Supreme Court E-Library

FIRST DIVISION

[G.R. No. 179990. October 23, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **DIOSDADA I. GIELCZYK,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); SECTION 14(1) AND SECTION 14(2) THEREOF, DISTINGUISHED.— In *Heirs of Mario Malabanan v. Republic*, the Court further clarified the difference between Section 14(1) and Section 14(2) of P.D. No. 1529. The former refers to registration of title on the basis of **possession**, while the latter entitles the applicant to the registration of his property on the basis of **prescription**. Registration under the first mode is extended under the aegis of the P.D. No. 1529 and the Public Land Act (PLA) while under the second mode is made available both by P.D. No. 1529 and the Civil Code. Moreover, under Section 48(b) of the PLA, as amended by Republic Act No. 1472, the 30-year period is in relation to possession without regard to the Civil Code, while under Section 14(2) of P.D. No. 1529, the 30-year period involves extraordinary prescription under the Civil Code, particularly Article 1113 in relation to Article 1137.

2. ID.; ID.; ID.; SECTION 14(2); THIRTY-YEAR PERIOD OF POSSESSION; NOT COMPLIED WITH IN CASE AT BAR.— [T]he respondent failed to meet the required period of possession and occupation for purposes of prescription. From the time of the declaration on September 1, 1965 that the properties in question are purportedly alienable and disposable up to the filing of the application of the respondent on July 17, 1995, the respondent and her predecessors-in-interest had possessed and occupied the said properties for only 29 years and 10 months, short of two months to complete the whole 30-year possession period. Granting *por arguendo* that the respondent and her predecessors-in-interest had possessed and occupied the subject lots since 1948, the Court cannot still tack those years to complete the 30-year possession period since

Supreme Court E-Library

the said lots were only declared alienable and disposable on September 1, 1965. In *Naguit*, we ruled that for as long as the land was declared alienable and disposable, the same is susceptible of prescription for purposes of registration of imperfect title. In *Lim v. Republic*, we further clarified that "while a property classified as alienable and disposable public land may be converted into private property by reason of open, continuous, exclusive and notorious possession of at least 30 years, public dominion lands become patrimonial property not only with a declaration that these are alienable or disposable but also with an express government manifestation that the property is already patrimonial or no longer retained for public use, public service or the development of national wealth. And only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run." While the subject lots were supposedly declared alienable or disposable on September 1, 1965 based on the Certifications of the CENRO, the respondent still failed to complete the 30-year period required to grant her application by virtue of prescription.

3. ID.; ID.; ID.; AN APPLICANT FOR A GRANT OVER A LOT MUST SHOW THAT HE HAS EXERCISED ACTS OF DOMINION OVER THE PROPERTY IN QUESTION.— [A] simple claim of "open, continuous, exclusive and notorious possession and occupation" does not suffice. An applicant for a grant or title over a lot must be able to show that he has exercised acts of dominion over the property in question. The applicant's possession must not be simply a nominal claim where he only plants a sign or symbol of possession. In other words, his possession of the property must be patent, visible, apparent, notorious and not clandestine; it should be uninterrupted, unbroken and not intermittent or occasional; it should demonstrate exclusive dominion over the land and an appropriation of it to his own use and benefit; and it should be conspicuous, which means generally known and talked of by the public or the people in the neighborhood.

4. ID.; ID.; TAX DECLARATIONS AND RECEIPTS; CANNOT BE CONSIDERED AS CONCLUSIVE EVIDENCE OF OWNERSHIP OR RIGHT OF POSSESSION OVER A PIECE OF LAND.— "Well settled is the rule that tax declarations and receipts are not conclusive evidence of ownership or of the right to possess

Supreme Court E-Library

land when not supported by any other evidence. The fact that the disputed property may have been declared for taxation purposes in the names of the applicants for registration or of their predecessors-in-interest does not necessarily prove ownership. They are merely *indicia* of a claim of ownership."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Humility E. Sumayang for respondent.

D E C I S I O N

REYES, *J.*:

The present petition is one for review under Rule 45 of the 1997 Rules of Court. The Republic of the Philippines (petitioner) challenges the Decision[1] dated September 21, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 70078, affirming the Decision[2] of the Regional Trial Court (RTC) of Mandaue City, Branch 56, which granted the application of Diosdada I. Gielczyk (respondent) for the original registration of title of Lot Nos. 3135-A and 3136-A of Plans Csd-072219-004552 and Csd-072219-004551, both situated in Jugan, Consolacion, Cebu. The petitioner prays that the Court annuls the CA Decision dated September 21, 2007 in CA-G.R. CV No. 70078, and that it should dismiss Land Registration Commission (LRC) Case No. N-452 for utter lack of merit.[3]

Antecedent Facts

On July 17, 1995, the respondent sought the registration under her name of the lands denominated as Lot No. 3135-A and Lot No. 3136-A of Plans Csd-072219-004552 and Csd-072219-

[1] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Antonio L. Villamor, concurring; *rollo*, pp. 28-39.

[2] *Id.* at 61-63.

[3] *Id.* at 16-17.

Supreme Court E-Library

004551. Both lands were situated in Jugan, Consolacion, Cebu.

In her verified application in LRC Case No. N-452, the respondent claimed that she is the owner of the two parcels of land, which are situated, bounded and specifically described in Plans Csd-072219-004552 and Csd-072219-004551,[4] to wit:

TECHNICAL DESCRIPTIONS
Lot 2007, Cad. 545-D, identical to lot
3135-A, Csd-072219-004552
(Luisa Ceniza)

A parcel of land (lot 20047, Cad.545-D, identical to lot 3135-A, Csd-072219-004552), being a portion of lot 3135, Cad. 545-D (new), situated in the Barrio of Jugan, Municipality of Consolacion, Province of Cebu, Island of Cebu. Bounded on the NE., along line 1-2 by lot 20048 (identical to lot 3135-B, Csd-072219-004552), on the SE., along line 2-3 by Camino Vicinal Road, on the SW., along line 3-4 by lot 3126, on the NW., along line 4-1 by lot 3136, All [sic] of Cad. 545-D (New). Beginning at a point marked "1" on plan being S. 83 deg. 17'E., 1878.69 m. from BLLM No. 1, Consolacion, Cebu.

thence S. 61 deg. 20'E., 40.69 m. to point 2;
thence S. 26 deg. 14'W., 57.80 m. to point 3;
thence N. 61 deg. 26'W., 38.40 m. to point 4;
thence N. 23 deg. 59'E., 58.02 m. to point of the

beginning. Containing an area of TWO THOUSAND TWO HUNDRED EIGHTY FIVE (2,285) SQUARE METERS, more or less. All points referred to are indicated on the plan and are marked on the ground as follows; points 1 and 2 by P.S. cyl. conc. mons. 15x40 cms. and the rest are old P.S. cyl. conc. mons 15x60 cms. Bearings Grid; date of original survey July 14, 1987-November 11, 1987, and that of the subdivision survey executed by Geodetic Engineer Norvic S. Abella on November 12, 1993 and approved on May 24, 1994.[5]

TECHNICAL DESCRIPTIONS
Lot 20045, Cad. 545-D, identical to
Lot 3136-A, Csd-072219-004551
(Constancio Ceniza)

---

[4] *Id.* at 41 and 46-47.

[5] *Id.* at 46.

Supreme Court E-Library

A parcel of land (lot 20045, Cad.545-D, identical to lot 3136-A, Csd-072219-004551), being a portion of lot 3136, Cad. 545-D (New), situated in the Barrio of Jugan, Municipality of Consolacion, Province of Cebu, Island of Cebu. Bounded on the SE., along line 1-2 by lot 3135, on the SW., along line 2-3-4 by lot 3126, on the NW., along line 6-1 by lot 20046, All [sic] of Cad. 545-D (New), on the NE., along line 6-1 by lot 20046 (identical to lot 3136-B, Csd-072219-004551). Beginning at a point marked "1" on plan being S. 83 deg. 17'E., 1878.69 m. from B.L.L.M. No. 1, Consolacion, Cebu.

thence S. 23 deg. 59'W., 58.02 m. to point 2;
thence N. 65 deg. 10'W., 41.39 m. to point 3;
thence N. 35 deg. 15'W., 2.55 m. to point 4;
thence N. 20 deg. 43'E., 44.05 m. to point 5;
thence N. 20 deg. 44'E., 12.48 m. to point 6:
thence S. 65 deg. 37'E., 46.79 m. to point of the

beginning. Containing an area of TWO THOUSAND SIX HUNDRED TEN (2,610) SQUARE METERS, more or less. All points referred to are indicated on the plan and are marked on the ground as follows; points 1 and 6 by P.S. cyl. conc. mons. 15x40 cms. and the rest are old P.S. cyl. conc. mons 15x60 cms. Bearings Grid; date of original survey July 14, 1987-November 11, 1987, and that of the subdivision survey executed by Geodetic Engineer Norvic S. Abella on November 19, 1993 and approved on May 26, 1994.[6]

The respondent further alleged the following: (a) that the said parcels of land were last assessed for taxation at ₱2,400.00; (b) that to the best of her knowledge and belief, there is no mortgage nor encumbrance of any kind affecting said land, nor any person having interest therein, legal or equitable; (c) that she had been in open, complete, continuous, and peaceful possession in the concept of an owner over said parcels of land up to the present time for more than 30 years, including the possession of her predecessors-in-interest; (d) that she acquired title to said land by virtue of the deeds of absolute sale; and (e) that said land is not occupied.[7]

The respondent, as far as known to her, also alleged that the full names and complete addresses of the owners of all

[6] *Id.* at 47.

[7] *Id.* at 41 and 49-53.

Supreme Court E-Library

lands adjoining the subject land are the following:

ADJOINING OWNERS OF LOT 3135-A:

North- Lot 3135-B owned by Mrs. Luisa Ceniza
Jugan, Consolacion, Cebu

East - Municipal Road
c/o Municipal Mayor
Consolacion, Cebu

South - Lot 3126 owned by Mr. Rene Pepito
Jugan, Consolacion, Cebu

West - Lot 3136-A owned by the applicant.

ADJOINING OWNERS OF LOT 3136-A:

North - Lot 3136-B, owned by Mr. Constancio Ceniza
Jugan, Consolacion, Cebu

East - Lot 3135-A, owned by the applicant;

South - Lot 3126, owned by Mr. Rogelio M. Pepito
Jugan, Consolacion, Cebu

West - Lot 3138, owned by Mr. Miguel Hortiguela
Jugan, Consolacion, Cebu[8]

To prove her claim, the respondent submitted the following pieces of evidence:

(a) Approved plans of Lot Nos. 3135-A and 3136-A;[9]

(b) Approved technical descriptions of the same lots;[10]

(c) Certification from the Chief, Technical Services Section, Department of Environment and Natural Resources (DENR), Region 7, Central Visayas Lands Management Services in lieu of surveyor's certificates;[11]

---

[8] *Id.* at 42.

[9] *Id.* at 42 and 44-45.

[10] *Id.* at 42 and 46-47.

[11] *Id.* at 42 and 48.

Supreme Court E-Library

(d) Latest tax declarations of the lots;[12]

(e) Latest tax clearance of the same lots;[13]

(f) Deeds of Sale in favor of the respondent;[14]

(g) Certifications from the Community Environment and Natural Resources Officer (CENRO), Cebu City, that the lots are alienable and disposable;[15] and

(h) Certification from the Chief, Records Section, DENR, Region 7, Cebu City that the same lots are not subject to public land application.[16]

Furthermore, when the respondent testified in court, her testimony sought to establish the following:

(i) That the respondent acquired Lot No. 3136-A (which is identical to Lot 20045, and is situated in Jugan, Consolacion, Cebu, with an area of 2,610 sq m), and Lot No. 3135-A (which is identical to Lot 20047, and is situated in Jugan, Consolacion, Cebu, with an area of 2,285 sq m) through purchase from Constancio Ceniza and Luisa Ceniza respectively;[17]

(ii) That the respondent was never delinquent in paying the taxes for the said lots. In fact the following tax declarations were issued for Lot No. 3136-A: Tax Dec. No. 01258 for the year 1948; Tax Dec. No. 012459 for the year 1965; Tax Dec. No. 20846 for the year 1980; Tax Dec. No. 29200 for the year 1981; Tax Dec. No. 04210 for the year 1985; and Tax Dec. No. 13275 for the year 1989; while the following tax declarations were issued for Lot No. 3135-A: Tax Dec. No. 01670 for the year 1948; Tax Dec. No. 012931 for the year 1965; Tax Dec. No. 021294 for the year 1968; Tax Dec. No. 25146 for the year 1973; Tax

---

[12] *Id.* at 42 and 49-50.

[13] *Id.* at 42 and 51.

[14] *Id.* at 42 and 52-53.

[15] *Id.* at 42 and 54-55.

[16] *Id.* at 42 and 56.

[17] *Id.* at 62 and 63.

Supreme Court E-Library

Dec. No. 01411 for the year 1974; Tax Dec. No. 20849 for the year 1980; Tax Dec. No. 04208 for the year 1985; Tax Dec. No. 13274 for the year 1989;[18]

(iii) That the said parcels of land are alienable and disposable and are not covered by subsisting public land application;[19]

(iv) That the respondent and her respective predecessors-in-interest had been in possession of Lot No. 3135-A and Lot No. 3136-A for more than 40 years in the concept of an owner, exclusively, completely, continuously, publicly, peacefully, notoriously and adversely, and no other person has claimed ownership over the same land;[20] and

(v) That the respondent is a Filipino Citizen and that despite her marriage to an American national, she has retained her Filipino citizenship.[21]

The petitioner filed an opposition dated September 18, 1995 to the respondent's application for registration of title, alleging among others:

(1) That neither the respondent nor her predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the land in question since June 12, 1945 or prior thereto;[22]

(2) That the muniments of title and/or the tax declarations and tax payment receipts of the respondent attached to or alleged in the application do not constitute competent and sufficient evidence of a *bona fide* acquisition of the land applied for or of their open, continuous, exclusive and notorious possession and occupation thereof in the concept of an owner since June 12, 1945, or prior thereto; and that said muniments of title do not appear to be genuine and the tax declarations and/or tax

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at 63.

[22] *Id.* at 58.

Supreme Court E-Library

payment receipts indicate the pretended possession of the respondent to be of recent vintage;[23]

(3) That the respondent can no longer avail of the claim of ownership in fee simple on the basis of Spanish title or grant since she has failed to file an appropriate application for registration within the period of six months from February 16, 1976 as required by Presidential Decree (P.D.) No. 892. From the records, the petitioner further alleged that the instant application was filed on July 7, 1995;[24]

(4) That the parcel of land applied for is a portion of the public domain belonging to the petitioner and that the said parcel is not subject to private appropriation.[25]

On November 3, 1999, the RTC rendered its Decision[26] in favor of the respondent, the dispositive portion of which provides:

> WHEREFORE, from all the foregoing undisputed facts supported by oral and documentary evidence, the Court finds and so holds that the applicant has registrable title over subject lots, and the same title is hereby confirmed. Consequently, the Administrator, Land Registration Authority is hereby directed to issue Decree of Registration and Original Certificate of Title to Lots 3135-A and 3136-A [sic], both situated at Jugan, Consolacion, Cebu in the name of the applicant DIOSDADA I. GIELCZYK, 44 years old, Filipino, married to Philip James Gielczyk, American national, resident of No. 4 Noel St., UHV, Parañaque, Metro Manila, as her exclusive paraphernal property.
>
> Upon finality of this judgment, let a corresponding decree of registration and original certificate of title be issued to subject lot in accordance with Sec. 39, PD 1529.
>
> SO ORDERED.[27]

Not convinced of the RTC's decision, the petitioner filed an appeal dated August 5, 2002 before the CA, which was also

---

[23] *Id.* at 58-59.

[24] *Id.* at 59.

[25] *Id.*

[26] *Id.* at 61-63.

[27] *Id.* at 63.

Supreme Court E-Library

denied on September 21, 2007,[28] the dispositive portion of which provides:

WHEREFORE, the appeal is hereby ***DENIED*** and the assailed Decision ***AFFIRMED*** in its entirety.[29]

Thus, the petitioner filed the present Petition for Review under Rule 45 of the 1997 Rules of Court, raising the sole issue:

Issue

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN UPHOLDING THE RULING OF THE TRIAL COURT THAT RESPONDENT WAS ABLE TO PROVE THAT SHE AND HER PREDECESSORS-IN-INTEREST HAVE BEEN IN OPEN, COMPLETE, CONTINUOUS, NOTORIOUS, EXCLUSIVE AND PEACEFUL POSSESSION OVER THE LANDS SUBJECT OF THE APPLICATION FOR ORIGINAL REGISTRATION FOR A PERIOD OF OVER 40 YEARS THROUGH MERE TAX DECLARATIONS AND IN THE ABSENCE OF PROOF WHEN THE SUBJECT LOTS WERE DECLARED ALIENABLE AND DISPOSABLE LANDS OF THE PUBLIC DOMAIN.[30]

Our Ruling

It must be noted that the respondent did not file any comment on the petition despite efforts to notify her and her counsel of record. Thus, in the Resolution[31] dated March 30, 2011, this Court resolved to dispense with the respondent's comment and shall decide the instant petition based on available records.

After a thorough study of the records, the Court resolves to grant the petition.

The respondent failed to completely prove that there was an expressed

[28] *Id.* at 28-39.

[29] *Id.* at 38.

[30] *Id.* at 13.

[31] *Id.* at 123.

Supreme Court E-Library

State declaration that the properties in question are no longer intended for public use, public service, the development of the national wealth and have been converted into patrimonial property, and to meet the period of possession and occupation required by law.

Section 14 of P.D. No. 1529 or *The Property Registration Decree* enumerates the persons who may apply for the registration of title to land, to wit:

Sec. 14. *Who may apply*. The following persons may file in the proper Court of First Instance 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.

(2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.

(4) Those who have acquired ownership of land in any other manner provided for by law.

In the assailed decision granting the respondent's application for registration of title, the CA explained that the RTC's decision was based on Section 14(2) of P.D. No. 1529 and not on Section 14(1) of the same decree.[32] The CA said:

However, a judicious scrutiny of the attendant facts would reveal that the assailed decision of the RTC was based not on PD No. 1529,

---

[32] *Id.* at 37.

Supreme Court E-Library

Section 14(1), but under Section 14(2) of said issuance. The pertinent portion of the decision is quoted as follows:

> "From the documentary evidence presented and formally offered by the applicant, the Court is convinced that she and her predecessors-in-interest has (sic) been in open, complete, continuous, notorious, exclusive and peaceful possession over the lands herein applied for registration of title, for a period of over 40 years, in the concept of an owner and that applicant has registrable title over same lots in accordance with Sec. 14, PD 1529."

A closer scrutiny will show that the questioned decision was based on PD No. 1529, Section 14(2).

In the case of *Republic of the Philippines vs. Court of Appeals and Naguit*, it was ruled that:

> Did the enactment of the Property Registration Decree and the amendatory P.D. No. 1073 preclude the application for registration of alienable lands of the public domain, possession over which commenced only after June 12, 1945? It did not, considering Section 14(2) of the Property Registration Decree, which governs and authorizes the application of "those who have acquired ownership of private lands by prescription under the provisions of existing laws."
>
> **"Prescription is one of the modes of acquiring ownership under the Civil Code. There is a consistent jurisprudential rule that properties classified as alienable public land may be converted into private property by reason of open, continuous and exclusive possession of at least thirty (30) years. With such conversion, such property may now fall within the contemplation of "private lands" under Section 14(2), and thus susceptible to registration by those who have acquired ownership through prescription. Thus, even if possession of the alienable public land commenced on a date later than June 12, 1945, and such possession being been [sic] open, continuous and exclusive, then the possessor may have the right to register the land by virtue of Section 14(2) of the Property Registration Decree."**

In the instant case, applicant-appellee was able to present tax declarations dating back from 1948. Although tax declarations and realty tax payment of property are not conclusive evidence of

Supreme Court E-Library

ownership, nevertheless, they are good *indicia* of the possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual, or at the least constructive, possession. They constitute proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests, not only one's sincere and honest desire to obtain title to the property, but it also announces his adverse claim against the State and all other interested parties, including his intention to contribute to the needed revenues of the Government. All told, such acts strengthen one's *bona fide* claim of acquisition of ownership.[33] (Citations omitted)

The Court agrees with the CA's finding that the RTC's grant of the respondent's application for registration of title was based on Section 14(2) of P.D. No. 1529 and not on Section 14(1) of the same decree. As the CA, citing *Republic of the Philippines v. Court of Appeals and Naguit*,[34] correctly explained, an applicant may apply for registration of title through prescription under Section 14(2) of P.D. No. 1529, stating that patrimonial properties of the State are susceptible of prescription and that there is a rich jurisprudential precedents which rule that properties classified as alienable public land may be converted into private property by reason of open, continuous and exclusive possession of at least 30 years.[35]

In *Heirs of Mario Malabanan v. Republic*,[36] the Court further clarified the difference between Section 14(1) and Section 14(2) of P.D. No. 1529. The former refers to registration of title on the basis of **possession**, while the latter entitles the applicant to the registration of his property on the basis of **prescription**. Registration under the first mode is extended under the aegis of the P.D. No. 1529 and the Public Land Act (PLA) while under the second mode is made available both by P.D. No. 1529 and the Civil Code. Moreover, under Section 48(b) of the PLA, as amended by Republic Act No. 1472, the

---

[33] *Id.* at 36-37.

[34] 489 Phil. 405 (2005).

[35] *Rollo*, pp. 36-37.

[36] G.R. No. 179987, April 29, 2009, 587 SCRA 172.

Supreme Court E-Library

30-year period is in relation to possession without regard to the Civil Code, while under Section 14(2) of P.D. No. 1529, the 30-year period involves extraordinary prescription under the Civil Code, particularly Article 1113 in relation to Article 1137.[37]

Indeed, the foregoing jurisprudence clearly shows the basis of the respondent's application for registration of title. However, the petitioner argued that the respondent failed to show proof of an expressed State declaration that the properties in question are no longer intended for public use, public service, the development of the national wealth or have been converted into patrimonial property. It pointed out that the certification which the respondent submitted did not indicate when the lands applied for were declared alienable and disposable.[38]

On this point, the Court cannot completely agree with the petitioner. Indeed, the respondent attempted to show proof as to when the subject lands were declared alienable and disposable. While the RTC and the CA failed to cite the evidence which the respondent submitted, the Court cannot, in the name of substantial justice and equity, close its eyes to the September 23, 2004 *Certification* issued and signed by Fedencio P. Carreon (Carreon), OIC, CENRO, which the respondent attached in her Appellee's brief in the CA,[39] as a supplement to her earlier submissions, particularly Annex "G" and Annex "G-1" or the June 28, 1995 *Certifications* issued by Eduardo M. Inting, CENRO.[40]

---

[37] *Id.* at 201-205.

Quoted hereunder for easy reference are Articles 1113 and 1137 of the CIVIL CODE OF THE PHILIPPINES, to wit:

Art. 1113. All things which are within the commerce of men are susceptible of prescription, unless otherwise provided. Property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription.

Art. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

[38] *Rollo*, pp. 20-21.

[39] CA *rollo*, p. 62.

[40] *Rollo*, pp. 54-55.

Supreme Court E-Library

Carreon's *Certification* is reproduced here:

Republic of the Philippines
Department of Environment and Natural Resources
COMMUNITY ENVIRONMENT AND
NATURAL RESOURCES OFFICE
Cebu City

23 September 2004

CENRO, Cebu City, Lands Verification
CONSTANCIO CENIZA *ET AL*. (Consolacion, Cebu)

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

This is to certify that per projection conducted by Forester Restituto A. Llegunas a tract of land lots 3135 and 3136, Cad 545-D(New) containing an area of FIFTEEN THOUSAND SIX HUNDRED EIGHTY SEVEN (15,687) square meters[,] more or less[,] situated at Jugan, Consolacion, Cebu as shown and described in the sketch plan at the back hereof as prepared by Geodetic Engineer Aurelio Q. Caña for CONSTANCIO CENIZA *ET AL*. **was found to be within Alienable and Disposable Block I of Land Classification Project No. 28 per L. C. Map No. 2545 of Consolacion, Cebu certified under Forestry Administrative Order No. 4-1063 dated September 1, 1965**. (Emphasis Supplied)

This is to certify further that the subject area is outside Kotkot-Lusaran Watershed Reservation per Presidential Proclamation No. 1074 dated Sept. 2, 1997.

This certification is issued upon the request of Mr. Constancio Ceniza for the purpose of ascertaining the land classification status only and does not entitle him preferential/priority rights of possession until determined by competent authorities.

FEDENCIO P. CARREON
OIC, Community Environment
& Natural Resources Officer

However, following our ruling in *Republic of the Philippines v. T.A.N. Properties, Inc.*,[41] this CENRO Certification by itself

[41] 578 Phil. 441 (2008).

Supreme Court E-Library

is insufficient to establish that a public land is alienable and disposable. While the certification refers to Forestry Administrative Order No. 4-1063 dated September 1, 1965, the respondent should have submitted a certified true copy thereof to substantiate the alienable character of the land. In any case, the Court does not need to further discuss whether the respondent was able to overcome the burden of proving that the land no longer forms part of the public domain to support her application for original land registration because of other deficiencies in her application.

Indeed, the respondent failed to meet the required period of possession and occupation for purposes of prescription. From the time of the declaration on September 1, 1965 that the properties in question are purportedly alienable and disposable up to the filing of the application of the respondent on July 17, 1995, the respondent and her predecessors-in-interest had possessed and occupied the said properties for only 29 years and 10 months, short of two months to complete the whole 30-year possession period.

Granting *por arguendo* that the respondent and her predecessors-in-interest had possessed and occupied the subject lots since 1948, the Court cannot still tack those years to complete the 30-year possession period since the said lots were only declared alienable and disposable on September 1, 1965. In *Naguit*, we ruled that for as long as the land was declared alienable and disposable, the same is susceptible of prescription for purposes of registration of imperfect title.[42] In *Lim v. Republic*,[43] we further clarified that "while a property classified as alienable and disposable public land may be converted into private property by reason of open, continuous, exclusive and notorious possession of at least 30 years, public dominion lands become patrimonial property not only with a declaration that these are alienable or disposable but also with an express government manifestation that the property is already patrimonial or no longer retained for public use, public service or the

[42] *Supra* note 34, at 414.

[43] G.R. No. 158630, September 4, 2009, 598 SCRA 247.

Supreme Court E-Library

development of national wealth. And only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run."[44]

While the subject lots were supposedly declared alienable or disposable on September 1, 1965 based on the Certifications of the CENRO, the respondent still failed to complete the 30-year period required to grant her application by virtue of prescription.

The respondent failed to present specific acts of ownership to substantiate her claim of open, continuous, exclusive, notorious and adverse possession in the concept of an owner.

The petitioner contends that the respondent failed to present specific acts of ownership to substantiate the latter's claim of open, continuous, exclusive, notorious and adverse possession in the concept of an owner. Here, the Court agrees with the petitioner's argument.

In *Roman Catholic Bishop of Kalibo, Aklan v. Municipality of Buruanga, Aklan*,[45] the Court ruled that for an applicant to *ipso jure* or by operation of law acquire government grant or vested title to a lot, he must be in open, continuous, exclusive and notorious possession and occupation of the lot.[46] In the said case, the Court clarified what it actually meant when it said "open, continuous, exclusive and notorious possession and occupation," to wit:

> The petitioner submits that even granting *arguendo* that the entire Lot 138 was not assigned to it during the Spanish regime or it is not the owner thereof pursuant to the Laws of the Indies, its open, continuous, exclusive and notorious possession and occupation of

---

[44] *Id.*; *see* also *Heirs of Malabanan v. Republic*, G.R. No. 179987, September 3, 2013.

[45] 520 Phil. 753 (2006).

[46] *Id.* at 794.

Supreme Court E-Library

Lot 138 since 1894 and for many decades thereafter vests *ipso jure* or by operation of law upon the petitioner a government grant, a vested title, to the subject property. It cites Subsection 6 of Section 54 of Act No. 926 and Subsection b of Section 45 of Act No. 2874.

This contention is likewise not persuasive.

One of the important requisites for the application of the pertinent provisions of Act No. 926 and Act No. 2874 is the "open, continuous, exclusive and notorious possession and occupation" of the land by the applicant. **Actual possession of land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property.** The phrase "possession and occupation" was explained as follows:

> It must be underscored that the law speaks of "possession and occupation." Since these words are separated by the conjunction *and*, the clear intention of the law is not to make one synonymous with the order [sic]. **Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word *occupation*, it seeks to delimit the all-encompassing effect of constructive possession. Taken together with the words *open, continuous, exclusive and notorious,* the word *occupation* serves to highlight the fact that for one to qualify under paragraph (b) of the aforesaid section, his possession of the land must not be mere fiction.** As this Court stated, through then Mr. Justice Jose P. Laurel, in *Lasam v. The Director of Lands*:
>
> > x x x Counsel for the applicant invokes the doctrine laid down by us in *Ramos v. Director of Lands*. But it should be observed that the application of the doctrine of constructive possession in that case is subject to certain qualifications, and this court was careful to observe that among these qualifications is "one particularly relating to the size of the tract in controversy with reference to the portion actually in possession of the claimant." **While, therefore, "possession in the eyes of the law does not mean that a man has to have his feet on every square meter of ground before it can be said that he is in possession," possession under paragraph 6 of Section 54 of Act No. 926, as amended by paragraph (b) of Section 45 of Act No. 2874, is not gained by mere nominal claim. The mere planting of a sign or symbol**

Supreme Court E-Library

> **of possession cannot justify a Magellan-like claim of dominion over an immense tract of territory. Possession as a means of acquiring ownership, while it may be constructive, is not a mere fiction.** x x x.
>
> x x x x x x x x x
>
> **Possession is open when it is patent, visible, apparent, notorious and not clandestine. It is continuous when uninterrupted, unbroken and not intermittent or occasional; exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and notorious when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood.**
>
> **Use of land is adverse when it is open and notorious.**

Indisputably, the petitioner has been in open, continuous, exclusive and notorious possession and occupation of Lot 138-B since 1894 as evidenced by the church structure built thereon. However, the record is bereft of any evidence that would tend to show that such possession and occupation extended to Lots 138-A and 138-C beginning the same period. No single instance of the exercise by the petitioner of proprietary acts or acts of dominion over these lots was established. Its unsubstantiated claim that the construction of the municipal building as well as the subsequent improvements thereon, *e.g.*, the rural health center, Buruanga community Medicare hospital [sic], basketball court, Rizal monument and grandstand, was [sic] by its tolerance does not constitute proof of possession and occupation on its (the petitioner's) part.

Absent the important requisite of open, continuous, exclusive and notorious possession and occupation thereon since 1894, no government grant or title to Lots 138-A and 138-C had vested upon the petitioner *ipso jure* or by operation of law. Possession under paragraph 6 of Section 54 of Act No. 926, as amended by paragraph (b) of Section 45 of Act No. 2874, is not gained by mere nominal claim.[47] (Citations omitted and emphasis supplied)

In sum, a simple claim of "open, continuous, exclusive and notorious possession and occupation" does not suffice. An

---

[47] *Id.* at 794-796.

Supreme Court E-Library

applicant for a grant or title over a lot must be able to show that he has exercised acts of dominion over the property in question. The applicant's possession must not be simply a nominal claim where he only plants a sign or symbol of possession. In other words, his possession of the property must be patent, visible, apparent, notorious and not clandestine; it should be uninterrupted, unbroken and not intermittent or occasional; it should demonstrate exclusive dominion over the land and an appropriation of it to his own use and benefit; and it should be conspicuous, which means generally known and talked of by the public or the people in the neighborhood.[48]

The Court held in *Cruz v. Court of Appeals, et al.*,[49] that therein petitioners were able to show clear, competent and substantial evidence establishing that they have exercised acts of dominion over the property in question. These acts of dominion were the following:

(a) they constructed permanent buildings on the questioned lot;

(b) they collected rentals;

(c) they granted permission to those who sought their consent for the construction of a drugstore and a bakery;

(d) they collected fruits from the fruit-bearing trees planted on the said land;

(e) they were consulted regarding questions of boundaries between adjoining properties; and

(f) they religiously paid taxes on the property.[50]

However, in the present petition, the respondent failed to specifically show that she and her predecessors-in-interest had exercised acts of dominion over the subject lots. Admittedly, the respondent's best evidence to prove possession and ownership were tax declarations and receipts issued in her name or the names of her predecessors-

[48] *Id.*

[49] 182 Phil. 184 (1979).

[50] *Id.* at 195.

Supreme Court E-Library

in-interest, but these tax declarations and receipts are not conclusive evidence of ownership or right of possession over a piece of land. "Well settled is the rule that tax declarations and receipts are not conclusive evidence of ownership or of the right to possess land when not supported by any other evidence. The fact that the disputed property may have been declared for taxation purposes in the names of the applicants for registration or of their predecessors-in- interest does not necessarily prove ownership. They are merely *indicia* of a claim of ownership."[51]

In the instant case, the respondent failed to show that she or her predecessors-in-interest have exercised acts of dominion over the said parcels of land. In fact, it was only the respondent who testified to substantiate her allegations in the application. She did not present anyone else to support her claim of "open, continuous, exclusive and notorious possession and occupation." Unfortunately, her testimony simply made general declarations without further proof, to wit:

DIRECT EXAMINATION:

Q - Mrs. Gielczyk, are you the same Diosdada Gielzcyk[,] the applicant in this case?
A - Yes.

Q - Are you familiar with [L]ots No. 3135 and 20045, both of Consolacion, Cebu?
A - Yes.

Court:

Excuse me, You can answer in English? You don't need an interpreter?
A - Yes[,] Your Honor.

Atty. Germino:

Who is the owner of these lots?
A - I am the one.

---

[51] *Republic v. Manimtim*, G.R. No. 169599, March 16, 2011, 645 SCRA 520, 536, citing *Republic of the Philippines v. Dela Paz*, G.R. No. 171631, November 15, 2010, 634 SCRA 610, 623.

Supreme Court E-Library

Q - How large is 20047?
A - It has an area of 2,286 square meters.

Q - How much is the assessed value of Lot 20047?
A - I do not think, [₱]430.00 per square meters is the assessed value reflected in the document.

Court:
Is that reflected in the tax declaration?
Atty. Germino:
Yes[,] Your Honor.

Court:
Then the tax declaration would be the best evidence.
Atty. Germino:
Q - Do you know if there are other persons who are interested whatsoever over the lots you have mentioned?
A - No sir.

Atty. Germino:
Q - Are there liens and encumbrances affecting the lots?
A - No[,] sir.

Q - Who is in possession of these lots?
A - I am in possession.

Court:
Physically? I thought you are residing in Manila?
A - Because my family is living there in Consolacion and I always come home every month. I have my parents and brothers there.

Court:
The same property?
A - Near my parents' house[,] Your Honor.

Court:
Proceed.

Atty. Germino:
Q - How long have you been in possession of the lots?
A - Including my predecessors-in-interest, for over a period of 40 years.

Q - What is the nature of your possession?
A - Adverse against the whole world, continous [sic], peaceful[,] open and uninterrupted.

Supreme Court E-Library

Q - How did you acquire Lot 20047?
A - I purchased it from Luisa Ceniza.

Q - Do you know how did Luisa Ceniza acquire the same?
A - She inherited it from her father Remigio Ceniza.

Q - Do you have a deed of sale in your favor?
A - Yes, I have.[52]

x x x x x x x x x

Atty. Germino:
Q - You said that includ[i]ng your predecessors-in-interest, your possession including your predecessors-in-interest has been for over forty (40) years. Do you have the tax declaration of Lot 20047 since 1948 until the present?
A - Yes.

Q - Showing to you tax declaration No. 01670 in the name of the heirs of Remigio Ceniza covering land in Consolacion for the year 1948, please examine and tell the court whether that is the tax declaration of Lot 20047 for the year 1948?
A - Yes, this is the one.

x x x x x x x x x

Atty. Germino:

Q - Showing to you tax declaration No. 012931 in the name of heirs of Remigio Ceniza for the year 1965, please examine the same and tell the Honorable court what relation has that to the tax declaration of lot 20047 for the year 1965?
A - This is the same.

x x x x x x x x x

Atty. Germino:

Q - Showing to you tax declaration No. 021294 in the name of Luisa and Constancio Ceniza for the year 1968, please examine and tell the court whether that is the tax declaration of Lot 20047 for the year 1968?
A - Yes, this is the same.

x x x x x x x x x

---

[52] Records, LRC Case No. N-452, pp. 83-84.

Supreme Court E-Library

Atty. Germino:
Q - Showing to you tax declaration No. [no number was indicated in the TSN] in the name of Luisa Ceniza for the year 1963 tell the court whether that is the tax declaration for the year 1973?
A - Yes, this is the one.[53]

In the continuance of her testimony, the respondent added no further information for this Court to conclude that she indeed exercised specific acts of dominion aside from paying taxes. She testified thus:

xxx x x x xxxx

Atty. Germino:
Q - Mrs. Gielczyk, one of the last lot subject to [sic] your petition is Lot 20045, how large is this lot?
A - 2,610 square meters.

Q - How much i[s] the assess value of this lot?
A - [₱]970.00

Q - Who is in possession of this lot?
A - I am the one.

Q - How long have you been in possession?
A - Including my predecessors-in-interest is [sic] over a period of 40 years.

COURT: (to witness)
Q - Personally[,] how long have you been in possession of this property?
A - If I remember right, 1985.

ATTY. GERMINO:
Q - How did you acquire lot 20045?
A - I purchased it from Constancio Ceniza.

Q - Do you have a deed of sale in your favor?
A - Yes.

COURT:
We are talking about 3136-A?
ATTY. GERMINO:
Yes, we are through with Lot 3135?

---

[53] *Id.* at 88-91.

Supreme Court E-Library

COURT:

This is 3136-A equivalent to Lot 20045. Proceed.

ATTY. GERMINO:

I am showing to you a deed of absolute sale by Constancio Ceniza over lot 3136-A acknowledged before Notary Public Marino Martillano, as Doc. No. 2637 book 4, series of 1988, please examine this document and tell the Court if that is the deed of sale?

A - Yes.

x x x x x x x x x

Q - Are you not delinquent in the payment of taxes for lot 3136-A?

A - No, sir.

Q - Do you have a tax clearances [sic]?

A - Yes, I have.

Q - I am showing to you tax clearance issued by the municipal treasurer of Consolacion, Cebu, is that the tax clearance you referred to?

A - Yes, sir.

ATTY. GERMINO:

We ask your Honor the tax clearance be marked as double "C".

COURT:

Mark it.

x x x x x x x x x x

COURT: (to witness)

Q - You said that including your predecessor-in-interest[,] your possession of the land applied for is more than 40 years, do you have a Tax Declaration of lot 3136-A from 1948 until the present?

A - Yes.

Q - I am showing to you a bunch of Tax Declaration[,] 6 in all[,] from the (sic) year 1948, 1965, 1980, 1981, 1985 and 1989, please examine this Tax Declaration and tell us whether these are the Tax Declarations of Lot 3136-A from 1948 until the present in your name?

A - These are the ones.

ATTY. GERMINO:

We ask that the Tax Declaration in bunch be marked as Exhibit double "F" and the succeeding Tax Declaration to be marked as double "FF-1" up to double "F-5".

Supreme Court E-Library

COURT:
Mark it.[54]

The respondent's cross-examination further revealed that she and her predecessors-in-interest have not exercised specific acts of dominion over the properties, to wit:

COURT:
Cross-examination?

FISCAL ALBURO:
May it please the Honorable Court.

COURT:
Proceed.

FISCAL ALBURO:
Q - Mrs. [G]ielczyk, how many lots are involved in this petition?
A - 2 portions.

Q - How did you acquire this lot [sic]?
A - I purchased it [sic] from Constancio Ceniza.

Q - When was that?
A - If I remember right in 1985 or 1986.

Q- In other words, you srarted [sic] possessing the property since 1985, until the present?
A- Yes.

Q- But you are not in actual occupant [sic] of the property because you are residing in Paranaque?
A- But I have a cousin in Consolacion.

Q- But you are not residing in Consolacion?
A- I used to go back and forth Cebu and Manila.

Q- Who is in charge of your property in Consolacion?
A- My brothers.

Q - In other words, your property is being taken cared of by your brothers?
A - Yes.

FISCAL ALBURO:
That is all, your Honor.

---

[54] *Id.* at 93-97.

Supreme Court E-Library

ATTY. GERMINO:
No redirect, your Honor.

COURT: (to witness)
By the way, where do you stay often?
A - Usually in Manila.

Q - Who takes care of the property in Mandaue City?
A - My brothers because there are coconut trees and some fruits and he watched it [sic].

Q - Who is using the coconut trees and the fruits?
A - Just for consumption, there are few coconuts.[55] (Emphasis supplied)

From the foregoing testimony of the lone witness (the applicant-respondent herself), the Court can deduce that, besides intermittently paying the tax dues on Lot No. 3135-A, the respondent did not exercise acts of dominion over it. Neither can the Court give credence to the respondent's claim that her predecessors-in-interest had exercised dominion over the property since the respondent failed to present any witness who would substantiate her allegation. The pieces of documentary evidence, specifically the tax declarations and the deeds of absolute sale, can neither be relied upon because the same revealed no indication of any improvement that would have the Court conclude that the respondent exercised specific acts of dominion. For instance, the deed of absolute sale simply said that the improvements on Lot No. 3135-A consisted of two (2) coconut trees, one (1) mango tree, one (1) *caimito* tree and one (1) jackfruit tree.[56] The tax declarations have not shown any indication supporting the respondent's claim that she exercised specific acts of dominion.[57]

As to Lot No. 3136-A, the deed of absolute sale showed that there were 14 coconut trees, eight (8) jackfruit trees, and a residential building, which was actually possessed by the vendor

---

[55] *Id.* at 97-98.

[56] *Id.* at 12.

[57] *Id.* at 49-56.

Supreme Court E-Library

Constancio Ceniza. Moreover, it was only in Tax Declaration Nos. 29200, 04210 and 13275 where it was declared that a residential building has been built in Lot No. 3136-A.[58] And based on the records, Tax Declaration No. 29200, where the residential building was first indicated, is dated 1981. It may be said then that it was only in 1981 when the respondent's predecessors-in-interest exercised specific acts of dominion over Lot No. 3136-A, the period of which consists barely of 14 years. Thus, the respondent has not completed the required 30 years of "open, continuous, exclusive and notorious possession and occupation."

Clearly, from the pieces of documentary and testimonial evidence, and considering that the respondent did not present any other witness to support her claim, the Court has no other recourse but to declare that she has not presented the premium of evidence needed to award her title over the two parcels of land.

Finally, the Court cannot end this decision without reiterating the final words of former Associate Justice Dante O. Tinga in the case of *Malabanan*.[59] Justice Tinga correctly pointed out the need to review our present law on the distribution of lands to those who have held them for a number of years but have failed to satisfy the requisites in acquiring title to such land. Justice Tinga eloquently put the matter before us, thus:

> A final word. The Court is comfortable with the correctness of the legal doctrines established in this decision. Nonetheless, discomfiture over the implications of today's ruling cannot be discounted. For, every untitled property that is occupied in the country will be affected by this ruling. The social implications cannot be dismissed lightly, and the Court would be abdicating its social responsibility to the Filipino people if we simply levied the law without comment.
>
> The informal settlement of public lands, whether declared alienable or not, is a phenomenon tied to long-standing habit and cultural

---

[58] *Id.* at 67-69.

[59] *Supra* note 36.

Supreme Court E-Library

acquiescence, and is common among the so-called "Third World" countries. This paradigm powerfully evokes the disconnect between a legal system and the reality on the ground. The law so far has been unable to bridge that gap. Alternative means of acquisition of these public domain lands, such as through homestead or free patent, have proven unattractive due to limitations imposed on the grantee in the encumbrance or alienation of said properties. Judicial confirmation of imperfect title has emerged as the most viable, if not the most attractive means to regularize the informal settlement of alienable or disposable lands of the public domain, yet even that system, as revealed in this decision, has considerable limits.

There are millions upon millions of Filipinos who have individually or exclusively held residential lands on which they have lived and raised their families. Many more have tilled and made productive idle lands of the State with their hands. They have been regarded for generation by their families and their communities as common law owners. There is much to be said about the virtues of according them legitimate states. Yet such virtues are not for the Court to translate into positive law, as the law itself considered such lands as property of the public dominion. **It could only be up to Congress to set forth a new phase of land reform to sensibly regularize and formalize the settlement of such lands which in legal theory are lands of the public domain before the problem becomes insoluble. This could be accomplished, to cite two examples, by liberalizing the standards for judicial confirmation of imperfect title, or amending the Civil Code itself to ease the requisites for the conversion of public dominion property into patrimonial.**

One's sense of security over land rights infuses into every aspect of well-being not only of that individual, but also to the person's family. Once that sense of security is deprived, life and livelihood are put on stasis. It is for the political branches to bring welcome closure to the long pestering problem.[60] (Citation omitted and emphasis supplied)

Indeed, the Court can only do as much to bring relief to those who, like herein respondent, wish to acquire title to a land that they have bought. It is for our lawmakers to write the

---

[60] *Id.* at 212-213.

Supreme Court E-Library

law amending the present ones and addressing the reality on the ground, and which this Court will interpret and apply as justice requires.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **GRANTED** and the Decision dated September 21, 2007 of the Court of Appeals in CA-G.R. CV No. 70078 is **ANNULLED and SET ASIDE**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 184369. October 23, 2013]

HEIRS OF FLORENTINO QUILO, NAMELY: BENJAMIN V. QUILO, JAIME V. QUILO, CELEDOÑA Q. RAMIREZ, IMELDA Q. ANCLOTE, ZENAIDA Q. BAITA, ORLANDO V. QUILO, EVANGELINE Q. PALAGANAS, ARTURO V. QUILO, and LOLITA Q. SEISMUNDO, *petitioners, vs.* **DEVELOPMENT BANK OF THE PHILIPPINES-DAGUPAN BRANCH, and SPOUSES ROBERTO DEL MINDO and CARLINA DEL MINDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45; QUESTIONS OF FACT ARE NOT PROPER THEREIN; EXCEPTION.— The determination of whether a person is an agricultural tenant is basically a question of fact. As a general rule, questions of fact are not