

## TWENTY-FIRST DIVISION

[ CA-G.R. CV No. 02424-MIN, February 25, 2015 ]

**ROMULO B. GALE, LILIOSA D. GALE, ROLITO D. GALE AND  
RITCHE D. GALE, PLAINTIFFS-APPELLANTS, VS. SPS. JULIUS  
AND SERSIE MACASAET, AND THE REGISTER OF DEEDS OF  
DAVAO CITY, DEFENDANTS-APPELLEES.**

### DECISION

**SINGH, J.:[\*]**

On appeal under Rule 41 of the Rules of Court is the Order<sup>[1]</sup> dated August 26, 2009 of the Regional Trial Court (RTC), 11<sup>th</sup> Judicial Region, Branch 11 of Davao City in Civil Case No. 32,408-08.

#### Factual Antecedents

Subject of the present controversy is a parcel of land known as Lot No. 9183-D,<sup>[2]</sup> Csd-11-010104-D (subject lot) situated at Malvar Street, San Pedro Extension, Davao City, consisting of 601 square meters (sq. m.) covered by Original Certificate of Title (OCT) No. P-13010.<sup>[3]</sup>

On September 23, 1987, appellee Julius Macasaet (Macasaet) filed an Application for Free Patent<sup>[4]</sup> over the subject lot before the Bureau of Lands of Davao City, docketed as FPA (XL-14) 2254. Thereafter, a Notice of Application for Free Patent<sup>[5]</sup> was issued by said Office directing that all adverse claims to the subject lot must be filed on or before November 8, 1987. Copies of such notice were then posted in the prescribed places. On February 3, 1989, OCT No. P-13010 was issued to appellee Macasaet pursuant to Free Patent No. (XI-14)6262.<sup>[6]</sup>

Nineteen (19) years later, or on June 25, 2008, herein appellants Romulo, Liliosa, Rolito and Ritche, all surnamed Gale (the Gales), filed with the RTC a complaint<sup>[7]</sup> for Annulment of Title of Real Property, Reconveyance and Damages with prayer for Writ of Preliminary Mandatory Injunction against herein appellee Macasaet and his wife Sersie Macasaet. The case was docketed as Civil Case No. 32,408-08 and impleaded as nominal defendant therein was the Register of Deeds of Davao City.

In their complaint, Romulo and Liliosa Gale claimed that since 1971 up to the present they had been in actual, open, continuous, exclusive, notorious, adverse and belligerent possession and occupation of the subject lot. They planted it with trees and built structures thereon like their garage and many other improvements. Their children (Rolito and Ritche) spent their childhood cultivating said land by helping them plant crops and raise game fowl thereat. In support of their claims, the Gales submitted a Joint Affidavit of two disinterested persons.<sup>[8]</sup>

However, allegedly unknown to them (the Gales), appellee Macasaet applied for a free patent over the subject lot, misrepresenting in his application that said land was first cultivated by his father (Simeon B. Macasaet) on August 28, 1920 and that he had been cultivating it since June 8, 1960. The Gales also alleged that appellee Macasaet misled the public by indicating San Pedro Extension as the location of the subject lot when it is actually situated in Malvar Street. They further alleged that after appellee Macasaet was granted OCT No. P-13010, he fenced the said land thereby disturbing their peaceful occupation thereof and impeding their access from their house.

Consequently, the Gales sought the annulment and/or cancellation of OCT No. P-13010 alleging that it is null and void *ab initio* because appellee Macasaet obtained it through fraud and misrepresentation in his free patent application, which he committed by declaring that he had been in actual occupation and possession of the subject lot and that it had no other claimant, even though he was fully aware that the Gales occupied, cultivated, possessed and claim said land as their own. The Gales thus contended that since title to the subject lot was fraudulently obtained by appellee Macasaet, the law considers him a mere trustee of such property, holding it for the benefit of its real owners, i.e., the Gales. Aside from praying for the nullification and/or cancellation of OCT No. P-13010, the Gales alternatively prayed for the reconveyance of the subject lot to them.

Answering,<sup>[9]</sup> the Macasaets denied that the Gales had been in possession of and had actually occupied the subject lot since 1971. Appellee Macasaet maintained that it was his father (Simeon Macasaet) who was in actual possession and occupation of a then undivided parcel of land located in San Pedro Extension, Davao City since August 28, 1920, which included the subject lot. It was also his father who first entered, cultivated and introduced improvements thereon. Upon Simeon Macasaet's death, appellee Macasaet and his mother (Julia Macasaet) continued cultivating the whole property. When the Mindanao School of Midwifery was established on September 1, 1958,<sup>[10]</sup> its building was constructed on the subject lot (then owned by his mother) as she was an incorporator and then the President of said school. She was the one who ordered the fencing of the whole property, providing only means of ingress and egress to the subject lot for the students, faculty members and staff.

Macasaet denied employing fraud and false representation in his free patent application. He neither deliberately concealed his free patent application from the Gales nor misled the public by indicating therein San Pedro Extension as the location of the subject lot.

As special affirmative defense, Macasaet posited that assuming for the sake of argument that the Gales were in possession of the subject lot, they are already barred by the statute of limitations from instituting any claim over it because they failed to file any adverse claim or opposition to his free patent application within the period prescribed by the Bureau of Lands. Also, he asserted that his title to the subject lot had long become indefeasible, irrevocable and incontrovertible after the expiration of one year from its issuance on February 3, 1989, pursuant to Section 38 of Act No. 496 or the Land Registration Act; hence, it can no longer be annulled or nullified.

On August 28, 2008, Macasaet filed a motion<sup>[11]</sup> to set his affirmative defense of prescription for hearing, which the Gales opposed alleging that his affirmative defense of prescription was frivolous and baseless.<sup>[12]</sup> The RTC directed the parties to file their respective memoranda vis-à-vis the affirmative defense of prescription.<sup>[13]</sup>

### The RTC Ruling

On August 26, 2009, the RTC dismissed the case in this wise:

"x x x

x x x

Defendant Macasaet's special and affirmative defense is sufficiently supported by laws and jurisprudence that plaintiffs' (*the Gales*) action for annulment of title of real property and reconveyance are barred by the statute of limitations. x x x.

x x x. Plaintiffs' claim that prescription does not run against them considering that they were in actual, open, continuous, exclusive and adverse possession of the subject land is devoid of merit. This claim applies only to reivindicatory action.

Certificates of title that are genuine and valid on their face are incontrovertible, indefeasible and conclusive against the whole world. (citation omitted)

x x x

x x x

Perfunctorily, plaintiffs' action for annulment of title of real property and reconveyance has already been barred by statute of limitations as provided under Section 38 of Act No. 496 of (sic) the Land Registration Act, to wit:

"X x x... Upon the expiration of said term of one year, every decree or certificate of title issued in accordance with this section shall be incontrovertible. X x x x x..."

The certificate of title registered in the name of Julius Macasaet which was issued on February 3, 1989 had long become indefeasible, irrevocable and incontrovertible after the expiration of one (1) year from issuance thereof. Plaintiffs' claim was filed only after the lapse of more than eighteen years.

WHEREFORE, in view of the foregoing and on the ground that plaintiff's action had already prescribed, this instant case is hereby ordered DISMISSED.

SO ORDERED." (*Italics Ours*)

The Gales moved for the reconsideration<sup>[14]</sup> of the foregoing Order, which appellee Macasaet opposed, but the RTC denied said motion on April 5, 2010.<sup>[15]</sup>