amended. Later, Presidential Decree 1529, the Property Registration Decree, amended and codified laws relative to registration of property. "Adjudication of land in a registration (or cadastral) case does not become final and incontrovertible until the expiration of one (1) year after the entry of the final decree." After the lapse of said period, the decree becomes incontrovertible and no longer subject to reopening or review. However, the right of a person deprived of land or of any estate or interest therein by adjudication or confirmation of title obtained by actual fraud is recognized by law as a valid and legal basis for reopening and revising a decree of registration. The fraud contemplated by the law is actual and extrinsic fraud, which includes an intentional omission of a fact required by law. For fraud to justify a review of a decree, it must be extrinsic or collateral, and the facts upon which it is based have not been controverted or resolved in the case where the judgment sought to be annulled was rendered. Persons who were fraudulently deprived of their opportunity to be heard in the original registration case are entitled to a review of a decree of registration.

5. **ID.; ID.; ACTION FOR RECONVEYANCE BASED ON IMPLIED OR CONSTRUCTIVE TRUST MUST BE FILED WITHIN TEN YEARS FROM ISSUANCE OF TITLE.** — "An action based on implied or constructive trust prescribes in ten (10) years. This means that petitioners should have enforced the trust within ten (10) years from the time of its creation or upon the alleged fraudulent registration of the property." Discovery of the fraud must be deemed to have taken place from the issuance of the certificate of title "because registration of real property is considered a 'constructive notice to all persons' and it shall be counted 'from the time of such registering, filing or entering.'" In the present case, respondents came to know of the fraud in securing title to the land sometime after its registration, however, an innocent purchaser for value had not acquired the property. Extrinsic fraud attended the application for the land registration. It was filed when respondents were out of the country and they had no way of finding out that petitioners applied for a title under their name. Fortunately, respondents' action for reconveyance was timely,

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as it was filed within ten (10) years from the issuance of the torrens title over the property.

APPEARANCES OF COUNSEL

Rodolfo A. Lockey for petitioners.
Anacleto Montemayor for private respondent.

D E C I S I O N

PARDO, *J.*:

The petition for review on *certiorari* before us seeks to review the decision of the Court of Appeals,[1] which affirmed that of the Regional Trial Court, Alaminos, Pangasinan,[2] declaring respondents as the absolute and lawful owners of the land covered by Original Certificate of Title No. 139 of the Registry of Deeds of Pangasinan.

The antecedent facts are as follows:

Dionisio Fontanilla had four (4) children, namely, Rosa, Antonio, Jose and Lorenza, all surnamed Fontanilla. Rosa married Estanislao Pajaro and their union produced Fructoso and Paciencia. Lorenza married Alberto Rasca and they had a daughter, petitioner Amparo Rasca (married to Enriquito Serna). Jose had a son, respondent Santiago Fontanillla (married to Rafaela Rasing). Hence, the parties involved are first cousins.

Dionisio Fontanilla was the original owner and possessor of a parcel of land, containing an area of twelve thousand five hundred eight square meters (12,508 sq. m.), located in Barangay Lucap, Alaminos, Pangasinan.[3]

In 1921, the property was declared in his name for taxation purposes. In the same year, Turner Land Surveying Company

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[1] In CA-G.R. CV No. 39922, Eighth Division, promulgated on August 22, 1995, Salas, *J., ponente*, Lantin and Austria-Martinez, *JJ.*, concurring.

[2] Civil Case No. A-1329. Judge Vivencio A. Bantugan penned the decision.

[3] Regional Trial Court Record, Civil Case No. A-1329, p. 2.

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surveyed the land for Dionisio Fontanilla, with the agreement that the cost of survey would be paid upon approval of the plan by the Bureau of Lands. On March 2, 1923, the Bureau of Lands approved the survey plan.

In 1938, for failing to pay the survey costs and to prevent foreclosure, Dionisio Fontanilla sold the land to his daughter, Rosa Fontanilla. In 1939, Rosa began paying the real estate property tax thereon.

On August 21, 1955, for a consideration of one thousand seven hundred pesos (₱1,700.00), Rosa sold the land to her nephew, respondent Santiago Fontanilla, evidenced by a notarized deed of absolute sale, signed by Rosa. The instrument was not registered.

In 1955, respondents constructed their house of strong materials on the lot in question, which was completed in 1957.

On December 16, 1957, Rosa's heirs, Estanislao Pajaro and his two (2) children, Fructoso and Pacencia, executed another deed of absolute sale over the same land in favor of respondent Santiago Fontanilla.

In 1978, respondents went to the United States to visit their daughter Mila Fontanilla Borillo. They stayed there until 1981.

On December 20, 1978, taking advantage of respondents' absence from the country, petitioners Enriquito and Amparo Serna applied to the land registration court of Pangasinan for registration[4] of the said parcel of land in their name.

In 1979, the land registration court approved the application, and pursuant to Decree N-176768, the Register of Deeds of Pangasinan issued Original Certificate of Title No. 139 to petitioners. On January 10, 1980, the title was transcribed in the registration book of the Register of Deeds of Pangasinan.

On May 27, 1981, respondents filed with the Court of First Instance, Branch XIII, Alaminos, Pangasinan, an action for

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[4] Land Registration Case No. 396, LRC Record No. N-53913, Court of First Instance, Alaminos, Pangasinan.

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reconveyance with damages, and sought the annulment of O.C.T. No. 139.[5]

In the trial court, petitioners admitted that Dionisio Fontanilla originally owned the land in dispute. However, they claimed that in 1978 they bought the property for three thousand pesos (₱3,000.00) from Lorenza Fontanilla-Rasca. Lorenza, in turn, traced her title from her husband, Alberto Rasca.

Petitioner Amparo said that when Dionisio failed to pay the survey costs in 1921, Turner Land Surveying Company took the property in question as payment for services. Her father, Alberto Rasca, redeemed the property from Turner evidenced by a deed of sale, which, however, Amparo could not produce in court. When her father died, Santiago Fontanilla borrowed from her mother the deed covering the transfer of the property, which Santiago did not return. She said that the property was first declared in Alberto's name for taxation purposes in 1951. Later, the property was ceded to her.

After due trial and consideration of the evidence presented before the trial court and in the land registration case, on June 5, 1992, the trial court rendered judgment in favor of the plaintiffs (herein respondents) spouses Santiago Fontanilla and Rafaela Rasing, decreeing:

"WHEREFORE, judgment is hereby rendered:

"(a) Declaring the plaintiffs as the absolute and legal owners of the land in question particularly described and bounded and stated in paragraph two (2) of the complaint;

"(b) Ordering the defendants to Transfer and Recover [sic] Original Certificate of Title No. 139 to the plaintiffs;

"(c) Ordering the defendants to pay plaintiffs the amount of ₱5,000.00 as attorney's fees;

"(d) Ordering the defendants to pay the plantiffs the amount of ₱5,000.00 as exemplary damages;

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[5] Docketed as Civil Case No. A-1329.

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"(e) And to pay the costs, without pronouncement as to moral damages.

"Done at Alaminos, Pangasinan, this 5th day of August, 1992.

"(t/s) Vivencio A. Bantugan

"Judge"[6]

From the decision of the trial court, both parties appealed to the Court of Appeals. Respondents questioned the court *a quo's* failure to grant their claim for moral damages. On the other hand, petitioners claimed that the trial court committed serious error in the appreciation of facts and application of law and jurisprudence.

On August 22, 1995, the Court of Appeals rendered decision affirming that of the trial court.

In a resolution dated February 26, 1996,[7] the Court of Appeals denied petitioners' motion for reconsideration.

Hence, this petition for review.

Petitioners submit these issues for resolution: (1) whether or not the appealed decision is supported by evidence; (2) whether or not the decision is in accordance with law and jurisprudence.[8]

The first issue is factual, which we cannot review on appeal.[9] However, petitioners make an issue of the fact that the judge who penned the decision was not the one who presided over the proceedings.

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[6] Regional Trial Court Decision, *Rollo*, pp. 227-228.

[7] Resolution, *Rollo*, p. 40.

[8] Petition, Supreme Court, *Rollo*, p. 8.

[9] *Reyes vs. Court of Appeals*, 258 SCRA 651, 659 [1996]; *Pagobo vs. Court of Appeals,* 280 SCRA 870; *Policarpio vs. Court of Appeals*, 269 SCRA 344; *Rivera vs. Court of Appeals*, 284 SCRA 673; *Cristobal vs. Court of Appeals,* 291 SCRA 122; *Linzag vs. Court of Appeals*, 291 SCRA 304; *Congregation vs. Court of Appeals*, 291 SCRA 385.

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"We have ruled in *People vs. Rayray*,[10] that the fact that the judge who heard the evidence is not himself the one who prepared, signed and promulgated the decision constitutes no compelling reason to jettison his findings and conclusions, and does not *per se* render his decision void. While it is true that the trial judge who conducted the hearing would be in a better position to ascertain the truth or falsity of the testimonies of the witnesses, it does not necessarily follow that a judge who was not present during the trial cannot render a valid and just decision. For a judge who was not present during the trial can rely on the transcript of stenographic notes taken during the trial as basis of his decision. Such reliance does not violate substantive and procedural due process."[11]

As a general rule, findings of fact of the Court of Appeals are binding and conclusive upon us, and we will not normally disturb such factual findings. This is because in an appeal by *certiorari* to this Court, only questions of law may be raised.[12] And "for a question to be one of law it must involve no examination of the probative value of the evidence presented by the litigants or any of them."[13] "To reiterate the distinction between the two types of questions: there is a question of law in a given case when the doubt or difference arises as to what the law is pertaining to a certain state of facts, and there is a question of fact when the doubt arises as to the truth or the falsity of alleged facts."[14]

Petitioners claim ownership of the land based on the deed of sale executed by Turner Land Surveying Co. in favor of Alberto Rasca, which, however, they failed to present in court. The truth or falsity of this claim is a question of fact, which, as aforesaid, is not reviewable in this appeal.

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[10] 241 SCRA 1 [1995].

[11] *People vs. Christopher Española,* 271 SCRA 689 [1997].

[12] Rule 45, Section 1, 1997 Rules of Civil Procedure.

[13] *Manila Bay Club Corporation vs. Court of Appeals,* 245 SCRA 715, 725 [1995].

[14] *Reyes vs. Court of Appeals, supra*, on p. 658.

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On the other hand, respondents proved that they were enjoying open, continuous and adverse possession of the property for more than sixty (60) years tacking in the possession of their predecessors in interest, Dionisio Fontanilla and Rosa Pajaro. As early as 1921, Dionisio Fontanilla was in adverse possession and paying taxes over the land. Rosa in turn, paid taxes for the first time in 1939,[15] while respondents began paying taxes in 1967.[16] They had their residential house built in 1955, which was completed in 1957. In 1980, Santiago executed a tenancy agreement[17] with Sixto Fontanilla. Until 1984, Santiago paid the taxes together with his tenant Sixto.

Though mere tax declaration does not prove ownership of the property of the declarant,[18] tax declarations and receipts can be strong evidence of ownership of land when accompanied by possession for a period sufficient for prescription.[19]

Going to the second issue that the appellate court's decision is not supported by law and jurisprudence, we find this to be vague and without merit as well.

At the time material hereto, registration of untitled land was pursuant to Act No. 496, as amended. Later, Presidential Decree 1529, the Property Registration Decree, amended and codified laws relative to registration of property. "Adjudication of land in a registration (or cadastral) case does not become final and incontrovertible until the expiration of one (1) year after the entry of the final decree."[20] After the lapse of said period, the decree becomes incontrovertible and no longer subject to reopening or review.

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[15] *Rollo*, p. 32.

[16] *Rollo*, p. 32.

[17] *Rollo*, p. 32.

[18] *Deiparine vs. Court of Appeals,* G.R. No. 111257, December 4, 1998.

[19] Tolentino, *Civil Code of the Philippines*, Volume II, 1998 edition, p. 76.

[20] *Heirs of Manuel A. Roxas vs. Court of Appeals*, 270 SCRA 309, 317 [1997].

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However, the right of a person deprived of land or of any estate or interest therein by adjudication or confirmation of title obtained by actual fraud is recognized by law[21] as a valid and legal basis for reopening and revising a decree of registration.

The fraud contemplated by the law is actual and extrinsic fraud, which includes an intentional omission of a fact required by law. For fraud to justify a review of a decree, it must be extrinsic or collateral, and the facts upon which it is based have not been controverted or resolved in the case where the judgment sought to be annulled was rendered. Persons who were fraudulently deprived of their opportunity to be heard in the original registration case are entitled to a review of a decree of registration.[22]

"An action based on implied or constructive trust prescribes in ten (10) years. This means that petitioners should have enforced the trust within ten (10) years from the time of its creation or upon the alleged fraudulent registration of the property."[23] Discovery of the fraud must be deemed to have taken place from the issuance of the certificate of title "because registration of real property is considered a 'constructive notice to all persons' and it shall be counted 'from the time of such registering, filing or entering.'"[24]

In the present case, respondents came to know of the fraud in securing title to the land sometime after its registration, however, an innocent purchaser for value had not acquired the property. Extrinsic fraud attended the application for the land registration. It was filed when respondents were out of the country and they had no way of finding out that petitioners applied for a title under their name.

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[21] Section 32, Presidential Decree No. 1529.

[22] *Heirs of Manuel A. Roxas vs. Court of Appeals, supra.*

[23] *Bernardino Ramos vs. Court of Appeals*, G.R. No. 111027, February 3, 1999; *Sta. Ana, Jr. vs. Court of Appeals*, 281 SCRA 624, 629.

[24] *Ramos vs. Court of Appeals, supra.*

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Fortunately, respondents' action for reconveyance was timely, as it was filed within ten (10) years from the issuance of the torrens title over the property.[25]

WHEREFORE, we *DENY* the petition for review on *certiorari* for lack of merit. We *AFFIRM* the decision and resolution of the Court of Appeals in CA-G.R. CV No. 39922.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Melo, Kapunan, and *Ynares-Santiago, JJ.,* concur.

SECOND DIVISION

[A.M. No. MTJ-98-1165. June 21, 1999]

EXEQUIEL P. DOMINGO, *complainant, vs.* **JUDGE LUIS ENRIQUEZ REYES and CLERK OF COURT ERLINDA CABRERA, MTC, GUIGUINTO, BULACAN,** *respondents.*

SYNOPSIS

Criminal complaints were filed against complainant herein and Engr. Benjamin Biascan for robbery with slight physical injuries and malicious mischief. The respondent Judge herein conducted a preliminary investigation of the case filed but found no *prima facie* case therefor. Respondent Judge instead ordered the Guiguinto police to amend the robbery charge to one for theft and to file a separate complaint for physical injuries.

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[25] *Sta. Ana vs. Court of Appeals*, 281 SCRA, *supra*, citing *Tale vs. Court of Appeals*, 208 SCRA 266.