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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. L-38188. June 18, 1987]

GREGORIO PETILLA, as substituted by RUFINO MAGLIBA and CECILIA D. VILLENA, HERMOGENES ROMERO and GENOVEVA MAYUGBA, *petitioners*, *vs.* **HON. COURT OF APPEALS and EVARISTO MARCELLA, DIRECTOR OF LANDS and MAXIMINIANA MARCELLA,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; EFFECT OF ONE OF THE SEVERAL JUDGMENT DEBTOR'S APPEAL.— The proposal of petitioners that Evaristo R. Marcella, *et al.* as defendants-appellants should be distinguished from intervenor-defendant Maximiniana Marcella is absurd. From the records all of the defendants appealed the case to the Court of Appeals including respondent Maximiniana Marcella. Moreover, petitioners never questioned the appeal of respondent Maximiniana Marcella as a defendant in the Court of Appeals. Thus such objection if at all tenable is deemed waived. And it is too late in the day to raise the issue for the first time on appeal before this Court. Even assuming for the sake of argument that said respondent did not appeal from the judgment of the lower court, this Court has held that a defendant may nevertheless be benefited by the judgment in favor of her co-defendants who interposed an appeal. '"As we have already

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said, whether an appeal by one of several judgment debtors will affect the liability of those who did not appeal must depend upon the facts in each particular case. If the judgment can only be sustained upon the liability of the one who appeals and the liability of the other co-judgment debtors depends solely upon the question whether or not the appellant is liable, and the judgment is revoked as to that appellant, then the result of his appeal will inure to the benefit of all." In this case even if respondent Maximiniana Marcella did not appeal since she derived her title from respondent Evaristo Marcella, consequently any judgment favorable to the latter shall inure to the benefit of the former.

2. CIVIL LAW; LAND TITLES AND DEEDS; FREE PATENT; MAY BE ISSUED ON PROPERTY PART OF PUBLIC DOMAIN.— On the second issue, petitioners contend that fraud was committed by respondent Evaristo R. Marcella in applying with the respondent Bureau of Lands for free patent on June 22, 1950 of the land in question which did not belong to him as his right and interest thereto was previously garnished, levied and sold at public auction on February 24, 1939 in favor of intervenor Land Title Association who in turn transferred all its rights to herein petitioners. Hence petitioners argue that the judgment of the trial court against Evaristo R. Marcella should have been sustained otherwise the Torrens System will become a shield for the commission of fraud. There is no merit in this contention. The Court of Appeals found that the property is part of the public domain so that the title of respondent Evaristo R. Marcella who applied for a free patent was upheld as against the petitioners who did not. Moreover, in whatever manner Evaristo R. Marcella obtained the title over the lot in question, the PNB was a purchaser in good faith and for valuable consideration of the property, so that Maximiniana Marcella acquired lawful title thereto when she acquired the same from the PNB.

APPEARANCES OF COUNSEL

Tomas V. Tadeo Jr. for petitioners.

Rodolfo G. de Guzman for respondent Maximiniana R. Marcella.

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DECISION

GANCAYCO, *J.*:

This is a petition for review of the decision of the Court of Appeals in an action for annulment of free patent title and of reconveyance which was elevated to the Court of Appeals from the Court of First Instance of Pangasinan.

The facts of the case are narrated in the questioned decision as follows:

"There are two parcels of land involved in the controversy: (1) a parcel of rice and cogon land indicated as Lot 1 of Plan Psu-133986, with an area of 22,977 square meters more or less; and (2) a parcel of riceland indicated as Lot 2 of Plan Psu-134176, with an area of 5,234 square meters more or less. The two parcels of land are adjoining, situated in the Barrio of Nibaliw, Municipality of San Fabian, Pangasinan.

Lot 1 of Plan Psu-133986 was formerly occupied by Lazaro Romero who had it declared for taxation purposes on October 7, 1925. The tax under that declaration began with the year 1922 (Exhibit "A"). Lazaro Romero ceded that lot to Gregorio Romero when they exchanged lands. When Gregorio Romero died sometime in 1928, his son, plaintiff Hermogenes Romero, succeeded him in the possession of the lot. He declared it for taxation purposes in his name (Exhibit "A-1"). He took possession of the lot and cultivated it himself. He and his predecessors-in-interest paid the land taxes (Exhibits "C", "C-1" to "C-12"). He claimed continuous and exclusive possession in concept of owner of that lot by himself and his predecessor-in-interest from 1922 up to the present.

Lot 2 of Plan Psu-134176 was a portion of a larger tract of land which was formerly occupied by Pantaleon Garcia. It was declared and assessed for taxation purposes in his name in 1921. He sold the whole tract of land to Tiburcio Garcia on April 4, 1928 (Exhibit "I"). On July 5, 1939, Tiburcio Garcia sold that land to Vicente Naraja (Exhibit "I-1"). On October 1, 1946, Vicente Naraja sold it to Ambrosia, Nieves, Sotera and Feliciano, all surnamed Naraja (Exhibit "I-2"). On May 2, 1950, after he allegedly became the sole owner of the whole tract of land, Feliciano Naraja sold it to original plaintiff Gregorio Petilla (Exhibit

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"I-3"). On May 31, 1968, after the death of Gregorio Petilla, his heirs executed an affidavit of confirmation of sale made by Gregorio Petilla during his lifetime in favor of plaintiffs Rufino Maliba and Cecilia Villena (Exhibit "I-4"). Plaintiff Rufino Maliba paid the realty taxes corresponding to that land on November 19, 1962 (Exhibit "J"). Previously Gregorio Petilla paid the realty taxes (Exhibits "J-1" to "J-9"). Plaintiffs Rufino Maliba and Cecilia Villena claimed possession of Lot 2 of Plan Psu-134176 by themselves and their predecessors-in-interest since 1921.

Defendant Evaristo R. Marcella, claiming to have acquired by purchase on October 12, 1933 (Exhibit "5"), among others, a parcel of land, which covers Lot 1 of Plan Psu-133986 and Lot 2 of Plan Psu-134176, from Juan Narvasa under whose name the same was surveyed on September 10, 1932, by Private Land Surveyor Mariano Celis and designated as Lot 1 in Plan Psu-95930, took possession of the said land, cultivated it, and paid realty taxes therefor (Exhibits "6", "6-A" to "6-F").

The land in question was sold by the Sheriff at a public auction held on February 24, 1939, to Intervenor Land Title Association, Inc., by virtue of the writ of execution issued by the Justice of the Peace Court of Lingayen, Pangasinan, in its Civil Case No. 2359 for a sum of money, where Juan Narvasa and defendant Evaristo R. Marcella were impleaded as among the party-defendants. For failure of defendants in that case to redeem the property within the one-year period, the Sheriff executed a final sale in favor of land Title Association Inc., on February 27, 1940 (Exhibits "G-2" to "G-8").

On June 22, 1950, defendant Evaristo R. Marcella filed in the Bureau of Lands an application for a free patent covering the land in question (Exhibit "7"). The Bureau of Lands gave due course to his application (Exhibits "7-A", "7-B" and "7-C"). On August 27, 1951, the Bureau of Lands approved the application, and as a result of which Original Certificate of Title No. P-261 (Exhibit "I" or Exhibit "H"), covering the land in question, was issued in the name of defendant Evaristo R. Marcella by the Register of Deeds of Pangasinan. On April 4, 1952, defendant Evaristo R. Marcella mortgaged the land to the Philippine National Bank to secure a loan of ₱400.00 (Exhibit "1"). For failure of defendant Evaristo R. Marcella to pay the loan, the Philippine National Bank foreclosed the mortgage, resulting in the sale of the land at public auction sale by the Sheriff in favor of the Philippine National Bank. After the expiration of the one-year redemption period

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without defendant Evaristo R. Marcella exercising his right of redemption, the Philippine National Bank executed an affidavit of consolidation and had it registered. By virtue of the affidavit of consolidation, the Original Certificate of Title No. P-261 in the name of defendant Evaristo R. Marcella was cancelled, and in its place Transfer Certificate of Title No. 44633 was issued in the name of the Philippine National Bank.

On July 25, 1955, plaintiffs filed a notice of *lis pendens* with the Register of Deeds of Pangasinan (Exhibit "E") and the same was annotated at the back of Original Certificate of Title No. P-261 (Exhibits "E-1", "E-2" and "H-1" of Exhibit "H"). It was annotated also at the back of Transfer Certificate of Title No. 44633.

Plaintiffs and Land Title Association, Inc., the latter as intervenor, executed an amicable settlement on February 27, 1958, the latter transferring and conveying all its rights to the land in question in favor of the former.

The Philippine National Bank sold the land to intervenor-defendant Maximiniana Marcella, and Transfer Certificate of Title No. 44633 in the name of the Philippine National Bank was cancelled and in its place Transfer Certificate of Title No. 47467 was issued on December 27, 1963, in favor and in the name of purchaser Maximiniana Marcella (Exhibit "2"). The notice of *lis pendens* which was annotated at the back of Original Certificate of Title No. P-261 and that of Transfer Certificate of Title No. 44633 was carried in Transfer Certificate of Title No. 47467.

Plaintiff Hermogenes Romero claimed that he was never notified of the application for a free patent filed by defendant Evaristo R. Marcella with the Bureau of Lands, nor was any survey made, nor was there any notice on the premises made of such application for a free patent. According to him, he discovered the issuance of the free patent sometime in April, 1955, when he sought to register in ordinary land proceedings in court the land in question, and defendant Evaristo R. Marcella opposed his application (Exhibit "D").[1]

On the basis of the foregoing facts, the trial court declared the TCT No. 47467 in the name of Maximiniana Marcella as null and void and further declared plaintiffs as the legal owner

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[1] Pp. 16-20, *Rollo*, pp. 2-6, Decision.

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being the persons to be in possession of the two (2) parcels of land in question and ordered defendant Evaristo R. Marcella to pay attorney's fees and damages. Appealing from said decision to the Court of Appeals defendants Evaristo R. Marcella and Maximiniana Marcella invoked the following assignment of errors:

"I

THE TRIAL COURT ERRED IN CONCLUDING THAT THE LAND IN QUESTION IS PRIVATE IN NATURE, BUT STRANGELY ENOUGH IT DID NOT, HOWEVER, DARE TO DECLARE IN THE JUDGMENT THAT THE LAND IS PRIVATE PROPERTY OF THE PLAINTIFF.

II

THE TRIAL COURT ERRED IN NOT DECLARING IN THE JUDGMENT THAT THE LAND IN QUESTION IS DEFINITELY A PORTION OF THE PUBLIC DOMAIN UNDER THE CONTROL MANAGEMENT AND DISPOSITION OF THE BUREAU OF LANDS SUBJECT TO THE SUPERVISION OF THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES, THERE BEING A COMPLETE ABSENCE OF ANY THE COMMONWEALTH GOVERNMENT, OR OF THE SPANISH TITLE ISSUED BY THE SPANISH GOVERNMENT TO THE PLAINTIFFS OR TO THEIR PREDECESSORS, OR ANY OTHER TITLE ISSUED BY REPUBLIC OF THE PHILIPPINES. PLAINTIFFS ALLEGED POSSESSION, NO MATTER HOW LONG A TIME IT LASTED DOES NOT CONSTITUTE OR RIPEN INTO A PRIVATE TITLE AS AGAINST THE GOVERNMENT.

III

THE TRIAL COURT ERRED IN NOT CONCLUDING AND DECLARING THAT PLAINTIFFS, NOT HAVING BEEN ABLE TO PRESENT SPANISH TITLE THAT WOULD SUPPORT THEIR PRIVATE TITLE OVER THE LAND IN QUESTION, HAVE NO LEGAL INTEREST THEREIN AND THEREFORE HAD NO PERSONALITY AND STANDING IN COURT TO ASSAIL THE FREE PATENT O.C.T. P-261 IN THE NAME OF EVARISTO MARCELLA. THE REPUBLIC OF THE PHILIPPINES REPRESENTED BY THE SOLICITOR GENERAL IS THE ONLY PROPER PARTY TO INSTITUTE THE ACTION TO ANNUL THE FREE PATENT, IF THERE EXIST GOOD GROUNDS FOR ANNULMENT. (SEE *DIRECTOR OF LANDS VS. EUSTAQUIO DE LUNA*, G.R. No L-1464, OCT. 23, 1960).

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IV

THE TRIAL COURT ERRED IN NOT HOLDING AND DECLARING THAT FREE PATENT OF EVARISTO MARCELLA, HAVING BEEN REGISTERED IN THE REGISTER OF DEEDS OF PANGASINAN UNDER SEC. 122 OF ACT 496 (O.C.T. P-261), IS VESTED WITH ALL THE CHARACTERISTICS OF INCONTESTABILITY AND INDEFEASIBILITY, AND, IT GUARANTEES GOOD TITLE TO ALL PERSONS WHO WANT TO DEAL WITH THE LAND COVERED BY SAID TITLE O.C.T. P-261. (SEE *VICTOR DE LOS REYES VS. PASTORA*, G.R. NO. L-143160).

V

THE TRIAL COURT ERRED IN NOT HOLDING THAT PLAINTIFFS ARE NOW BARRED TO INSTITUTE THE ACTION TO ANNUL THE TITLE ON THE GROUND OF FRAUD AND MISREPRESENTATION, BECAUSE THE ACTION HAS ALREADY PRESCRIBED ONE (1) YEAR AFTER THE ISSUANCE OF SAID TITLE, AND BECAUSE OF THE FACT THAT THE PHILIPPINE NATIONAL BANK HAD ALREADY ACQUIRED INTEREST ON THE LAND AS INNOCENT MORTGAGEE FOR VALUE AND IN GOOD FAITH, AND OF THE FURTHER FACT THAT THE TRANSFER CERTIFICATE OF TITLE 44333 IN THE NAME OF THE PNB HAS ALREADY BEEN CANCELLED ALSO AND T.C.T. 47467 WAS ISSUED IN ITS PLACE IN THE NAME OF MAXIMINIANA MARCELLA AS CONSEQUENCE OF LEGAL SALE IN DUE COURSE OF COMMERCIAL TRANSACTION.

VI

THE TRIAL COURT GRAVELY ERRED IN DECLARING THE NULLITY OF T.C.T. 47467 IN THE NAME OF MAXIMINIANA MARCELLA (PRIVY OF THE PHILIPPINE NATIONAL BANK WHICH WAS THE HOLDER OF T.C.T. 44333 IN ITS NAME), AND THE PNB HAS SOLD ALREADY THE PROPERTY IN QUESTION TO SAID MAXIMINIANA MARCELLA.

VII

THE TRIAL COURT GRAVELY ERRED IN DECLARING THE TRANSFER CERTIFICATE OF TITLE NO. 47467 IN THE NAME OF MAXIMINIANA MARCELLA AS NULL AND VOID WITHOUT A PREVIOUS JUDICIAL DECLARATION OF NULLITY OF T.C.T. 44333 IN THE NAME OF THE PHILIPPINE NATIONAL BANK.

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VIII

THE TRIAL COURT LIKEWISE ERRED IN DECLARING THE PLAINTIFFS AS THE LEGAL OWNERS AND THE PERSONS IN POSSESSION OF THE TWO PARCELS OF LAND IN QUESTION WHEN THE COURT DID NOT EVEN DARE TO DECLARE O.C.T. P-261 IN THE NAME OF EVARISTO MARCELLA AND T.C.T. 44333 IN THE NAME OF PNB AS NULL AND VOID.

IX

THE TRIAL COURT ERRED IN NOT DECLARING THAT O.C.T. P-261 IN THE NAME OF EVARISTO MARCELLA AND T.C.T. 44333 IN THE NAME OF PNB, NOT OTHERWISE DECLARED NULL AND VOID, SUBSIST IN FULL LEGAL FORCE AND EFFECT VESTED WITH ALL THE CHARACTERISTICS OF FINALITY, INCONTESTABILITY AND INDEFEASIBILITY UNDER THE PROVISIONS OF THE LAND REGISTRATION LAW (ACT 496).

X

THE TRIAL COURT ERRED IN NOT DISMISSING THE COMPLAINT, AND, IN NOT CONDEMNING THE PLAINTIFFS JOINTLY AND SEVERALLY TO PAY THE DEFENDANT MAXIMINIANA MARCELLA ₱20,000.00 AS MORAL DAMAGE FOR THE MENTAL ANGUISH, WOUNDED FEELINGS, MORAL SHOCK AND HUMILIATIONS SHE SUFFERED BY REASON OF THE UNFOUNDED, FALSE AND MALICIOUS IMPUTATION OF COLLUSION AND BAD FAITH IMPUTED AGAINST HER BY THE PLAINTIFFS, AND, ALSO THE PAYMENT OF REASONABLE ATTORNEY'S FEES OF ₱2,000.00 AND ₱1,000.00 AS LITIGATION EXPENSES."[2]

The Court of Appeals in reversing the judgment of the trial court made the following disquisition in the appealed decision:

"In the first three assignments of error, the question to determine is whether the land in question was already a private land at the time defendant-appellant Evaristo R. Marcella filed his application for a free patent. The position of plaintiffs-appellees is that it was then already a private land, the documents they presented in evidence showing that the land in question has been possessed since time

[2] Pp. 23-26. *Rollo.*

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immemorial by private individuals in concept of owner, who declared it for taxation purposes and paid taxes therefor since 1922. We share the contrary view that it was still part of the public domain.

The position of plaintiffs-appellees is not sustainable. There is no question that the land in question was a portion of the public domain when the first of plaintiffs-appellees' predecessors-in-interest occupied it. No portion of the public domain in the possession of any individual, no matter how long his possession may have been, can be considered as his private property simply on the basis of possession, for the reason that ownership can never be acquired by adverse possession or prescription as against the government. It has been held that mere occupation of public land and planting thereon of improvements do not convert it into a private land. The occupant of public land may acquire it only in accordance with the public land law (*Arnido vs. Francisco*, 50 O.G. 3068). Tax declarations and payment of realty taxes do not constitute evidence of ownership of the land to which they refer. In the case of *Naval vs. Jonsay, et al.*, 95 Phil. 939, it was held that while occupation and cultivation of a public land give rise to a right to apply for a free patent, in order that right may ripen into a free patent title, it is necessary, among other things, that an application be actually filed, In this case, neither their predecessors-in-interest nor plaintiffs-appellees filed an application for a free patent. Consequently, plaintiffs-appellees acquired no vested right over the land in question which remained a portion of the public domain up to the time the application of defendant-appellant Evaristo R. Marcella for a free patent was approved by the Bureau of Lands and Original Certificate of Title No. P-261 was issued by the Register of Deeds of Pangasinan.

We sustain the fourth and fifth assignments of error, the same not having been disputed by plaintiffs-appellees. However, the position of plaintiffs-appellees is that the question to determine narrows down to whether the action for reconveyance has prescribed. The question raised by plaintiffs-appellees cannot be considered in this appeal, they having failed to appeal from the decision of the trial court which did not order the reconveyance of the land in question. While an appellee may on appeal be permitted to make counter-assignments of errors when the purpose is merely to defend himself against the errors imputed by appellant to the court *a quo* such is allowed merely to sustain the judgment in his favor but not to seek a modification or reversal of said judgment, for in such a

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case there is need for him to appeal from the judgment. (*Pineda & Ampil Manufacturing Co. vs. Bartolome, et al.*, 95 Phil. 930)

As regards the sixth assignment of error, which refers to the trial court's declaring the nullity of Transfer Certificate of Title No. 47467 in the name of intervenor-defendant Maximiniana Marcella, plaintiffs-appellees claimed that she was not a purchaser in good faith, because a notice of *lis pendens* had already been filed with the Register of Deeds of Pangasinan and annotated at the back of Original Certificate of Title No. P-261 and subsequently at the back of Transfer Certificate of Title No. 44633 when she acquired the land in question. For buying the land in question despite the notice of *lis pendens* bad faith cannot be attributed to intervenor-defendant Maximiniana Marcella. There are authorities which take the position that the doctrine of *lis pendens* is not founded on any theory of notice at all, but is based upon the necessity of preventing litigants from disposing of the property in controversy in such manner as to interfere with the execution of the court's order (34 Am. Jur. 363-364). Indeed, one who buys property, knowing that the interest he acquired therein will be subject to the judgment or decree finally rendered in the case cannot be said to have acted in bad faith.

At any rate, since a notice of *lis pendens* is made to secure the rights of plaintiff if he prevails, the notice will produce no effect if the judgment is rendered against him (*Limjap vs. Vera Moguer*, 11 Phil. 439).

With respect to the seventh, eighth, ninth and tenth assignments of error, plaintiffs-appellees merely quoted in their brief the portion of the decision of the trial court, which states that the title of Maximiniana Marcella is null and void "for the reason that it breathes its life from the title of defendant Evaristo Marcella which is also null and void."

As we cannot bring ourselves to agree with the trial court, we sustain the seventh, eighth and ninth assignments of error which we believe are meritorious. The claim for moral damages, attorney's fees and litigation expenses under the tenth assignment of error has no factual and legal bases."[3]

Consequently, the Court of Appeals held:

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[3] Pp. 26-30, *Rollo*.

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"WHEREFORE, the decision appealed from is REVERSED and a new one shall be entered, declaring Transfer Certificate of Title No. 44633 in the name of the Philippine National Bank and Transfer Certificate of Title No. 47467 in the name of Maximiniana Marcella valid and in full legal force and effect. The Register of Deeds of Pangasinan is ordered to delete and cancel the annotation of *lis pendens* on the back of each of said titles.

Without pronouncement as to costs."[4]

The herein petition for review raises two issues:

1) An appeal by one party does not inure to the benefit of another party who did not interpose an appeal; and that

2) The Torrens System should not be used as a shield for the commission of fraud.

Under the first issue the petitioners contend that respondent Maximiniana Marcella was a mere intervenor in the case who did not take the place of the original defendant Evaristo R. Marcella so that when Atty. Rufino E. Gonzales who represented both defendants and intervenor Maximiniana Marcella interposed the appeal in behalf of defendants-appellants it did not include respondent Maximiniana Marcella who was an intervenor-defendant. Petitioners argue that the decision of the lower court became final insofar as defendant Maximiniana Marcella is concerned, whereby her title to the property was declared null and void and the plaintiffs therein were declared the legal owners and the persons in possession of the property in question; and that the decision of the Appellate Court in favor of the defendants does not inure to the benefit of intervenor-defendant Maximiniana Marcella who did not interpose an appeal thereto.

The theory advanced by petitioners is untenable. The records show that on February 12, 1968 respondent Maximiniana Marcella filed a petition for intervention in the case before the lower court claiming that the property subject of litigation is now her property duly registered in her name which she acquired by purchase from the Philippine National Bank (PNB), the latter

[4] P. 30, *Rollo*.

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having acquired the property in turn at the public auction of said property upon foreclosure of the mortgage executed in favor of PNB by respondent Evaristo R. Marcella.[5] On July 24, 1968 respondent Maximiniana Marcella filed an answer to the third amended complaint "as defendant in substitution and in lieu of original defendant Evaristo R. Marcella," represented by her counsel Rufino E. Gonzales.[6] In the fourth amended complaint filed by petitioners on December 26, 1968 they referred to said respondent "as the defendant Maximiniana R. Marcella, the sister of the principal defendant Evaristo R. Marcella"[7] and co-defendant in the case.[8] The answer of said respondent to the fourth amended complaint of February 4, 1969, was filed in her capacity as a defendant.[9] In the memorandum that was filed by petitioners on November 28, 1970 said respondent was repeatedly referred to as the new defendant or as a party defendant.[10] When defendants filed a memorandum on May 15, 1970 it was filed in behalf of all the defendants by counsel Rufino E. Gonzales including respondent Maximiniana R. Marcella.[11] In the decision of the trial court of August 18, 1970 respondent Maximiniana Marcella was referred as a defendant not only in the body thereof but also in the dispositive part.[12] Thus, when on September 28, 1970 Atty. Rufino E. Gonzales filed the notice of Appeal before the lower court in behalf of all the defendants the logical and only conclusion is that the appeal included respondent Maximiniana Marcella who is a co-defendant.

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[5] Pp. 96-97, Record on Appeal.

[6] Pp. 97-101, Record on Appeal.

[7] Pp. 103-112, Record on Appeal, No. XII, pp. 109-110.

[8] No. XIV and XV, Prayer, pp. 110-111, *Supra*.

[9] Pp. 112-113, Record.

[10] Pp. 113-124, 126-127 & 134, *Supra*.

[11] Pp. 135-157, Record on Appeal.

[12] Pp. 157-178, Record on Appeal.

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The proposal of petitioners that Evaristo R. Marcella, *et al.* as defendants-appellants should be distinguished from intervenor-defendant Maximiniana Marcella is absurd. From the records all of the defendants appealed the case to the Court of Appeals including respondent Maximiniana Marcella.

Moreover, petitioners never questioned the appeal of respondent Maximiniana Marcella as a defendant in the Court of Appeals. Thus such objection if at all tenable is deemed waived. And it is too late in the day to raise the issue for the first time on appeal before this Court.

Even assuming for the sake of argument that said respondent did not appeal from the judgment of the lower court, this Court has held that a defendant may nevertheless be benefited by the judgment in favor of her co-defendants who interposed an appeal.

"'As we have already said, whether an appeal by one of several judgment debtors will affect the liability of those who did not appeal must depend upon the facts in each particular case. If the judgment can only be sustained upon the liability of the one who appeals and the liability of the other co-judgment debtors depends solely upon the question whether or not the appellant is liable, and the judgment is revoked as to that appellant, then the result of his appeal will inure to the benefit of all."[13]

In this case even if respondent Maximiniana Marcella did not appeal since she derived her title from respondent Evaristo Marcella, consequently any judgment favorable to the latter shall inure to the benefit of the former.

On the second issue, petitioners contend that fraud was committed by respondent Evaristo R. Marcella in applying with the respondent Bureau of Lands for free patent on June 22, 1950 of the land in question which did not belong to him as his right and interest thereto was previously garnished, levied and sold at public auction on February 24, 1939 in favor of intervenor Land Title Association who in turn transferred all its rights to

[13] *Municipality of Orion vs. Concha*, 50 Phil. 682; quoted with approval in *Gov't of the Phil. vs. Tizon*, 20 SCRA 1182.

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herein petitioners. Hence petitioners argue that the judgment of the trial court against Evaristo R. Marcella should have been sustained otherwise the Torrens System will become a shield for the commission of fraud.

There is no merit in this contention.

The Court of Appeals found that the property is part of the public domain so that the title of respondent Evaristo R. Marcella who applied for a free patent was upheld as against the petitioners who did not. Moreover, in whatever manner Evaristo R. Marcella obtained the title over the lot in question, the PNB was a purchaser in good faith and for valuable consideration of the property,[14] so that Maximiniana Marcella acquired lawful title thereto when she acquired the same from the PNB.

WHEREFORE, the petition is DISMISSED for lack of merit with costs against petitioners.

SO ORDERED.

Yap (Chairman), Narvasa, Melencio-Herrera, Cruz, Feliciano, and *Sarmiento, JJ.*, concur.

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[14] *Fule vs. De Legare*, 7 SCRA 351 (1963); *Dizon vs. Rodriguez & Republic vs. Court of Appeals*, 13 SCRA 704 (1965); *Roxas vs. Dinglasan*, 28 SCRA 430 (1969); *Maquiling vs. Umacthay*, 335 SCRA 499 (1970).