Supreme Court E-Library

In the case of Capital Garment Corporation *vs.* Ople[22] this Court held that "since the case has been pending for four (4) years, We find that a period of two years for purposes of fixing the backwages of petitioner is fair and reasonable." Then in the more recent case of Philippine Airlines, Inc. *vs.* NLRC[23] We ruled that "since the case has been pending for five years and four months, an award of two and one-half years of backwages is just and equitable."

This case has been pending since May 1977 or a period of almost eight (8) years now. Considering the philosophy for the fixing of backwages as indicated in the above cited decisions, it is our opinion and we so hold that an award of backwages for three (3) years would be fair, just and reasonable.

WHEREFORE, the appealed decision of the respondent Commission is hereby MODIFIED insofar as the payment of backwages is concerned in that the petitioner is ordered to pay private respondent backwages for three (3) years computed on the basis of his pay as of April 25, 1977, without qualification and deduction. The decision is AFFIRMED in all other respects. The restraining order earlier issued is hereby ordered LIFTED.

Costs against petitioners.

SO ORDERED.

Makasiar, Aquino, Concepcion Jr., Abad Santos, and *Escolin, JJ.,* concur.

SECOND DIVISION

[G.R. No. L-56077. February 28, 1985]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* COURT OF APPEALS, SPOUSES PRUDENCIO MAXINO and

---

[22] 117 SCRA 473.

[23] 120 SCRA 224.

Supreme Court E-Library

TARCIANA MORALES, PEDRO GONZALES, ROGELIO AQUINO, Minor represented by his father, Manuel Aquino, and ALEJANDRO, SOCORRO, MERCEDES, CONCHITA, REMEDIOS and FLORA, all surnamed CONSOLACION, ***respondents.***

SYLLABUS

1. **REMEDIAL LAW; APPEAL; SOLICITOR GENERAL; PERIOD TO APPEAL SHOULD BE COUNTED FROM RECEIPT OF NOTICE BY THE SOLICITOR GENERAL.**— We hold that the reglementary thirty-day period for appeal should be reckoned from the time the Solicitor General's Office was apprised of the 1970 order of denial and not from the time the special counsel or the fiscal was served with that order. These representatives of the Solicitor General had no power to decide whether an appeal should be made. They should have referred the matter to the Solicitor General. The Solicitor General's Office should be served with the final order disposing of the petition and should not be bound by the service on his surrogates, the special counsel and the fiscal (Republic *vs.* Polo, L-49247, March 13, 1979, 89 SCRA 33; Republic *vs.* Mendoza, L-49891, October 31, 1983, 125 SCRA 539).

2. **ID.; ID.; RECORD ON APPEAL; INTEREST OF JUSTICE WARRANTS WAIVER OF RULES ON PERFECTION OF APPEAL; GOVERNMENT NOT ESTOPPED BY MISTAKES OF AGENTS.**— The fact that after the record on appeal was filed on time, the Solicitor General's Office was late in filing the amendments to it is of no moment. In exceptional cases, like the instant case, the interest of justice may warrant waiver of the rules (Republic *vs.* Court of Appeals, L-31303-04, May 31, 1978, 83 SCRA 453). Where it is contended that the registration is void allegedly because public forestal land was registered and the State sought to declare the decision void, the Government should not be estopped by the mistakes or errors of its agents (Gov't. of the U.S. *vs.* Judge of 1st Inst. of Pampanga, 50 Phil. 975, 980).

3. **CIVIL LAW; LAND REGISTRATION; GRATUITOUS ADJUSTMENT OR COMPOSITION TITLE CANNOT BE THE BASIS OF THE IDENTITY OF LAND WHERE AREA STATED THEREIN IS DIFFERENT FROM THE ACTUAL AREA.**— The basis of the claim of the Maxinos is a Spanish title,

Supreme Court E-Library

Exhibit G, a *gratuitous composition title* or adjustment title issued on July 30, 1888 to *Prudencio Tesalona* pursuant to the Royal Decree of December 26, 1884 for 29 hectares of *pasture land (pasto de animales)* allegedly bounded by the Yamay and Campalacio Creeks. The Maxinos contend that the Tesalona's *gratuitous* adjustment or composition title (as distinguished from an *onerous* adjustment title) should prevail in determining the identity of the disputed land. This assertion is untenable in the light of the notorious discrepancy between the area of 29 hectares stated in the title and the 970 hectares now claimed as the real area (885 hectares for Lot 1 and 84 hectares for Lot 2 which is not involved in this case).

4. **ID.; ID.; ID.; ALLEGED OWNER HAS THE BURDEN OF PROVING THAT THE TITLE JUSTIFIED THE CONSIDERABLE INCREASE IN AREA.**— The Maxinos have the burden of proving that the title justified the considerable increase in area. They have not shown that a title for 29 - hectares could be a valid title for 970 hectares. The boundaries and areas stated in Tesalona's tax declarations reveal that a *different land* was covered thereby. The title states that the 29 hectare land was located in *Barrio Yamay*. In his tax declarations it is stated that the land was located in Barrio Cambuga, now Anonang.

5. **CIVIL LAW; LAND REGISTRATION; PUBLIC FORESTAL LAND IS NOT REGISTRABLE; POSSESSION, HOWEVER LONG DOES NOT RIPEN INTO OWNERSHIP.**— It is axiomatic that public forestal land is not registrable. Its inclusion in a title, whether the title be issued during the Spanish regime or under the Torrens system, nullifies the title (Director of Lands *vs.* Reyes, L-27594 and Alinsunurin *vs.* Director of Lands, L-28144, November 28, 1975, 68 SCRA 177, 194-5; Director of Lands *vs.* Salazar, G.R. No. 50340, December 26, 1984). Possession of public forestal lands, however long cannot ripen into private ownership (Director of Forestry *vs.* Muñoz, L-24796, June 28, 1968, 23 SCRA 1183, 1199; Director of Lands *vs.* Salazar, *supra*).

6. **ID.; ID.; COMPOSITION TITLE; SPANISH TITLES ARE NOT INDEFEASIBLE.**— Spanish titles are not indefeasible (Director of Forestry *vs.* Munoz, *supra*, p. 1198). The instant case bears similarities to Ramirez and Bayot de Ramirez *vs.* Director of Lands, 60 Phil. 114, where an adjustment title issued in 1896 was held to be void because it was fraudulent and it covered public forestal land not subject to registration.

Supreme Court E-Library

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Silvestre Loveria, Jr. for spouses Prudencio Maxino & Tarciana Morales.

DECISION

AQUINO, *J.*:

This case is about the validity of the registration of 885 hectares of public forestal land located in Mulanay, Quezon.

In Land Registration Case No. 81-G of the Court of First Instance of Gumaca, Quezon, Judge Vicente del Rosario on March 21, 1961 rendered a decision, ordering the registration of said land, Lot 1, allegedly located at Barrio Cambuga (Anonang), Mulanay, in the names of the spouses Prudencio Maxino and Tarciana Morales, less 200 hectares which should be registered in the names of the Heirs of Lorenzo Consolacion (72, Record on Appeal). The decision became final and executory. A decree and an original certificate of title were issued.

More than eight years later, or on June 20, 1969, the Republic of the Philippines filed with the Gumaca court an amended petition to annul the decision, decree and title on the ground that they are void because the land in question was still a part of the *unclassified public forest*. Moreover, the possessory information title relied upon by the Maxino spouses covered only *29 hectares of land and not 885 hectares*. The petition was verified by the Acting Director of Forestry.

The Maxinos opposed the petition. After a hearing on the merits, Judge Agana denied the petition in his order of September 8, 1970. That order was served upon the assistant provincial fiscal on September 16, 1970 and on the special counsel, Jaime Dispo of the Bureau of Forestry, on November 26, 1970.

A copy of the order was transmitted by the fiscal to the Solicitor General's Office only on *September 2, 1971* or nearly one year from the issuance of the order. Twenty-two days thereafter

Supreme Court E-Library

or on September 24 the Solicitor General appealed from that order and filed a motion for extension of time within which to submit a record on appeal. The appeal was given due course.

In its decision dated October 24, 1980 the Appellate Court through Justices Asuncion, Porfirio V. Sison and Sundiam dismissed the petition because the 1970 order had allegedly long become final and unappealable. The Solicitor General appealed to this Court.

That is the issue to be resolved first: whether the appeal of the State from the trial court's 1970 order of denial was seasonably made. The Appellate Court held that the service of the order on Dispo, as special attorney, was binding on the Solicitor General's Office. Consequently, the record on appeal, which was filed after thirty days from the service of the order upon Dispo, was filed out of time.

We hold that the reglementary thirty-day period for appeal should be reckoned from the time the Solicitor General's Office was apprised of the 1970 order of denial and not from the time the special counsel or the fiscal was served with that order. These representatives of the Solicitor General had no power to decide whether an appeal should be made. They should have referred the matter to the Solicitor General.

In the designation of Dispo as special counsel by Solicitor General Barredo, approved by Secretary of Justice Teehankee, it was specified that he should consult the Solicitor General on all questions, legal and factual, regarding the case. The question of whether an appeal should be made could only be decided by the Solicitor General's Office.

The 1969 petition to annul the decision, decree and titles was filed by Solicitor General Felix V. Makasiar, Assistant Solicitor General Antonio A. Torres and Solicitor Alicia Sempio-Diy. Consequently, the Solicitor General's Office should be served with the final order disposing of the petition and should not be bound by the service on his surrogates, the special counsel and the fiscal (Republic *vs.* Polo, L-49247, March 13, 1979, 89 SCRA 33; Republic *vs.* Mendoza, L-49891, October 31, 1983, 125 SCRA 539).

Supreme Court E-Library

The fact that after the record on appeal was filed on time, the Solicitor General's Office was late in filing the amendments to it is of no moment. In exceptional cases, like the instant case, the interest of justice may warrant waiver of the rules (Republic *vs.* Court of Appeals, L-31303-04, May 31, 1978, 83 SCRA 453).

In this case, where it is contended that the registration is void allegedly because public forestal land was registered and the State sought to declare the decision void, the Government should not be estopped by the mistakes or errors of its agents (Gov't. of the U.S. *vs.* Judge of 1st Inst. of Pampanga, 50 Phil. 975, 980; Bachrach Motor Co. *vs.* Unson, 50 Phil. 981, 990; Go Tian An *vs.* Republic, 124 Phil. 472, 475; Republic *vs.* Aquino, L-33983, January 27, 1983, 120 SCRA 186, 191-192).

Now, as to the merits of the case. It is incontestable that Lot 1, the 885-hectare area registered by the Maxinos, is within the public forest, not alienable and disposable nor susceptible of private appropriation. Its inclusion in the public forest was certified by Director of Forestry Florencio Tamesis on July 6, 1940, as per Land Classification Map No. 1386, Tayabas Project No. 16-E of Mulanay, Exhibit C-Annulment, and as shown in the report and testimony of Lorenzo R. Tria, a forest station warden (Exh. B-Annulment; 7, 10-15 tsn., March 5, 1970). Tria recommended that the title of the Maxino spouses be annulled (Exh. B-Annulment).

The certification was reiterated by the Director of Forestry on May 20, 1948 as per Land Classification Map No. 1516, No. 16-E of Mulanay, Quezon, Exhibit 1-A-Director of Forestry, and as shown in paragraph 6 of the report of Forester Emerson B. Abraham who recommended that the opposition to the registration entered by the Director be sustained (Exh. 1-Director of Forestry; Exh. Q, Report of Land Investigator Serapion Bauzon).

The basis of the claim of the Maxinos is a Spanish title, Exhibit G, a *gratuitous composition title* or adjustment title issued on July 30, 1888 to *Prudencio Tesalona* pursuant to the Royal Decree of December 26, 1884 for 29 hectares of *pasture land* (*pasto de animales*) allegedly bounded by the Yamay and Campalacio Creeks.[1]

[1] "DIRECTOR GENERAL DE ADMINISTRACION CIVIL DE FILIPINAS y por su delegacion el jefe de la provincia de Tayabas.

Supreme Court E-Library

There is a monstrous and bewildering discrepancy between the area of *29 hectares* and the actual area of the land bounded by the Yamay and Campalacio Creeks which is *970 hectares* as surveyed in 1959 (Exh. D). We have no hesitation in saying that the composition title *erred in stating the boundaries.* The trial court grievously erred in applying to this case the rule that the area comprised in the boundaries should prevail over that stated in the muniments of title.

Tria averred in his report and testimony that the Yamay and Campalacio Creeks mentioned in the composition title really refer to the *Banguian and Mamba creeks.* This would mean that the actual area claimed by Maxino was only 371 hectares, not 970 (Exh. B-Annulment; 27-30 tsn., March 5, 1970).

That would also explain why in the document, Exhibit H, presented by the Maxinos, mention is made of "paligawang *'Manba'.*"

"Por cuanto D. Prudencio Tesalona natural, vecino y principal del pueblo de Mulanay de esta provincia ha solicitado la composición con el Estado del terreno realengo que poseé en el barrio llamado Yamay, *pasto de animales* de la jurisdicción del pueblo de Mulanay de esta provincia, siendo sus limites y cabida, los siguientes:

"1.ª PARCELA. Radica en el sitio arriba indicado mide una superficie de *veintinueve hectáreas,* cincuenta áreas y setenta y cinco centiáreas. Limita al Norte Estero Campalacio; al Este estero Yamay; al Sur estero Yamay y al Oeste estero Campalacio.

"Y como por resolución de la Junta local de fecha doce del actual le ha sido adjudicada al interesado por *composición gratuita* la propiedad de dicho terreno, con arreglo al Real Decreto de 26 de Diciembre de 1884, y habiendo presentado el papel sellado x x x se une al mismo debidamente inutilizado, expido el presente TITULO para que en virtud del mismo se haya y tenga por dueño legitimo del terreno expresado á D. Prudencio Tesalona natural vecino y principal de dicho pueblo de Mulanay.

"Este titulo se inscribirá en la Escribania de la provincia y en el Juzgado receptor encargado hoy dia del Registro de la propiedad.

"Dado en Tayabas a treinta de Julio de mil ochocientos ochenta y ocho.

"El Jefe de la provincia

SGD. Illegible"

(Portion regarding stamps and registration omitted)

Supreme Court E-Library

The unreliability or dubiousness of the composition title is evident from the sale executed by the heirs of Prudencio Tesalona in favor of Tarciana Morales-Maxino (Exh. F).

Prudencio Tesalona died in 1905. He was survived by his two children Maria and Lucila. On September 24, 1935 the two heirs, without executing an extrajudicial settlement of Prudencio's estate and adjudicating the said 29-hectare land to themselves, executed an "absolute sale" of the land in favor of Tarciana Morales-Maxino (Exh. F), the wife of applicant Prudencio Maxino who was Maria's son and the grandson of Prudencio Tesalona.

That curious document is not a sale at all. It is a *"quitclaim."* It is stated therein that in consideration of *P200* the Tesalona sisters "releases and forever quitclaim unto the said Vendee" the 29-hectare land described in the composition title (Exh. F).

As an indication that the Tesalona "vendors" were not certain that their title was good, it was stipulated as an "express condition" that the said vendors *had no obligation of warranty* for "the premises hereby sold by them, the Vendee hereby expressly releasing the Vendor(s) from all duty of defending the Vendee against all persons now claiming, or who may hereafter claim, *to have a better right and title* thereto, and assuming all the risk of eviction by superior title" (Exh. F).

It was further stipulated "that in the event that any third person shall succeed in establishing right or title to said premises or to any portion thereof superior to that of the grantor and in lawfully dispossessing the Vendee therefrom the Vendee shall not be entitled to reimbursement from the Vendor of the sum of TWO HUNDRED PESOS which constitutes the consideration for these presents, or of any part thereof, or to damages" (Exh. F).

The Maxinos contend that Tesalona's *gratuitous* adjustment or composition title (as distinguished from an *onerous* adjustment title) should prevail in determining the identity of the disputed land. This assertion is untenable in the light of the notorious discrepancy between the area of 29 hectares stated in the title and the 970 hectares now claimed as the real area (885 hectares for Lot 1 and 84 hectares for Lot 2 which is not involved in this case).

Supreme Court E-Library

The most that can be said for Tesalona is that his gratuitous adjustment title granted him possessory rights *over pasture land with an area of 29 hectares but not ownership over 970 hectares of grazing land.* As to the requirements for an adjustment proceeding under the Royal Decree of December 26, 1884, where the area in hectares, not the boundaries, is important, see Ventura, *Land Registration and Mortgages,* pp. 17-19.

The Maxinos have the burden of proving that the title justified the considerable increase in area. They have not shown that a title for 29 hectares could be a valid title for 970 hectares. The boundaries and areas stated in Tesalona's tax declarations reveal that a *different land* was covered thereby. The title states that the 29-hectare land was located in *Barrio Yamay.* In his tax declarations it is stated that the land was located in Barrio Cambuga, now Anonang.

His 1906 tax declaration is for a parcel of land whose boundaries are not the Yamay and Campalacio Creeks but it was bounded by the Yamay Creek and the lands of Maximo Tesalona, Emiterio Tesalona and Felix Aguilles, with an area of *120 hectares* (Exh. I). On the other hand, his 1919 and 1921 tax declarations are for land with the same boundaries but with an area of *36 hectares* only (Exhs. I-2 and I-3).

The 1948, 1958 and 1961 tax declarations use the boundaries Campalacio and Yamay Creeks but the area of the pasture land is *100 hectares* only, a far cry from the 970 hectares as surveyed (Exhs. I-4, I-5 and I-6).

It is axiomatic that public forestal land is not registerable. Its inclusion in a title, whether the title be issued during the Spanish regime or under the Torrens system, nullifies the title (Director of Lands *vs.* Reyes, L-27594 and Alinsunurin *vs.* Director of Lands, L-28144, November 28, 1975, 68 SCRA 177, 194-5; Director of Lands *vs.* Salazar, G.R. No. 50340, December 26, 1984).

Possession of public forestal lands, however long, cannot ripen into private ownership (Director of Forestry *vs.* Muñoz, L-24796, June 28, 1968, 23 SCRA 1183, 1199; Director of Lands *vs.* Salazar, *supra*).

Supreme Court E-Library

The oral evidence does not bolster the case at all for the applicants. Applicant Prudencio Maxino testified that the lot he was seeking to register has an area of more than *seventy hectares* (8 tsn., Jan. 11, 1961). He purchased the lot from his aunt and mother, as shown in the deed of September 24, 1935, Exhibit F (9).

He testified that the Mamba Creek is also known as Yamay Creek (13). The land was grazing or pasture land (15). Thirty-one squatters occupied the land (5 tsn., March 6, 1961). He did not know that the land had an area of 29 hectares in 1935 when he bought it (6). He came to know the area of the land when it was surveyed. He was not present when it was surveyed (6).

Another witness, Fortunato Nañadiego, 76, testified that the land was possessed during the Spanish regime by his stepfather, *Pedro Tesalona,* the owner, not *Prudencio Tesalona,* the holder of the adjustment title (11).

Spanish titles are not indefeasible (Director of Forestry *vs.* Muñoz, *supra,* p. 1198). The instant case bears similarities to Ramirez and Bayot de Ramirez *vs.* Director of Lands, 60 Phil. 114, where an adjustment title issued in 1896 was held to be void because it was fraudulent and it covered public forestal land not subject to registration. As to void composition or patent issued in 1898, see Testagorda *vs.* Commanding General, 6 Phil. 573.

Incidentally, it may be mentioned that Presidential Decree No. 892 effective February 16, 1976 discontinued the use of Spanish titles as evidence in land registration proceedings.

WHEREFORE, the order of Judge Agana, the decision of the Appellate Court and the decision of Judge Del Rosario dated March 21, 1961 are reversed and set aside. The application for registration of Lot 1, Psu-175880 is dismissed. No costs.

SO ORDERED.

Concepcion Jr., Abad Santos, Escolin, and *Cuevas, JJ.,* concur.

Makasiar, J., did not take part.