Supreme Court E-Library



Under Sec. 52 (C) (4), Rule VI of CSC Memorandum Circular No. 19, Series of 1999, habitual tardiness is penalized as follows:

First Offense – Reprimand

Second Offense – Suspension for 1-30 days

Third Offense – Dismissal from the service

Since this is the first offense of Calingasan, the proper sentence is a reprimand with a stern warning that a repetition of the same or a similar offense in the future will be dealt with more severely.

**WHEREFORE,** LARAINE. I. CALINGASAN, Court Stenographer II, Municipal Trial Court in Cities, Sta. Rosa City, Laguna, is hereby *REPRIMANDED* for her habitual tardiness and *WARNED* that a repetition of the same or a similar offense will warrant the imposition of a more severe penalty.

**SO ORDERED.**

*Carpio (Chairperson), Brion, Perez,* and *Reyes, JJ.*, concur.

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**FIRST DIVISION**

[G.R. No. 141019. November 23, 2011]

**JOSE TEOFILO MERCADO,** *petitioner, vs.* **VALLEY MOUNTAIN MINES EXPLORATION, INC.,** *respondent.*

[G.R. No. 164281. November 23, 2011]

**HEIRS OF JUAN OLIMPIADA and HEIRS OF SERGIO OLIMPIADA,** *petitioners, vs.* **COURT OF APPEALS, HON. ALFONSO GARCIA, Judge, RTC, Branch 18, Tagaytay City, VALLEY MOUNTAIN MINES EXPLORATION, INC., represented by its President,**

Supreme Court E-Library



**JOAQUIN RODRIGUEZ, and CITY GOVERNMENT OF TAGAYTAY,** *respondents.*

[G.R. No. 185781. November 23, 2011]

**HEIRS OF JUAN AND SERGIO OLIMPIADA, represented by Fernando Olimpiada as Attorney-in-Fact,** *petitioners, vs.* **HON. GREGORIO M. MONREAL, CITY ASSESSOR, TAGAYTAY CITY,** *respondent.*

**SYLLABUS**

**1. CIVIL LAW; LAND REGISTRATION; REQUIREMENTS FOR REGISTRATION OF PUBLIC LAND. —** It should be stressed that a person who seeks registration of title to a piece of land must prove the claim by clear and convincing evidence, and is duty bound to identify sufficiently and satisfactorily the property. Otherwise stated, all facts must indicate that no other person, including the government, will be prejudiced by the adjudication of the land to the applicant. Indeed, a land registration court has no jurisdiction to order the registration of land already decreed in the name of another in an earlier land registration case. A second decree for the same land would be null and void. The applicant for registration under Section 14, paragraph (1) of P.D. No. 1529 must specifically prove: (1) possession of the subject land under a *bona fide* claim of ownership from June 12, 1945 or earlier; and (2) the classification of the land as an alienable and disposable land of the public domain. The burden of proof in overcoming the presumption of State ownership of lands of the public domain is on the person applying for registration. The applicant must show that the land subject of the application is alienable or disposable.

**2. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW UNDER RULE 45, PROPER REMEDY; DISTINGUISHED FROM PETITION FOR *CERTIORARI* UNDER RULE 65. —** In filing this petition for *certiorari*, petitioners availed of the wrong remedy. The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45 which is not similar to a petition for *certiorari* under Rule 65

Supreme Court E-Library



of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45. Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.

**3. ID.; SPECIAL CIVIL ACTIONS; *MANDAMUS*; CONCEPT. —** *Mandamus* is a writ commanding a tribunal, corporation, board, or person to do the act required to be done when it or he unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, there being no other plain, speedy, and adequate remedy in the ordinary course of law. The action lies to compel the performance, when refused, of a ministerial duty. A purely ministerial act, in contradistinction to a discretional act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done.

**4. ID.; ID.; ID.; *MANDAMUS* MAY NOT BE AVAILED OF TO DIRECT THE EXERCISE OF JUDGMENT. —** As correctly observed by the trial court, the correction sought would add new owners, aside from the fact that the property covered by the subject tax declaration is already under the name of VMMEI since 1988. It must be stressed that before a tax declaration is issued by the city assessor, he has to ensure that the taxpayer submits the proper documents which indicate the nature of his right or claim over the property covered by the tax declaration. Clearly, the actual exercise of the city assessor's duty to issue tax declarations is necessarily discretionary as it involves judgment on his part in examining the documents presented. Well-settled is the rule that *mandamus* may not be availed of to direct the exercise of judgment or discretion in a particular

Supreme Court E-Library



way, or to retract or reverse an action already taken in the exercise of either.

**5. ID.; EVIDENCE; SURVEY PLAN IS INEFFECTUAL TO PROVE POSSESSION AND OWNERSHIP OF LAND. —** In asserting their right as co-owners, petitioners presented the approved plan of Lot 4867 indicating that the survey was prepared for "Heirs of Narciso Olimpiada, *et al*." The words "*et al*." is an abbreviation of *et alli* ("and others") and is often affixed to the name of the person first mentioned, where there are several plaintiffs, grantors, persons addressed, *etc*. Such "*et al*." affixed to the name of the claimants appearing on the approved survey plan/technical description is not sufficient to establish the alleged co-ownership. The approved survey plan and technical description of the subject land merely plot the location and the boundaries thereof. We have held that while these documents help in establishing the identity of the property sought to be registered, they are completely ineffectual in proving possession of the applicant in the concept of an owner for the necessary period. Much less, therefore, can they constitute evidence of ownership and identities of the claimants/ owners of the land surveyed.

**APPEARANCES OF COUNSEL**

*Salonga Hernandez Mendoza* for J. Mercado.

*Abbas Alejandro-Abbas Francisco & Associates* for VMMEI.

*Office of the City Legal Officer (Tagaytay)* for public respondent.

**D E C I S I O N**

**VILLARAMA, JR., *J*.:**

The consolidated petitions before us stemmed from contending claims over lots sold by the government in a tax delinquency sale and subsequently applied for original registration under Presidential Decree (P.D.) No. 1529.

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## The Facts

Subject of controversy are the following parcels of land situated at Barangay Sungay, Iruhin, Tagaytay City:

| Lot No. | Area (sq.m.) | Tax Declaration No. |
|---|---|---|
| 4867 | 284,105 | 09959-B |
| 7539 | 8,400 | 09224-B |
| 7540 | 3,907 | 09226-B |
| 7541 | 6,564 | 09225-B |
| 4831-B | 121,489 | 09958-B[1] |

Lot 4867 was originally declared under the name "Heirs of Narciso Olimpiada" with Rosa Cabrera as the named Administrator in Tax Declaration (TD) 09959-B.[2] On the other hand, the declared owners of Lots 7539, 7540, 7541 and 4831-B are the Heirs of Juan Desengaño.[3] The heirs of Narciso Olimpiada and heirs of Juan Desengaño were in actual possession of the aforesaid properties.

For failure to pay the real property taxes for several years, the subject lots were sold by the City Government of Tagaytay in a public auction held on November 28, 1983, as evidenced by the Certificate of Sale of Delinquent Property to Purchaser issued in favor of Valley Mountain Mines Exploration, Inc. (VMMEI). Said certificate of sale was registered on December 9, 1983.

To save their property, the heirs of Narciso Olimpiada,[4] through their attorney-in-fact, Rosa Cabrera Mendoza, executed a "Deed

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[1] Records (LRC Case No. TG-354), p. 223; records (LRC Case No. TG-355), pp. 242, 245-246, 248; records (LRC Case No. TG-356), pp. 218, 220.

[2] *Id.*

[3] Records (LRC Case No. TG-355), pp. 287-294; records (LRC Case No. TG-356), pp. 218-221.

[4] Rosa Cabrera Mendoza (married to Primitivo Mendoza), Magdaleno Cabrera, Rogelio Cabrera, Ireneo Cabrera, Felipe Olimpiada, Macario Olimpiada, Mercedes Olimpiada, Filomeno Olimpiada, Paulino Olimpiada, Conrado Olimpiada, Norma Olimpiada and Maxima Olimpiada.

Supreme Court E-Library



of Sale of an Unregistered Parcel of Land With Assignment of Rights and Assumption of Obligations" in favor of Jose Teofilo T. Mercado (Mercado).[5] The heirs of Juan Desengaño[6] through their attorney-in-fact Primitivo Mendoza likewise executed a similar deed in favor of Mercado.[7]

On December 7, 1984, Mercado paid the sums of ₱58,327.82 and ₱33,841.49 for the five parcels of land. Consequently, a Certificate of Redemption covering the subject properties was issued by the Office of the City Treasurer of Tagaytay City.[8] Said office also returned the purchase price plus interest thereon to VMMEI on December 11, 1984.[9] However, the checks issued by Mercado in payment of the aforesaid sums when presented for payment to the bank, were dishonored for the reason "Refer to Drawer." Under letters dated April 16, 1985 and October 8, 1985, the Office of the City Treasurer advised Mercado to replace the bounced checks.[10]

On April 14, 1986, VMMEI through its counsel wrote then City Treasurer Concepcion C. Daplas asserting its right to be reinstated as the highest bidder during the public auction sale considering that no effective redemption was made by the delinquent owners, and expressed willingness to return the total amount of ₱111,222.07 refunded to it and also to pay additional sums to update the taxes due on the subject properties.[11]

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[5] Records (LRC Case No. TG-354), pp. 231-236.

[6] Honorio Pesigan, Armando Pesigan, Marcelina Pesigan, Jovita Pesigan, Felicito Pesigan, Ciriaco Perez, Lorenza Mendoza, Juanita Mendoza, Juanito Mendoza, Agapito Mendoza, Paciencia Mendoza, Catalina Mendoza, Sofia Mendoza, Teodora Mendoza, Nena Mendoza, Roman Mendoza, Aba Mendoza, Domingo Serrano, Librada Serrano, Corazon Serrano, Norma Serrano, Soledad Umali Mendoza, Ciriaco Mendoza, Leonida Mendoza and Anastacia Mendoza.

[7] Records (LRC Case No. TG-355), pp. 302-310.

[8] Records (LRC Case Nos. TG-354), p. 237; records (LRC Case No. TG-355), p. 253.

[9] *Id.* at 389.

[10] Records (LRC Case No. TG-356), pp. 128-129.

[11] Records (LRC Case No. TG-354), pp. 384-385.

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Thereupon, under letter dated April 22, 1986, Daplas sought the advice/ruling of the Minister of Finance on whether she can accept VMMEI's repayment for the total amount of tax delinquency of the auctioned properties and costs without going through the process of another public auction, and issue the corresponding final bill of sale in its favor.[12] No written reply was received from the Ministry of Finance regarding Daplas' query.

On August 7, 1986, Daplas accepted the amount of ₱46,400.00 from Mercado as partial cash payment, particularly "for replacement of check covering payment of tax receipts # 7495076, 7495036 & 7495075" as evidenced by a handwritten temporary receipt she issued to Mercado.[13] Said amount was immediately deposited with PNB Cavite Branch under SJV No. 86-09-21 dated September 5, 1986. On October 7, 1986, a certain Mr. Francisco Zarate informed the City Treasurer that he is withdrawing the payment he made in behalf of Mercado because he realized that the transaction was irregular since the 365 days redemption period allowed by law had already expired when they paid the cash replacement of the bounced check of Mercado.[14] However, such money paid by Zarate was never returned by the City Treasurer's Office.

The repayment made by VMMEI was eventually accepted and then OIC/City Treasurer Pio Baybay executed the Final Bills of Sale[15] covering the subject lots. Consequently, the previous tax declarations of the Heirs of Narciso Olimpiada and Heirs of Desengaño were cancelled and new tax declarations for the year 1988 were issued in the name of VMMEI which likewise paid the real property taxes due on the five parcels of land.

On May 15, 1988, the Heirs of Narciso Olimpiada and Juan Desengaño sought reconsideration of the cancellation of their

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[12] *Id.* at 386-387.

[13] *Id.* at 391.

[14] *Id.* at 394.

[15] *Id.* at 372-381.

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respective tax declarations on the ground that it was illegal considering that the auctioned properties have been timely redeemed. In his letter-reply, then City Assessor Josefina De Castro informed that their properties have already been sold at public auction for non-payment of real property taxes in accordance with existing regulations and procedure.[16] Still, the said heirs reiterated their request for the revival or restoration of their tax declarations on September 7, 1989.[17]

On September 26, 1989, Mercado filed separate petitions for judicial confirmation of title over the subject lots in the Regional Trial Court (RTC) of Tagaytay City (Branch 18), docketed as **LRC Case Nos. TG-354** (Lot 4867 - Olimpiada Property), **TG-355** (Lots 7539, 7540 and 7541 - Desengaño Properties) and **TG-356** (Lot 4831-B - Desengaño Property).

The Republic of the Philippines through the Solicitor General entered appearance and filed its Opposition to the petitions filed in LRC Case Nos. TG-355 and TG-356.[18] The Heirs of Narciso Olimpiada represented by Atty. Dante A. Carandang (Carandang Group) filed their Opposition in LRC Case No. TG-354, having earlier filed on April 11, 1990 before the same court **Civil Case No. TG-1124** for the annulment of public auction sale. The Heirs of Juan Desengaño filed their Opposition in LRC Case Nos. TG-355 and TG-356.[19] VMMEI, on the other hand, filed its Opposition to all three petitions filed by Mercado.[20] VMMEI likewise filed a separate application for registration of the same parcels of land before the same court, docketed as **LRC Case No. TG-383**.

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[16] Records (LRC Case No. TG-355), p. 165.

[17] Records (LRC Case No. TG-354), pp. 68-71.

[18] Records(LRC Case No. TG-355), pp. 27-29; records (LRC Case No. TG-356), pp. 20-24.

[19] *Id.* at 31-37; *id.* at 25-31.

[20] Records (LRC Case No. TG-354), pp. 51-58; records (LRC Case No. TG-355), pp. 72-78; records (LRC Case No. TG-356), pp. 172-177.

Supreme Court E-Library



On April 23, 1991, the trial court issued a general order of default with the exception of private oppositors VMMEI and the Heirs of Narciso Olimpiada (Carandang Group).[21] Civil Case No. TG-1124 was dismissed on joint motion of the parties as the Heirs of Narciso Olimpiada pursued their opposition in the consolidated cases of LRC Case Nos. TG-354, TG-355 and TG-356.[22]

***Heirs of Narciso Olimpiada*[23] *(Carandang Group)***

These oppositors led by Teresa Olimpiada and counsel Atty. Dante A. Carandang, claimed to be the lawful owners of Lot No. 4867 as legal heirs of Narciso Olimpiada who died intestate sometime in 1926. They alleged that they were not notified of the public auction sale conducted on November 28, 1983 wherein their property was among those sold to VMMEI. As alleged possessors of the land in the concept of owner since time immemorial, they prayed that the court allow them to be substituted as applicants for registration of Lot 4867. A verified application[24] for judicial confirmation of title was subsequently filed by said heirs.

***Heirs of Juan Desengaño***

With the exception of spouses Primitivo Mendoza and Rosa Cabrera-Mendoza who refused to join in filing the opposition, the heirs of Juan Desengaño questioned the application of Mercado, asserting that they, by themselves and through their predecessors-in-interest, have been in open, continuous and uninterrupted possession of Lots 7539, 7540, 7541 and 4831-B, subject of LRC Case Nos. TG-355 and TG-356, in

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[21] Records (LRC Case No. TG-354), p. 137.

[22] *Rollo* (G.R. No. 141019), p. 92.

[23] Macario Olimpiada, Timoteo Olimpiada, Catalino Olimpiada, Teresita Olimpiada, Florencia Olimpiada, Segunda Olimpiada, Alberto Olimpiada, Teresa Olimpiada, Geminiano Olimpiada, Modesta Olimpiada, Paulino Olimpiada, Filomino Olimpiada, Conrado Olimpiada and Norma Olimpiada; Mercedes Mendoza, Magdaleno Cabrera, Rogelio Cabrera and Irineo Cabrera.

[24] Records (LRC Case No. TG-354), pp. 138-141.

Supreme Court E-Library



the concept of owner for more than 30 years. They denied having sold their properties to anybody.

***VMMEI***

In its capacity as purchaser at the public auction of all the five parcels of land subject of Mercado's application, VMMEI accused said applicant of misrepresentation and bad faith. VMMEI contended that Mercado's efforts to redeem the properties failed because his checks were dishonored, and hence the same did not produce the effect of payment of the redemption price, as in fact the communication sent by the Ministry of Finance dated August 12, 1986 to the City Treasurer of Tagaytay even mentioned that said office was contemplating to file a case against Mercado for violation of the Bouncing Checks Law.

By virtue of the purchase at the tax delinquency sale conducted by the City Government of Tagaytay, VMMEI claimed it is now the successor-in-interest of the previous owners, the Heirs of Narciso Olimpiada (Carandang Group) and Juan Desengaño, which has the right to apply for original registration of title over their lands. As to the request for reconsideration of the cancellation or the restoration/revival of their respective tax declarations, this was denied by the City Assessor who informed them that tax declarations covering their properties are now in the name of VMMEI as the present owner. VMMEI accordingly filed its opposition to the respective applications of the aforesaid heirs. It thus prayed for the dismissal of Mercado's application and for it to be allowed to be substituted in the application for registration as successors-in-interest of the Heirs of Narciso Olimpiada in LRC Case No. TG-354 and the Heirs of Juan Desengaño in LRC Case Nos. TG-355 and TG-356.

***Evidence Presented in LRC Case Nos. TG-354, TG-355 and TG-356***

At the trial of the cases, applicant Mercado's witness, Rosa Cabrera Mendoza, admitted that of the five children of Dominador Mendoza, a grandson of Narciso Olimpiada and her first cousin

Supreme Court E-Library



who died before the outbreak of war, only the eldest, Macario, signed the documents without a written authority from his siblings (Timoteo, Catalina,Teresita and Florencia). She likewise admitted that another heir, Josefa Olimpiada, allegedly a retardate, had no participation in the transaction; no proof of guardianship or imbecility of said heir, however, was submitted.[25]

Primitivo Mendoza also testified that Catalina, the daughter of his late brother Pascual Mendoza, was still alive at the execution of the Special Power of Attorney but did not sign the same. Catalina left as heirs her children with Lamberto Sumagui. Another daughter of Pascual Mendoza, Cornelia Mendoza, *a.k.a.* Aba Mendoza signed the document. His sister Paulina Mendoza had the following children: namely, Lorenza, Juanita, Juanito and Agapito, all surnamed Mendoza.[26] The widow (Soledad Umali Mendoza) of another heir, Marcelino Mendoza, signed the document for herself and allegedly in behalf of her children with Marcelino.[27]

Rosa and Primitivo presented the respective receipts for the amounts (₱200,000.00 for the heirs of Olimpiada and ₱400,000.00 for the heirs of Juan Desengaño)[28] representing the purchase price they received from Mercado, which were all deposited with Mercado's sister, Paulita Mercado Arañas, for safekeeping until the titles to the land are issued.[29]

Atty. Augusto Del Rosario testified that the subject deeds were executed in his presence. He relied on the representation of the heirs-signatories that they are the only heirs of the declared landowners and it being the custom in the rural areas to trust the word of the eldest in the family. He also admitted there

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[25] TSN, October 15, 1991, pp. 17-20, 38-40.

[26] TSN, November 12, 1991, pp. 8-11.

[27] TSN, November 8, 1991, pp. 27-28; Exh. 6-Desenganos, records (LRC Case No. TG-355), p. 341.

[28] Records (LRC Case No. TG-354), pp. 267, 310; records (LRC Case Nos. TG-355), pp. 297, 309.

[29] *Id.* at 267; *id.* at 297.

Supreme Court E-Library



were tenants on the subject properties but these tenants already executed waivers in favor of Mercado.[30]

Loreta "Luring" Mendoza testified that it was not her signature which appeared above the name "Lorenza Mendoza," which was not her true name, in the Special Power of Attorney in favor of Primitivo Mendoza.[31] Another witness, Cornelia Mendoza, likewise denied it was her signature appearing above the name "Aba Mendoza" and she always signed using the name "Cornelia Mendoza" her full name.[32]

Macario Olimpiada testified that he is a great grandson of Narciso Olimpiada, his father Dominador Olimpiada being the son of Victor Olimpiada. He denied the signature appearing above his name in the Special Power of Attorney in favor of Rosa Cabrera Mendoza. He does not know anything about the execution of said document nor the sale in favor of Mercado made by his co-heirs. He also did not make any contribution for the payment of real property taxes because it was only through Rosa Cabrera that he came to know that they have a property in Tagaytay. Neither is he aware that the subject land was sold in a public auction nor of its redemption by Mercado. In fact, he does not know anything of what was happening regarding the property.[33]

VMMEI presented as its witnesses its Treasurer Grace Ramos Abesamis, former City Treasurer of Tagaytay Concepcion Daplas and Local Training Operations Officer of the City Treasurer's Office Domingo Bayas.

Abesamis testified that the refund of the purchase money paid by VMMEI at the public auction was deposited in the company's account but on September 30, 1997, they paid it

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[30] TSN, December 12, 1991, pp. 8-16; TSN, December 18, 1991, pp. 5-9; TSN, January 15, 1992, 5-10; TSN, February 5, 1992, pp. 9-12, 17-19.

[31] TSN, February 14, 1992, pp. 10-11.

[32] *Id.* at 20.

[33] TSN, March 3, 1992, pp. 23-26, 30-39.

Supreme Court E-Library



back to the City Government of Tagaytay by issuing two checks duly receipted by the City Treasurer's Office. While the said payment consisted of personal checks of Joaquin Rodriguez, VMMEI's President, she explained that stockholders and officers can make advances in behalf of the company.[34]

Treasurer Daplas testified that the payment tendered by Mercado as redemption price was only partial and she issued a temporary receipt for ₱46,400.00 received only on August 7, 1986. They earlier refunded the purchase price to VMMEI on December 11, 1984 before they learned that the checks issued by Mercado bounced. The Ministry of Finance sent a telegram dated December 11, 1985 directing then OIC/City Treasurer of Tagaytay Pio Baybay to appear at said office in connection with the subject properties. The Final Bills of Sale were executed by Baybay in favor of VMMEI in Manila and she signed the documents as witness. This was upon the verbal instruction given by the officials of the now Department of Finance (DOF) when on the same date she and Baybay were called to a conference before said officials. The return of the refunded purchase price was made by Joaquin Rodriguez through checks.[35] She also identified the signatures of Baybay and the other witness in the Final Bills of Sale.[36]

***Gaudioso Platero, Bonifacia Platero, Herminia Platero-Castro and Elizabeth Platero-Fernandez (Plateros)***

After the parties have concluded the presentation of their evidence, the above-named individuals filed an Opposition/Petition for Registration. The Plateros, represented by their counsel Atty. Arcangelita Romilla-Lontok, claimed to be the owners of a residential land declared in their name under TD No. 013705-A, with an area of 100,500 square meters, which allegedly forms part of the parcel of land applied for by Mercado. They prayed

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[34] TSN, March 11, 1992, pp. 13-30, 51-54, 57-59.

[35] TSN, March 12, 1992, pp. 30-37, 39-49.

[36] TSN, March 20, 1992, pp. 38-40.

Supreme Court E-Library



for the dismissal of Mercado's application with respect to their ten-hectare property, the segregation of said area from the land subject of Mercado's application and the issuance of title in their favor as exclusive owners of the said portion. They also filed a motion to order verification/amendment/subdivision surveys which is necessary to exclude their property from Lot 4867.

Subsequently, the Plateros filed an Omnibus Motion: (1) to lift the order of general default; (2) to reopen the proceedings; (3) to admit the opposition/application for registration of the Plateros; and (4) the Plateros be allowed to introduce evidence in support of their opposition/application.[37] However, in a Joint Order dated January 7, 1993, the trial court denied their Opposition and Omnibus Motion, citing that a decision had already been rendered in the case.[38] On April 29, 1993, they filed a Notice of Appeal of the aforesaid Joint Order, as well as the Order dated April 20, 1993 denying their motion for reconsideration.[39]

***RTC Decision in LRC Case Nos. TG-354, TG-355 and TG-356***

On November 26, 1992, RTC Branch 18 rendered its Decision,[40] the dispositive portion of which reads:

> WHEREFORE, considering all the foregoing, judgment is hereby rendered confirming the ownership of Valley Mountain Mines Exploration, Inc., over the five (5) properties priorly owned by the Heirs of Narciso Olimpiada and the Heirs of Juan D[e]sengaño, subjects of these applications for land registration, and denominated as:
>
> 1. Lot 4867 with an area of 284,105 sq.m. – TG 354
> 2. Lot 7539 with an area of 8,400 sq.m. – TG 355

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[37] Records (LRC Case No. TG-354), pp. 595-607.

[38] *Id.* at 645-646.

[39] *Id.* at 738-740.

[40] *Rollo* (G.R. No. 141019), pp. 89-101. Penned by Judge Julieto P. Tabiolo.

Supreme Court E-Library



3. Lot 7540 with an area of 3,907 sq.m. – TG 355

4. Lot 7541 with an area of 6,564 sq.m. – TG 355

5. Lot 4831-B with an area of 121,489 sq.m. – TG 356

Consequently[,] this Court hereby grants the application for registration filed by Valley Mountain Mines Exploration, Inc., over the said properties, placing them under the operations of the new Land Registration Law (PD 1529) so that the same may be registered under its name.

Upon finality of this decision, the corresponding decree of registration may thus be issued in its name, upon payment of the prescribed legal fees therefor, if any.

SO ORDERED.[41]

The trial court ruled that Mercado's claim of ownership is founded on the deed of sale and assignment of rights with assumption of obligations executed by two alleged attorneys-in-fact of the owners, spouses Primitivo and Rosa Mendoza. However, the authority of said representatives was put in question by the exclusion of certain heirs who did not sign the special power of attorney and the aforesaid document of sale. On the redemption price paid by Mercado, the trial court noted that his partial cash payment of ₱46,000 was grossly insufficient to cover the amounts covered by the bounced checks. As to the claims of Heirs of Narciso Olimpiada (Carandang Group) and Heirs of Juan Desengaño, the trial court noted that while they were represented by their respective attorneys, they lost interest in pursuing their case and failed to introduce substantial evidence as they did not even file their memorandum.

In upholding the claim of VMMEI, the trial court ruled that VMMEI acquired ownership rights over the subject properties when it returned the refunded purchase price to the City Treasurer. As confirmation of such rights, the City Treasurer executed Final Bills of Sale in favor of VMMEI which was attested to by witness Daplas.

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[41] *Id.* at 100-101.

Supreme Court E-Library



***Heirs of Juan and Sergio Olimpiada***[42] ***(Fabella Group)***

On February 16, 1993, the heirs of Juan and Sergio Olimpiada who are allegedly full-blood brothers of Narciso Olimpiada, represented by their attorney-in-fact Fernando Olimpiada and their counsel Atty. Gilbert M. Fabella (Fabella Group), filed an Urgent Motion for Reopening[43] of LRC Case No. TG-354. They pointed out that in the approved plan of Lot 4867, Ap-04-000778[44] dated April 29, 1976, it was clearly indicated that the land described therein was surveyed for the "Hrs. of Narciso Olimpiada, *et al*." and that the words "*et al*." refer to the Heirs of Juan and Sergio Olimpiada, the co-owners of Narciso Olimpiada.

In a Joint Order[45] dated April 20, 1993, the trial court denied the said Urgent Motion as well as the petition for relief from judgment and motion for reconsideration filed by the Plateros. The trial court said it no longer had jurisdiction to act on the pending motions since it already approved the notice of appeal filed by applicant Mercado.

On May 20, 1998, the Olimpiada Heirs-Fabella Group[46] instituted before the same court (RTC of Tagaytay City, Branch

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[42] Domingo, Felicidad, Florentina, Alejandro, Teresa, Fernando, Salud, Ernesto, Matilde, Rosa, and Lamberto.

[43] Records (LRC Case No. TG-354), pp. 684-692.

[44] *Id.* at 299.

[45] *Id.* at 736-737. Penned by Acting Presiding Judge Eleuterio F. Guerrero.

[46] It was alleged in the Amended Petition that the Heirs of Narciso Olimpiada are Dominador, Felipe, Paulino, Conrado, Felomino, Norma, Mercedes and Magdalena, all surnamed Olimpiada; they are survived by their children Mateo, Teresita, Catalino, Lucia, Segundo, Modesta, Aurora, Eduardo, Macario, Teodie, Alberto, Emeriano, Juanito, Emelita, Conrado,Jr., Oliver, Felix, Victoria, Maria, Noel, Esteban, Bonifacio, Donato, Cristina, Cesar, Elenita, Pedro, Ben, Sonny, Consolacion, Magdalena, Rosa, Ireneo and Rogelio. The Heirs of Juan Olimpiada are Gregorio, Feliciano, Domingo, Nicanor, Alejandro, Proctusa, Victoria and Marcelo who were survived by

Supreme Court E-Library



18) Civil **Case No. TG-1800** for Annulment of Auction Sale. However, the named attorney-in-fact was Macario Olimpiada. They prayed that the tax delinquency sale conducted by the City Government without notice to them as co-owners be declared null and void.[47]

VMMEI, defendant in Civil Case No. TG-1800, filed a motion to dismiss on the ground that plaintiffs have no personality to sue. They alleged that Juan and Sergio Olimpiada are collateral relatives of Narciso Olimpiada. There being children and descendants who survived, Narciso, Juan and Sergio were thus excluded from the inheritance, pursuant to Art. 1003 of the Civil Code of the Philippines. VMMEI called the attention of the trial court to the previous dismissal with prejudice of Civil Case No. TG-1124 filed by the children and grandchildren of Narciso Olimpiada against VMMEI. Further, VMMEI argued that the trial court has no jurisdiction over the case because plaintiffs failed to comply with the provision of the law that before a court can entertain an action to void a tax sale, plaintiff should have first paid to the court the correct amount for which the real property was sold, together with 20% interest per annum.[48]

On May 20, 1999, the trial court denied the motion to dismiss. However, VMMEI filed a motion for reconsideration which was granted under the order dated January 14, 2000. The trial court dismissed Civil Case No. TG-1800 stating that plaintiffs neglected to attach copies of such tax rolls or property tax record cards of the lot in question showing who is the delinquent owner entitled to notice of the auction sale. Plaintiffs'

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children Fernando, Carlito, Baby, Feliciano, Jr., Estelita, Oscar, Imelda, Brenda, Susan, Edna, George, Loreta, Shirley, Ofelia, Celia, Teresita, Rosalina, Marilyn, Benilda, Luisito, Ronaldo and Juanito, all surnamed Olimpiada. The Heirs of Sergio Olimpiada – Lorenza Olimpiada Agno and Salud Olimpiada Manimtim, who were survived by children Ernesto, Lamberto, Matilde and Rosa Agno, and Marilyn, Eduardo and Aurora, all surnamed Olimpiada Cabrera.

[47] *Rollo* (G.R. No. 164281), pp. 74-80.

[48] *Id.* at 70-72.

Supreme Court E-Library



motion for reconsideration was likewise denied by the trial court on May 15, 2000.[49] Subsequently, plaintiffs filed a petition for relief from judgment which suffered the same fate. Their motion for reconsideration of the denial of their petition for relief was also denied under the court's October 26, 2000 order. A second motion for reconsideration was also denied on December 11, 2002.[50] The aforesaid orders were assailed in a petition for *certiorari* filed by the Olimpiada Heirs-Fabella Group in the Court of Appeals (CA), docketed as **CA-G.R. SP No. 74454** entitled "*Heirs of Juan Olimpiada, et al. v. Valley Mountain Mines Exploration, Inc., City Government of Tagaytay and Hon. Alfonso Garcia, Judge, RTC Branch 18, Tagaytay City.*"[51]

***CA-G.R. CV No. 41164 and CA-G.R. SP No. 32309***

Applicant Mercado filed a notice of appeal from the adverse decision of the RTC in LRC Case Nos. TG-354, TG-355 and TG-356, the appeal docketed as **CA-G.R. CV No. 41164.** Before the CA, VMMEI filed a motion for the issuance of writ of possession, which was granted under its Resolution dated October 20, 1993.[52] In the same resolution, the motion for elevation of the court records in LRC Case Nos. TG-354 and TG-383 and/or remand of the case to the trial court, filed by the Olimpiada Heirs-Fabella Group (who represented themselves as "Heirs of Narciso, Juan and Sergio Olimpiada, *et al.*" was also denied. The CA noted that LRC Case No. TG-354 was already decided while the motion for consolidation was filed before the trial court by the Olimpiada Heirs-Fabella Group only on February 5, 1993. As per the report submitted by the

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[49] *Id.* at 85-91, 103.

[50] *Id.* at 111-116.

[51] *Rollo* (G.R. No. 141019), p. 426.

[52] CA *rollo* (CA-G.R. CV No. 41164), Vol. II, pp. 438-440. Penned by Associate Justice (retired Member of this Court) Consuelo Ynares-Santiago with Associate Justices Oscar M. Herrera and Corona Ibay-Somera, concurring.

Supreme Court E-Library



Sheriff, the writ of possession was returned unserved for lack of specification of the address of appellees.[53]

Meanwhile, the Olimpiada Heirs-Fabella Group filed in this Court **G.R. No. 110005**, "Appeal by *Certiorari*, Prohibition and Injunction" seeking to re-open the proceedings in LRC Case No. TG-354. Citing the pendency of said G.R. No. 110005, they filed an Urgent Motion before the CA to hold in abeyance resolution of the appeal (CA-G.R. CV No. 41164).[54]

VMMEI filed a motion to strike out the pleadings filed by the Plateros (who filed a motion for reconsideration of the resolution granting the motion for issuance of writ of possession) and Olimpiada Heirs-Fabella Group (who filed their opposition to the motion for issuance of writ of possession and motion to hold in abeyance resolution of the appeal). It pointed out that the group of heirs allegedly represented by Atty. Fabella is distinct from the Heirs of Narciso Olimpiada who were parties in LRC Case No. TG-354 whose counsel was Atty. Dante Carandang, while the Plateros were not at all parties before the trial court.[55]

In a Resolution[56] dated October 14, 1994, the CA denied the motions for reconsideration of the October 20, 1993 resolution, separately filed by the Olimpiada Heirs-Fabella Group, the Plateros and Mercado. The CA likewise granted VMMEI's motion and ordered the pleadings filed by the Olimpiada Heirs-Fabella Group and the Plateros stricken off the records. It was noted that G.R. No. 110005 was already denied with finality in a Resolution dated September 3, 1993. The Olimpiada Heirs-Fabella Group moved to reconsider the October 14, 1994 resolution, but the same was denied under the Resolution dated January 19, 1995.[57]

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[53] *Id.* at 745.

[54] CA *rollo* (CA-G.R. CV No. 41164), Vol. I, p. 28.

[55] CA *rollo* (CA-G.R. CV No. 41164), Vol. II, pp. 714-716.

[56] CA *rollo* (CA-G.R. CV No. 41164), Vol. III, pp. 830-839.

[57] *Id.* at 1022-1024.

Supreme Court E-Library



Aggrieved from their exclusion in CA-G.R. CV No. 41164, the Olimpiada Heirs-Fabella Group filed a petition before this Court, docketed as **G.R. No. 119059** (*Heirs of Narciso Olimpiada v. Court of Appeals, et al.*), appealing the October 14, 1994 resolution of the CA.

The Plateros challenged the October 14, 1994 resolution of the CA via a petition for review on *certiorari* they filed before this Court, docketed as **G.R. No. 117602.** On December 7, 1994, this Court resolved to deny the petition of the Plateros for failure to show that a reversible error was committed by the CA. The Plateros' motion for reconsideration and subsequent motion for leave to file a second motion for reconsideration were also denied by this Court.[58]

After this Court denied with finality the petition in G.R. No. 110005, the Olimpiada Heirs-Fabella Group instituted another suit to challenge and enjoin the proceedings in LRC Case Nos. TG-354 and TG-383. They filed a petition for "Annulment of Decision and Orders, Consolidation, Prohibition, Injunction with Prayer for a Restraining Order," docketed as **CA-G.R. SP No. 32309**. Petitioners therein specifically prayed that said case be consolidated with CA-G.R. CV No. 41164 pending with the appellate court.[59] In an obvious attempt to evade the charge of forum shopping, Atty. Fabella appended a Certification to said petition attesting that they have "withdrawn [their] action or proceeding involving the same issues in the Honorable Supreme Court in the case entitled, "*Heirs of Narciso Olimpiada, et al.*, represented by Fernando Olimpiada, in his capacity as attorney-in-fact, petitioners versus The Hon. Judge, Eleuterio O. Guerrero, Presiding Judge, Regional Trial Court Branch 18, Tagaytay City, Jose Teofilo T. Mercado and Valley Mountain Mines Exploration, Inc., represented by the President, Jack Rodriguez, under CA-G.R. No. 110005," and even attached the purported "Motion to Withdraw" signed by Atty. Fabella filed before the Supreme Court on October 12, 1993.[60] As earlier

[58] *Id.* at 1008, 1308.

[59] CA *rollo* (CA-G.R. SP No. 32309), pp. 2-32.

[60] *Id.* at 33-34.

Supreme Court E-Library



mentioned, G.R. No. 110005 was denied with finality by this Court on September 3, 1993.

On December 29, 1993, the CA's Thirteenth Division ordered the consolidation of CA-G.R. SP No. 32309 with CA-G.R. CV No. 41164.[61]

On November 12, 1997, the CA's Special Seventh Division issued the following Resolution:[62]

An examination of the rollo of SC G[.]R. No. 119059 revealed that the heirs of Narciso Olimpiada, *et al*., petitioners therein, filed a Manifestation with the Supreme Court on September 13, 1995 to inform the said court that they sought the assistance of the DENR to investigate the identity and registrability of the subject land. A certification marked as Annex B (p. 260, Rollo) issued by the Department of Environment and Natural Resources was subsequently presented to show that the land subject of this controversy falls within the "Unclassified Public Forest of Tagaytay City per LC-CM 10 control map of Cavite." The petitioners argue that if the land subject of this appeal is indeed forest land and is thus, inalienable, the tax sale conducted by the City of Tagaytay is void and the said land cannot be the subject of an application for registration. However, when the DENR failed to submit a full report on the matter on time, the Supreme Court issued a resolution dated September 3, 1997, which states:

> "Acting on the petitioners' *Ex-Parte* Clarification ('with prayer to defer agenda') dated December 4, 1995 and private respondent VMMEI's motion for early resolution dated April 9, 1996, the court resolved to dismiss the petition without prejudice, it appearing that this case is not yet ripe for the Court's calendar in view of petitioners' allegation that the Department of Environment and Natural Resources 'is still managing to finish the amendment of approved plan of the land subject of this case.' The earlier resolution dated February 5, 1997 denying the petition without prejudice is hereby recalled,

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[61] *Id.* at 414.

[62] *Id.* at 496-498. Penned by Associate Justice Minerva P. Gonzaga-Reyes with Associate Justices Portia Aliño-Hormachuelos and Demetrio S. Demetria, concurring.

Supreme Court E-Library



it appearing that petitioners have already submitted the addresses of the counsel for private respondents."

**The pendency before the Supreme Court of the issue of whether or not the subject land is registrable is prejudicial to the resolution of the case before us.** The appeal before us pertains to the application for registration of the subject land by appellant Mercado and appellee VMMEI. The petition for annulment of judgment docketed as CA-GR SP No. 32309 filed by the heirs of Narciso Olimpiada, *et al.*, consolidated with the appeal, prays that the said heirs be allowed to intervene in or oppose the application for registration filed by both Mercado and VMMEI. **Until the issue of registrability of the subject land is finally resolved this Court would be ill-advised to decide who between Mercado and VMMEI is entitled to registration, as it may later turn out that the land is indeed forest land and not subject to registration.** It is settled in our jurisprudence that title issued over forest or inalienable land is void *ab initio* and cannot ripen into private ownership (*Republic vs. IAC*, 209 SCRA 90).

WHEREFORE, the case is hereby ARCHIVED until the Supreme Court has finally resolved the petition filed by the Heirs of Narciso Olimpiada, *et al.* docketed as SC GR No. 119059.

SO ORDERED.[63] (Emphasis supplied)

Entry of judgment on the September 3, 1997 dismissal without prejudice of G.R. No. 119059 was made on December 12, 1997. VMMEI filed in said case the following motions: (1) Motion To Recall Entry of Judgment; (2) Motion To Resolve Petition, both dated September 6, 1998; and (3) Motion to Clarify dated October 6, 1998. In a Resolution[64] dated November 23, 1998, this Court said:

IN VIEW OF THE FOREGOING, the aforesaid Motions are all NOTED WITHOUT ACTION and the Court of Appeals may now judiciously proceed with the resolution of CA-GR No. SP 32309 and CA-GR CV No. 41164, inasmuch as this present case is now deemed finally resolved and terminated. No further pleadings will be entertained.

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[63] *Id.* at 497-498.

[64] CA *rollo* (CA-G.R. CV No. 41164) Vol. III, pp. 1723-1724.

Supreme Court E-Library



On May 31, 1999, the CA's Fourteenth Division rendered its Decision[65] dismissing the appeal of Mercado in CA-G.R. CV No. 41164 and sustaining the trial court's findings and conclusions as to the defective redemption made by Mercado, the validity of VMMEI's acquisition of the subject lands by repaying the purchase price to the City Treasurer, and the undisputed open, exclusive and notorious possession of the former owners of the lands since time immemorial. The appellate court also dismissed CA-G.R. SP No. 32309, noting that in dismissing without prejudice G.R. No. 119059, this Court did not reverse or modify the October 14, 1994 Resolution excluding the Olimpiada Heirs-Fabella Group and the Plateros in CA-G.R. CV No. 41164. Further, it was mentioned that since G.R. No. 110005 also filed by the same Olimpiada Heirs-Fabella Group was already denied with finality, the CA can no longer entertain the petition in CA-G.R. SP No. 32309 which questioned the RTC's order denying their motion to re-open proceedings in LRC Case Nos. TG-354, the same issues raised by said petitioners cannot be litigated anew. Lastly, the CA held that even if said petitioners were allowed to intervene in CA-G.R. CV No. 41164, still their alleged rights are foreclosed by the fact that VMMEI's mode of acquisition was not by sale made by the Olimpiada heirs but by purchase in a tax delinquency sale pursuant to P.D. No. 464. The dispositive portion of the CA Decision reads:

> WHEREFORE, the Decision of the Court *a quo* dated November 26, 1992 is affirmed *in toto*. Likewise, the petition docketed as CA-G.R. SP No. 32309 is DISMISSED for lack of merit.
>
> Costs against applicant-appellant.
>
> SO ORDERED.[66]

On October 12, 1999, Mercado filed a Motion for New Trial on the ground of newly discovered evidence consisting of the

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[65] *Rollo* (G.R. No. 141019), pp. 48-74. Penned by Associate Justice Demetrio G. Demetria with Associate Justices Ramon A. Barcelona and Mariano M. Umali concurring.

[66] *Id.* at 73.

Supreme Court E-Library



following: (1) the Notarial Report of Notary Public Crisostomo G. Valle showing that Document Nos. 809 to 987 appears on pages 67-101 of Book XXI for the month of September 1987 whereas the Final Bills of Sale indicated Document Nos. 977, 978 and 980, Book XXIII, pages 99 and 100, Book XVIII covers only pages Nos. 73-101, series of 1987; Documents 978 and 980 are recorded not as the final bills of sale; (2) Certification from the Clerk of Court, Notarial Section, RTC of Manila which proves the spurious nature of the Final Bills of Sale; and (3) Letter dated October 5, 1999 from Angelina M. Magsino, Deputy Executive Director and OIC of the Bureau of Local Government Finance, Department of Finance, in response to Mercado's letter-query if it is the practice of said office to give verbal instruction to then Tagaytay City Treasurer Daplas regarding the auction sale of the property redeemed by him, and which states that "as a matter of public policy, all job-related instructions to local treasury officials are usually made in writing" and that "whether somebody might have given [Daplas] such verbal instructions, the Bureau is not at all aware of the same."[67]

In its Resolution dated November 15, 1999, the CA granted Mercado's motion for new trial. Subsequently, however, in its Resolution dated December 1, 1999, the appellate court granted VMMEI's motion for reconsideration and set aside its November 15, 1999 resolution.[68]

On February 4, 2000, Mercado filed a petition for review before this Court to reverse the CA Decision dated May 31, 1999 and Resolution dated December 1, 1999, docketed as **G.R. No. 141019.**

***CA-G.R. SP No. 74454***

While their petition in CA-G.R. SP No. 74454 was still pending, the Olimpiada Heirs-Fabella Group filed a petition for *mandamus* before the RTC of Tagaytay City (Branch 23), docketed as **Civil Case No. TG-2406.**[69] Impleaded as defendant therein

[67] *Id.* at 209-225.

[68] *Id.* at 226-227, 391-395.

[69] *Rollo* (G.R. No. 164281), pp. 54-58.

Supreme Court E-Library



was City Assessor Gregorio M. Monreal. It was prayed that said defendant be directed to correct the error committed in the issuance of tax declaration as "New" in 1974 containing the name "Heirs of Narciso Olimpiada" only instead of the "Heirs of Narciso Olimpiada, *et al.*" as reflected in the approved survey plan (Ap-04-000778).

On August 15, 2003, the Olimpiada Heirs-Fabella Group filed an urgent motion to suspend proceedings in CA-G.R. SP No. 74454 to await the final resolution of the *mandamus* case (Civil Case No. TG-2406).[70] In its Opposition, VMMEI contended that the petition in Civil Case No. TG-2406 is defective as it did not also implead the City Government of Tagaytay. Such non-inclusion of the city government was deliberate and made to conceal the forum shopping committed by the Olimpiada Heirs-Fabella Group who had earlier filed Civil Case No. TG-1800, in which the reliefs are similar to those sought in Civil Case No. TG-2406. It was further argued that the filing of Civil Case No. TG-1800 was itself an act of forum shopping because the Olimpiada Heirs-Fabella Group had previously filed an urgent motion for reopening of Civil Case No. TG-354 before the RTC. In view of this clear and blatant forum shopping, the filing of the *mandamus* case could not be invoked as legal basis for suspension of the proceedings in CA-G.R. CV No. 74454.[71]

On March 31, 2004, the CA's Eighth Division rendered its Decision[72] dismissing the petition for *certiorari* finding no grave abuse of discretion committed by the respondent judge in dismissing Civil Case No. TG-1800. It noted that petitioners failed to offer satisfactory explanation for not complying with Section 83 of P.D. No. 464, failing to appeal the final orders of the respondent court, and resort to petition for relief from judgment and other motions without complying with procedural

[70] *Id.* at 151-154.

[71] *Id.* at 181-185.

[72] *Id.* at 36-47. Penned by Associate Justice Bienvenido L. Reyes (now a Member of this Court) with Associate Justices Conrado M. Vasquez, Jr. (retired Presiding Justice) and Arsenio J. Magpale, concurring.

Supreme Court E-Library



requirements. Additionally, the court found that the alleged extrinsic fraud was not substantiated. The Olimpiada Heirs-Fabella Group filed a petition for *certiorari* before this Court assailing the foregoing CA ruling, docketed as **G.R. No. 164281**.

On September 29, 2004, this Court's Second Division resolved to consolidate G.R. No. 164281 with G.R. No. 141019, and the case was referred to the First Division.[73]

***Civil Case No. TG-2406 (Mandamus Case) and CA-G.R. SP No. 89657***

On February 18, 2003, the RTC Branch 18 dismissed the petition for *mandamus* in Civil Case No. TG-2406 filed by the Olimpiada Heirs-Fabella Group against City Treasurer Gregorio M. Monreal. The trial court held that allowing the addition of the word "*et al*." in the questioned tax declarations connotes the inclusion of new owners, hence a real action involving ownership and title. Consequently, such correction can only be made after trial.

Their motion for reconsideration having been denied, the Olimpiada Heirs-Fabella Group appealed the February 18, 2003 order of dismissal (**CA-G.R. SP**[74] **No. 89657**).

On December 27, 2007, the CA rendered its Decision[75] affirming the assailed order. It noted that the tax declaration covering the subject property is already in the name of VMMEI and that appellants have not established a well-defined, clear and certain right to warrant the grant of their petition. Their motion for reconsideration was likewise denied by the CA under Resolution[76] dated December 19, 2008.

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[73] *Id.* at 218.

[74] Being an appeal, should have been docketed as CA-G.R. CV No. 89657.

[75] *Rollo* (G.R. No. 185781), pp. 25-30. Penned by Associate Justice Aurora Santiago-Lagman with Associate Justices Bienvenido L. Reyes (now a Member of this Court) and Apolinario D. Bruselas, Jr., concurring.

[76] *Id.* at 32-33.

Supreme Court E-Library



The matter was elevated to this Court by the Olimpiada Heirs-Fabella Group in a petition for review on *certiorari*, docketed as **G.R. No. 185781**.

On February 11, 2009, this Court's Second Division resolved to consolidate G.R. No. 185781 with the consolidated petitions in G.R. Nos. 141019 and 164281.[77]

## The Consolidated Petitions

### *G.R. No. 141019*

Petitioner seeks to reverse the May 31, 1999 CA Decision, as well as its December 1, 1999 Resolution, arguing that the CA erred in ruling that: (1) petitioner did not qualify as redemptioner under Section 78, P.D. No. 464; (2) petitioner's redemption was defective, which is contrary to the ruling in *Tolentino v. Court of Appeals* (106 SCRA 513); (3) petitioner's exercise of his right of redemption was not legal despite evidence showing that the certificates of redemption issued to him were not cancelled and that the City Treasurer subsequently accepted his real property tax payments; (4) respondent VMMEI never forfeited its rights as successful bidder at the auction sale despite the fact that it refunded the bid price to the City Treasurer's Office and there is no conclusive proof that it reimbursed the bid price which the City Treasurer's Office earlier refunded; (5) the final bills of sale submitted by VMMEI was admissible despite being photocopies, in violation of the Best Evidence Rule and having been notarized outside the territorial jurisdiction of Notary Public who notarized the same; and (6) the motion for new trial filed by petitioner cannot be granted, thus reversing its earlier resolution allowing the petitioner to present newly discovered evidence that the final bills of sale are spurious.[78]

Petitioner Mercado and respondent VMMEI filed several pleadings, including motions and counter-motions for contempt, precipitated by repeated motions to suspend proceedings/ resolution filed by the Olimpiada Heirs-Fabella Group who cited

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[77] *Id.* at 106-107.

[78] *Rollo* (G.R. No. 141019), pp. 12-23.

Supreme Court E-Library



the pendency of other related suits they instituted in the RTC and CA. The aforesaid heirs who are petitioners in G.R. Nos. 164281 and 185781 even filed a motion to intervene on March 28, 2003 in G.R. No. 141019 alleging that they are entitled to 2/3 of the land subject of LRC Case No. TG-354 and were not notified of the auction sale conducted by the City Government of Tagaytay.[79]

On December 17, 2002, Atty. Gilbert M. Fabella, filed his Withdrawal of Counsel And Opposition "to avoid conflict of interest such as Forum Shopping or *Litis Pendencia*, *etc.*"[80] In compliance with our directive, the Olimpiada Heirs-Fabella Group through Fernando Olimpiada filed their Comment stating that they had a hard time finding a replacement for Atty. Fabella due to financial constraints, and hence they object to the said withdrawal of counsel.[81] Thereafter, Atty. Fabella continued to represent them in these cases as shown by subsequent pleadings until the time he was already confined at the Philippine Heart Center.[82] On August 25, 2006, the Olimpiada Heirs through their attorney-in-fact, Fernando Olimpiada, informed this Court that Atty. Fabella died on January 12, 2006. Their subsequent pleadings in the three cases were filed by their attorney-in-fact Fernando Olimpiada.[83]

***G.R. No. 164281***

Petitioners aver that the CA gravely abused its discretion in: (1) not recognizing the fact that the RTC acting as land registration court did not acquire jurisdiction over the petitioners for being not parties in LRC Case No. TG-354; (2) not finding that petitioners owned 2/3 of the auctioned real property by inheritance as legitimate descendants; (3) not awaiting the resolution of the petition for *mandamus* filed by the petitioners to prove their ownership; (4) in favoring the tax delinquency

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79 *Id.* at 681-684.

80 *Id.* at 414.

81 *Id.* at 840-841.

82 *Id.* at 874-879.

83 *Id.* at 928-929.

Supreme Court E-Library



sale of the City Government of Tagaytay over the ownership claim of the petitioners; and (5) not appreciating the existence of external, actual and collateral fraud committed by respondents VMMEI and City Government of Tagaytay.[84]

Petitioners thus prayed for the following reliefs: (1) declaring the levy and subsequent auction sale made by the City Government of Tagaytay as null and void at least insofar as the 2/3 portion of the subject land is concerned; (2) declaring the Decision in LRC Case No. TG-354 with respect to Lot 4867 confirming ownership in favor of VMMEI as null and void at least to the extent of 2/3 thereof; (3) declaring the order of respondent judge dated January 14, 2000 as null and void for having been rendered with grave abuse of discretion and with gross misrepresentation for excluding petitioners as co-owners of Lot 4867; and (4) declaring the March 31, 2004 CA Decision as null and void for having been rendered with grave abuse of discretion as it did not await the final resolution of the *mandamus* case.[85]

***G.R. No. 185781***

Petitioners seek the reversal of the CA Decision dated December 27, 2007 in CA-G.R. SP No. 89657, setting forth the following arguments: (1) lands which have not been issued patent and certificate of title cannot be the object of an auction sale, and if sold by the non-grantee is a violation of the law; (2) the only bidder VMMEI is a mining corporation not allowed to acquire agricultural land, besides being a dummy corporation, its claim of ownership over the subject land is a violation of the Corporation Code; (3) the correction of a typographical or clerical error committed by a City Assessor is a ministerial function and is purely ministerial in character; (4) petitioners did not receive any notice declaring them as delinquent taxpayers and of the conduct of auction sale, and neither were they parties to the land registration case; and (5) under the Civil Code, VMMEI is only a trustee of the petitioners when it bought at the auction sale the lot owned in common. Petitioners thus prayed

[84] *Rollo* (G.R. No. 164281), p. 14.

[85] *Id.* at 29-30.

Supreme Court E-Library



that the CA decision be set aside and judgment be rendered ordering the City Assessor to correct the erroneous 1974 Tax Declaration No. 09959-B.[86]

**Ruling of the Court**

The present controversy generated a prolonged litigation on the issue of ownership. On the one hand is the dispute between Mercado and VMMEI as to who had validly acquired rights over Lot 4867 in the tax delinquency sale conducted by the City Government of Tagaytay and, on the other, is the persistent albeit unsubstantiated claim of the Olimpiada Heirs-Fabella Group that they are co-owners of the auctioned property as descendants of the alleged brothers of Narciso Olimpiada, Juan and Sergio Olimpiada.

In G.R. No. 141019, petitioner Mercado assails the CA in affirming the trial court's ruling that the subject lots auctioned by the City Government of Tagaytay were validly sold to respondent VMMEI in view of his insufficient and belated payment of redemption price.

There can be no dispute that the RTC in the application for original registration may pass upon the issue of ownership to determine whether the applicant is entitled to the relief he seeks. It had jurisdiction to rule on all matters necessary for the determination of the issue of ownership, including the validity of the auction sale and related contentious issues.[87] However, the trial and appellate courts glossed over the more crucial aspect of the proceedings in LRC Case Nos. TG-354, TG-355 and TG-356 pertaining to the *identity* and *registrability* of the lands applied for.

Records showed that in a Report[88] dated July 24, 1990, the Administrator of the Land Registration Authority (LRA) informed the trial court in LRC Case No. TG-354.

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[86] *Rollo* (G.R. No. 185781), pp. 7 and 21.

[87] See *Talusan v. Tayag*, G.R. No. 133698, April 4, 2001, 356 SCRA 263, 274-275.

[88] Records (LRC Case No. TG-354), pp. 17-20.

Supreme Court E-Library



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2. After plotting the aforesaid plan in our Municipal Index Sheet discrepancies were noted which were referred to the Lands Management Sector, Region IV, Quezon City for verification and correction in a letter of even date, July 24, 1990, Annex "A" hereof;

3. Letters of even date (July 24, 1990) were also sent to the a) Lands Management Bureau, Manila, b) Community Environment and Natural Resources Office, Bacoor, Cavite and c) Forest Management Bureau, Quezon City, Annexes "B", "C" and "D" hereof, requesting for the status of the parcel of land sought to be registered, if covered by any kind of public land application/land patent and is within the alienable and disposable land of the public domain.

WHEREFORE, the foregoing are initially submitted to the Honorable Court for its information, **with the recommendation that the rendition of the decision be held in abeyance until after the discrepancies are corrected and the requested informations are received**. (Emphasis supplied.)

However, the trial court rendered its Decision dated November 26, 1992 without waiting for the receipt by the LRA of the abovementioned verification reports on the correctness of the plan and status of the land applied for registration.

On January 5, 1993, the LRA submitted to the trial court a Supplementary Report,[89] as follows:

x x x x x x x x x

2. LMB & CENRO informed that the parcel of land situated in Iruhin, Tagaytay City, described in plan Ap-04-000778, Lot 4867, Cad-355 is not covered by any public land application/land patent per its 1st Indorsement dated September 28, 1990 & letter dated September 6, 1990, copies are attached hereto as Annexes "A" & "B";

3. The Regional Technical Director, Region IV, in its letter dated June 26, 1992, in LRC Record No. N-51844, a copy is attached hereto as Annex "C", informed that the correct tie line of Lot 4867 from BLLM #1, Cad-355, Tagaytay Cadastre should be N. 70 deg. 54'E., 6543.57 m.;

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[89] *Id.* at 653-658.

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4. When the furnished corrected tie line was applied in the replotting of Ap-04-000778, Lot 4867, Cad-355, in our Municipal Index Sheet, it was found that **Lot A, plan Vs-04-000318, a portion of Psu-179428, applied in LRC Case No. Tg-301, LRC Record No. N-51844 by Primitiva Landicho-Tenido, *et. al.*, & decided on October 21, 1988, is a portion of Lot 4867, Tagaytay Cadastre, applied in the case at bar.** Copy of plan Vs-04-000318 is attached hereto as Annex "D"; and

5. LRA letter dated July 24, 1990 addressed to the FMB remains unanswered as of this date.

WHEREFORE, the foregoing report is respectfully submitted to the Honorable Court for its information & guidance **with the recommendation that (1) the applicant be required to submit a subdivision plan in tracing cloth of Lot 4867, Tagaytay Cadastre, Ap-04-000478 together with the corresponding technical descriptions duly verified & approved by the Regional Technical Director, Region IV, by excluding therefrom as a separate lot the portion covered by plan Vs-04-000318, Lot A, a portion of Psu-179428, applied & decided in LR Case No. Tg-301, LRC Record No. N-51844 & the Forest Management Bureau to submit a report to the Court on the status of the land applied for, to determine whether said land or any portion thereof, is within the forest zone**.[90] (Emphasis supplied.)

Apparently, the LRA was not notified that a decision had already been rendered as evident from its letter[91] dated January 19, 1993 to the Clerk of Court, RTC, Branch 18, requesting for "confirmation of the genuineness and regular issuance" of said decision. Concerned about the matters earlier conveyed to the court and whether these have been properly addressed, the LRA again wrote the Clerk of Court, stating that—

In connection with the examination of the above-noted case/record, please furnish this Authority with a certified copy of the resolution or order if any, of the Honorable Court relative to our Supplementary Report dated January 05, 1993, for our record as required by existing regulations.

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[90] *Id.* at 653-654.

[91] *Id.* at 660.

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In the negative, please include said report in the calendar of cases for consideration of the Honorable Court.[92]

By that time, however, the RTC had already given due course to the appeal of Mercado, and hence the records were being forwarded to the appellate court.

As to the other lots applied for in LRC Case Nos. TG-355 and TG-356, though not subject of the petition before this Court, we note that the LRA Report dated August 10, 1990 submitted to the trial court in LRC Case No. TG-355 sets forth the following:

x x x x x x x x x

1. Parcels of land described as Lot Nos. 7539, 7540 and 7541 in plan As-04-000064, situated in the Barrio of Sunga, Tagaytay City are being applied for original registration of title;

2. After examining the afore-said plan discrepancies were noted which were referred to the Lands Management Sector (LMS), Quezon City, for verification and correction in a letter of even date (August 10, 1990), Annex "A" hereof;

3. Letters of even date (August 10, 1990) were also sent to (a) Land Management Bureau (LMB), Manila, (b) Community Environment and Natural Resources Office, (CENRO), Bacoor, Cavite, and (c) Forest Management Bureau (FMB), Quezon City, Annexes "B" "C" & "D" hereof, requesting for the status of the parcels of land sought to be registered, if covered by any kind of public land application/patent and are within the alienable and disposable land of public domain.

WHEREFORE, the foregoing are initially submitted to the Honorable Court for its information and guidance **with the recommendation that the rendition of the decision be held in abeyance until after the discrepancies are corrected and the requested informations are received.**[93] (Emphasis supplied.)

Again, there is no showing that the above recommendation was duly considered and acted upon by the trial court. It also did not wait for the submission of reports requested by the

[92] *Id.* at 679.

[93] Records (LRC Case No. TG-355), p. 39.

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LRA from the aforementioned agencies concerning the status of Lot 4831-B, whether it is covered by any kind of public land application/land patent, is a portion of or identical to any parcel of land covered by previously approved isolated survey, and is inside the alienable and disposable land of the public domain.[94] It should be stressed that a person who seeks registration of title to a piece of land must prove the claim by clear and convincing evidence, and is duty bound to identify sufficiently and satisfactorily the property. Otherwise stated, all facts must indicate that no other person, including the government, will be prejudiced by the adjudication of the land to the applicant.[95] Indeed, a land registration court has no jurisdiction to order the registration of land already decreed in the name of another in an earlier land registration case. A second decree for the same land would be null and void.[96]

The applicant for registration under Section 14, paragraph (1)[97] of P.D. No. 1529 must specifically prove: (1) possession of the subject land under a *bona fide* claim of ownership from June 12, 1945 or earlier; and (2) the classification of the land as an alienable and disposable land of the public domain. The burden of proof in overcoming the presumption of State ownership

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[94] Records (LRC Case No. TG-356), p. 36.

[95] *Republic v. Enriquez,* G.R. No. 160990, September 11, 2006, 501 SCRA 436, 447.

[96] *Laburada v. Land Registration Authority,* G.R. No. 101387, March 11, 1998, 287 SCRA 333, 343-344, citing *Metropolitan Waterworks and Sewerage Systems v. Court of Appeals,* G.R. No. 103558, November 17, 1992, 215 SCRA 783, 788.

[97] Sec. 14, paragraph (1) of Presidential Decree No. 1529 (Property Registration Decree), states:

SEC. 14. *Who may apply*. — The following persons may file in the proper Court of First Instance [now the Regional Trial Court] an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

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of lands of the public domain is on the person applying for registration. The applicant must show that the land subject of the application is alienable or disposable.[98]

In this case, the only evidence submitted before the trial court to show the character of the lands applied for is the Certification issued by CENRO Records Officer Benjamin Aukay stating the status of each lot as "not applied."[99] This hardly suffices to prove the character of the land as it did not even state whether the subject lots are within the alienable and disposable zone of the public domain. It must also be stressed that the tax delinquency sale is no proof of registrability of the land. Both Mercado and VMMEI failed to submit a certification from the proper government agency to prove that the lands subject for registration are indeed alienable and disposable.

The Court has recently reiterated the stringent evidentiary requirements to establish the character of the land, as follows:

> Matters of land classification or reclassification cannot be assumed; they call for proof. To prove that the land subject of an application for registration is alienable, an applicant must conclusively establish the existence of a positive act of the government, such as any of the following: a presidential proclamation or an executive order; other administrative actions; investigation reports of the Bureau of Lands investigator; or a legislative act or statute. The applicant may also secure a certification from the government that the lands applied for are alienable and disposable.
>
> Previously, a certification from the DENR that a lot was alienable and disposable was sufficient to establish the true nature and character of the property and enjoyed the presumption of regularity in the absence of contradictory evidence.
>
> However, in *Republic v. T.A.N. Properties, Inc.*, the Supreme Court overturned the grant by the lower courts of an original application for registration over a parcel of land in Batangas and ruled that a

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[98] *Arbias v. Republic*, G.R. No. 173808, September 17, 2008, 565 SCRA 582, 592, citing *Sps. Reyes v. Court of Appeals*, 356 Phil. 606, 624 (1998).

[99] Records (LRC Case No. TG-355), p. 256; records (LRC Case No. TG-356), p. 191.

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CENRO certification is *not* enough to certify that a land is alienable and disposable:

> "**Further, it is not enough for the PENRO or CENRO to certify that a land is alienable and disposable.** The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. **In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable**. Respondent failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable." (Emphasis supplied)

Thus, as it now stands, aside from a CENRO certification, an application for original registration of title over a parcel of land must be accompanied by a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records in order to establish that the land indeed is alienable and disposable.[100]

If indeed proven to be forest land, then the land registration court has no jurisdiction over the subject properties.[101] Jurisprudence is replete with cases reiterating that forest lands or forest reserves are not capable of private appropriation and possession thereof, however long, cannot convert them into private property. Possession of the land by private respondents, whether spanning decades or centuries, could never ripen into ownership.[102]

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[100] *Republic v. Vega*, G.R. No. 177790, January 17, 2011, 639 SCRA 541, 549-551.

[101] *Martinez v. Court of Appeals,* No. L-31271, April 29, 1974, 56 SCRA 647.

[102] *Republic v. De Guzman,* G.R. No. 137887, February 28, 2000, 326 SCRA 574, 580.

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The Court is mindful of the fact that the Solicitor General, though represented before the trial court by the public prosecutor, did not appeal the May 31, 1999 Decision in LRC Case Nos. TG-354, TG-355 and TG-356. Nonetheless, in view of the serious discrepancies reported by the LRA in the approved plans, the absence of competent proof of the status of the lands subject of application, the trial court's rendition of decision even before receipt of the reports requested by the LRA from the concerned government agencies (DENR-LMS, CENRO and FMB), we hold that remand of the case (G.R. No. 141019) for further proceedings is in order.

We recall this Court's initial observation when G.R. No. 119059 was dismissed without prejudice under the September 3, 1997 Resolution, that the case is not yet ripe for resolution in view of petitioners' allegation that the DENR has not yet finished the amendment of the approved plan.[103] This Court, as well as the CA, took note of relevant information supposedly obtained by petitioners relative to Lot 4867, which prompted the CA to temporarily archive the consolidated cases CA-G.R. CV No. 41164 and CA-G.R. SP No. 32309. When this Court entered judgment on the dismissal without prejudice of G.R. No. 119059, the CA was directed to proceed with the resolution of the said cases. However, G.R. No. 119059 did not actually resolve the merits of the petition and merely declared the case not yet ripe for disposition.

Perusal of the records in G.R. No. 119059 reveals that petitioners submitted a copy of the letter dated May 16, 1997 from DENR Regional Technical Director (Mainland Provinces) Benjamin P. Pambid and addressed to their counsel, Atty. Fabella, which reads:

> This has reference to the 1st Indorsement dated May 07, 1997 by Director S.F. Rodriguez, OIC, Legal Service Office, DENR Visayas Ave., Diliman, Quezon City relative to your request for certification re: Plan AP-04-000728 as contained in your letter dated January 13, 1997.

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[103] *Rollo* (G.R. No. 119059), p. 273.

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Our cadastral map record shows that there is such a parcel of land surveyed as Lot 4867 and appears in CM 14 deg. 05' N., 121 deg. 01'E. The Lot Data Computation, however, does not indicate the name of claimant, which means, that there was no identification obtained during the cadastral survey as to the claimant of the land.

It is much regretted that the record of past issuances of Advance Plans (AP), as shown in log books, is no longer intact. The log book presently in our possession starts with the number Ap-04-005869. In practice, we do not, in the past, keep a second copy of Advance Plans since such kind of plans were just prepared based on existing records of the cadastre. If, however, there exists in court, for exhibit purposes, such a plan denominated as AP-04-000778 in the name of the Heirs of Narciso Olimpiada, all that will be necessary will be for you to furnish this office a reproduction copy in order for us to determine whether or not the signatures are authentic and is an official issuance of the Regional office.[104]

Petitioners also furnished the Court with a copy of another letter dated June 23, 1997 from Regional Technical Director Pambid, which reads:

This is in response to your letter dated 30 May 1997 relative to Lot 4867, Cad 355, Tagaytay Cadastre:

On the issues you raised therein, hereinbelow are our comments, to wit:

1. **As projected by the Forest Engineering Division, Forest Management Sector, Lot 4867 covered by Plan Ap-04-000778 falls within the Unclassified Public Forest of Tagaytay City per LC-CM 10 control map of Cavite.**

2. Such being the classification of the land, the same, although covered by tax declaration, cannot be the subject of any public land disposition including sales auction by the local government on such ground as tax payment delinquency.[105]

The foregoing vital information should be made available to the Court for proper disposition of this case. The trial court

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[104] *Id.* at 258.

[105] *Id.* at 260.

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upon remand shall thus receive the completed amendment/ verification survey and such other pertinent reports in connection with the investigation being conducted by the DENR and those previously requested by the LRA. It may also conduct hearings whenever necessary, and to issue appropriate orders to obtain all relevant data pertaining to the lands subject of application for original registration. Thereafter, the entire evidence shall be forwarded to this Court for final disposition.

The Court will now resolve the other two petitions.

In G.R. No. 164281, the CA affirmed the trial court's order granting the motion to dismiss the suit for annulment of public auction sale.

In filing this petition for *certiorari*, petitioners availed of the wrong remedy. The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45 which is not similar to a petition for *certiorari* under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45. Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.[106]

Even if we decide the case on its merits, the petition still fails.

Petitioners' cause of action is predicated on the absence of notice to them as alleged co-owners. We have previously ruled

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[106] *Leynes v. Former Tenth Division of the Court of Appeals*, G.R. No. 154462, January 19, 2011, 640 SCRA 25, 43, citing *Fortune Guarantee and Insurance Corporation v. Court of Appeals*, 428 Phil. 783, 791 (2002).

Supreme Court E-Library



that it is incumbent upon the city treasurer to send the notice directly to the taxpayer — the registered owner of the property — in order to protect the latter's interests. Although preceded by proper advertisement and publication, an auction sale is void absent an actual notice to a delinquent taxpayer.[107] As to who is the taxpayer entitled to notice, it is the declared or registered owner as appearing in the tax rolls or property tax record cards of the municipality or city where the property is located. In *Talusan v. Tayag*,[108] the Court held that for purposes of the collection of real property taxes, the registered owner of the property is considered the taxpayer. Hence, only the registered owner is entitled to a notice of tax delinquency and other proceedings relative to the tax sale.[109] As petitioners failed to show they are the declared owners as shown in the tax rolls and tax records of respondent City Government of Tagaytay, the CA did not err in affirming the dismissal of their complaint.

Moreover, Section 83[110] of P.D. No. 464 states that the RTC shall not entertain any complaint assailing the validity of

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[107] *Tan v. Bantegui*, G.R. No. 154027, October 24, 2005, 473 SCRA 663, 673, citing *Puzon v. Abellera*, G.R. No. 75082, January 31, 1989,169 SCRA 789, 795-796.

[108] *Supra* note 87.

[109] *Id.* at 277. See also *Montaño v. Francisco*, G.R. No. 160380, July 30, 2009, 594 SCRA 332, 340.

[110] SEC. 83. *Suits assailing validity of tax sale.* — No court shall entertain any suit assailing the validity of a tax sale of real estate under this Chapter until the taxpayer shall have paid into court the amount for which the real property was sold, together with interests of *twenty per centum per annum* upon that sum from the date of sale to the time of instituting suit. The money so paid into court shall belong to the purchaser at the tax sale if the deed is declared invalid, but shall be returned to the depositor if the action fails.

Neither shall any court declare a sale invalid by reason of irregularities or informalities in the proceedings committed by the officer charged with the duty of making sale, or by reason of failure by him to perform his duties within the time herein specified for their performance, unless it shall have been proven that such irregularities, informalities or failure have impaired the substantial rights of the taxpayer.

Supreme Court E-Library



a tax sale of real property unless the complainant deposits with the court the amount for which the said property was sold plus interest equivalent to 20% per annum from the date of sale until the institution of the complaint. This provision was adopted in Section 267 of the Local Government Code, albeit the increase in the prescribed rate of interest to 2% per month.[111]

In G.R. No. 185781, the same petitioners fault the CA in not ruling that the correction sought in the 1974 tax declaration to add the words "*et al.*" to the named owners "Heirs of Narciso Olimpiada" was a purely ministerial function.

*Mandamus* is a writ commanding a tribunal, corporation, board, or person to do the act required to be done when it or he unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, there being no other plain, speedy, and adequate remedy in the ordinary course of law.[112] The action lies to compel the performance, when refused, of a ministerial duty. A purely ministerial act, in contradistinction to a discretional act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done.[113]

As correctly observed by the trial court, the correction sought would add new owners, aside from the fact that the property covered by the subject tax declaration is already under the name of VMMEI since 1988. It must be stressed that before a tax declaration is issued by the city assessor, he has to ensure that the taxpayer submits the proper documents which indicate the nature of his right or claim over the property covered by

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[111] *Wong v. City of Iloilo*, G.R. No. 161748, July 3, 2009, 591 SCRA 523, 529.

[112] Sec. 3, Rule 65, Rules of Court.

[113] Jose Y. Feria and Ma. Concepcion S. Noche, *CIVIL PROCEDURE ANNOTATED*, Vol. 2, 2001 Ed., p. 487.

Supreme Court E-Library



the tax declaration. Clearly, the actual exercise of the city assessor's duty to issue tax declarations is necessarily discretionary as it involves judgment on his part in examining the documents presented. Well-settled is the rule that *mandamus* may not be availed of to direct the exercise of judgment or discretion in a particular way, or to retract or reverse an action already taken in the exercise of either.[114]

In asserting their right as co-owners, petitioners presented the approved plan of Lot 4867 indicating that the survey was prepared for "Heirs of Narciso Olimpiada, *et al*." The words "*et al.*" is an abbreviation of *et alli* ("and others") and is often affixed to the name of the person first mentioned, where there are several plaintiffs, grantors, persons addressed, *etc*.[115] Such "*et al*." affixed to the name of the claimants appearing on the approved survey plan/technical description is not sufficient to establish the alleged co-ownership. The approved survey plan and technical description of the subject land merely plot the location and the boundaries thereof. We have held that while these documents help in establishing the identity of the property sought to be registered, they are completely ineffectual in proving possession of the applicant in the concept of an owner for the necessary period.[116] Much less, therefore, can they constitute evidence of ownership and identities of the claimants/owners of the land surveyed.

It did not escape the attention of the Court that G.R. Nos. 164281 and 185781 were spawned by the successive suits and motions of the Olimpiada Heirs-Fabella Group in the trial and appellate courts, a blatant violation of the rule against forum shopping. These multiple proceedings were initiated and actively pursued by their former counsel, Atty. Fabella, who had already

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[114] *Systems Plus Computer College of Caloocan City v. Local Government of Caloocan City*, G.R. No. 146382, August 7, 2003, 408 SCRA 494, 499, citing *JG Summit Holdings, Inc. v. Court of Appeals*, G.R. No. 124293, November 20, 2000, 345 SCRA 143, 153.

[115] *Black's Law Dictionary*, 6th Ed., p. 553.

[116] *Arbias v. Republic, supra* note 98 at 594.

Supreme Court E-Library



passed away in 2006. In any case, the Court deems it necessary at this stage to allow further reception of evidence, taking into consideration those opposition and concerns already entered into the records respecting the subject lands' identity and registrability.

**WHEREFORE,** the petition for *certiorari* in G.R. No. 164281 is *DISMISSED* and the petition for review on *certiorari* in G.R. No. 185781 is *DENIED*.

In G.R. No. 141019, the Decision dated May 31, 1999 and Resolution dated December 1, 1999 are *SET ASIDE*. The case is hereby *REMANDED* to the RTC of Tagaytay City, Branch 18 (LRC Case Nos. TG-354, TG-355 and TG-356) for further proceedings.

Let copies of this Decision be furnished the Land Registration Authority (LRA) and Department of Environment and Natural Resources (DENR), DENR Lands Management Bureau and DENR-Regional Office No. IV. Said agencies are hereby DIRECTED (1) to conduct an investigation or continue such investigation already commenced, if any, on the status of the lots subject of the application in LRC Case Nos. TG-354, TG-355 and TG-356; and (2) to submit their reports to the trial court as soon as their investigation is completed. The LRA is likewise directed to submit to the trial court all reports and findings relative to the subject lands, other than those which are already part of the records of the case.

The trial court shall conduct hearings and issue the appropriate orders whenever necessary to obtain all relevant information regarding the status of the subject lands. Thereafter, it shall submit its complete report and forward the entire evidence, testimonial and documentary, to this Court within ninety (90) days from termination of the proceedings.

Let copy of this Decision be furnished the Office of the Solicitor General who shall continue to appear in behalf of the Republic of the Philippines and file appropriate pleadings or actions pursuant to its legal mandate.

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No pronouncement as to costs.

**SO ORDERED.**

*Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin,* and *del Castillo, JJ.,* concur.

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**FIRST DIVISION**

[G.R. No. 157330. November 23, 2011]

**LINA CALILAP-ASMERON,** *petitioner, vs.* **DEVELOPMENT BANK OF THE PHILIPPINES, PABLO CRUZ,[*] TRINIDAD CABANTOG,[**] ENI S.P. ATIENZA and EMERENCIANA CABANTOG,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; APPEAL UNDER RULE 45 IS LIMITED TO QUESTIONS OF LAW; EXCEPTIONS. —** The petitioner's submissions, that her testimonial evidence sufficiently established the facts behind the execution of the deed of conditional sale, and that she had not fully understood the terms contained in the deed of conditional sale, involved questions of fact, for the consideration and resolution of them would definitely require the appreciation of evidence. As such, her petition for review is dismissible for raising factual issues. Under Rule 45 of the *Rules of Court,* only questions of law may be the proper subject of an appeal in this Court. x x x It is true that the Court has recognized several exceptions,

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[*] Substituted by his wife Remedios Lim-Cruz, per Supreme Court Resolution dated July 26, 2006 (*rollo,* pp. 135-136).

[**] Declared in default, per Supreme Court Resolution dated December 15, 2008 (*rollo,* pp. 162-163).