

TWENTY-SECOND DIVISION

[CA-G.R. CV NO. 02460-MIN, February 17, 2014]

**DIRECTOR OF LANDS, PETITIONER-APPELLANT, VS. JOSE TAN,
CLAIMANT-APPELLEE, VS. FE MISBA SALI, CLAIMANT.**

D E C I S I O N

LOPEZ, J.:

This is an appeal under Rule 41 of the Rules of Court filed by oppositor-appellant Director of Lands through the Office of the Solicitor General (OSG) to assail the October 11, 2010 Decision^[1] of the Regional Trial Court of Pagadian City, Branch 18, ^[2] in Cadastral Case No. N-31. The assailed decision decreed thus:

WHEREFORE, the Court renders judgment adjudicating Cadastral Lot No. Ts-09-06-000001 to claimant Jose Tan, married to Camila M. Tan.

The claim of claimant Fe Misba Sali is hereby Dismissed for lack of merit.

Let the corresponding decree be issued thirty (30) days after his (sic) decision shall become final.

No pronouncement as to cost.

SO ORDERED.

Culled from the records are the salient facts of the case:

Sometime in 1993, both claimant-appellee Jose Tan (Tan) and claimant Fe Misba Sali (Sali) filed their respective answers to the contested petition for cadastral claims before the Regional Trial Court of Pagadian City pursuant to Section 48(b) of Commonwealth Act (Com. Act) No. 141 or the Public Land Act, as amended by Presidential Decree No. 1073, for confirmation of an imperfect title and the issuance of a certificate of title over Lot No. 563, Ts-09-06-000001 of Pagadian Cadastre, situated in Kawit, Pagadian City.

Appellee Tan claimed that he has been in possession of the subject land in the concept of an owner for over thirty (30) years including that of his predecessors-in-interest and that he declared the subject property in his name for taxation purposes. He further claimed that he acquired the property by virtue of an Affidavit of Confirmation and Relinquishment executed by Jose Mirabueno (Mirabueno), the original claimant of the land.^[3]

On the other hand, claimant Sali claimed that she has been in possession of the property as an owner thereof for over thirty (30) years including that of her predecessors-in-interest and that she has been paying the taxes due thereon. She

likewise claimed that she acquired the subject property by actual occupation from Daniel Sali for value and in good faith.^[4]

Records of the case however show that claimant Sali was previously declared in default by the court *a quo* but the default order was later on lifted upon motion of claimant Sali; hence, she was allowed to file her answer.^[5] Subsequently, despite the previous default order, claimant Sali still failed to attend the court hearings despite due notice thereof. As a result, appellee Tan moved that he be allowed to present his evidence ex-parte and to which the court *a quo* granted on January 10, 2007.^[6]

Appellee Tan presented both testimonial and documentary evidence. His testimonial evidence consists of his testimony and that of his mother Marcela Tan and his neighbor Cipriano Perez. From their testimonies, it appeared that the original survey claimant of the subject property is a certain Jose Mirabueno (Mirabueno). Subsequently, the said property was transferred by Mirabueno to Alberto Perdiguez (Perdiguez), the father-in-law of Marcela Tan. Thereafter, Perdiguez relinquished his right over the subject property in favor of Marcela Tan and the latter consequently transferred her rights and interests over Lot No. 563 in favor of her son, appellee Tan.

On the other hand, appellee Tan's documentary evidence consists of the following:

- 1) Affidavit of Quitclaim and Confirmation dated March 25, 1999, executed by Jose Mirabueno in favor of appellee Tan;^[7]
- 2) Tax declaration of appellee Tan covering the subject property for the year 1994;^[8]
- 3) Realty Property Tax Receipts of appellee Tan for the subject property dated May 28, 1997;^[9]
- 4) Certification issued by the City Treasurer of Pagadian City showing payments of appellee Tan over the subject property for the year 1997;^[10]
- 5) Real Property Tax Receipts of appellee Tan for the subject property dated May 10, 2005;^[11] and
- 6) Real Property Tax Receipts of appellee Tan for the subject property dated January 29, 2007.^[12]

Thereafter, appellee Tan was directed to formally offer his exhibits within fifteen (15) days from notice.^[13] However, upon motion of appellee Tan, he was given an additional period of twenty (20) days to file his written offer of exhibits.^[14]

This notwithstanding, no written offer was filed by appellee Tan even after the lapse of more than a year. Thus, the court *a quo* issued an order dismissing the case without prejudice.^[15]

Appellee Tan immediately moved for the reconsideration of the order dismissing his case.^[16] Consequently, in an order dated September 3, 2010, the court *a quo*

recalled and vacated its previous order dismissing the case and instead, submitted the case for decision.^[17]

On October 11, 2010, the court *a quo* issued the assailed decision adjudicating Cadastral Lot No. 563, Ts-09-06-000001 to appellee Tan and dismissing the claim of claimant Sali.

Hence, the instant appeal interposed by the Director of Lands through the OSG.

Assignment of Error

Appellant OSG assigned the lone error committed by the court *a quo*, thus:

THE REGIONAL TRIAL COURT ERRED IN RULING THAT THE CLAIMANT JOSE TAN, JR. HAS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE HIS AND THAT OF HIS PREDECESSORS-IN-INTEREST'S POSSESSION OVER LOT NO. 563 WITHIN THE PERIOD AND IN THE CONCEPT REQUIRED BY LAW.

This Court's Ruling

We find the appeal meritorious.

Appellant OSG contends that appellee Tan failed to establish that he and his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the subject property – Lot 563, since June 12, 1945. It argues that appellee Tan traced his possession over the subject property from the time he built his house thereon but he tacked it to the possession of Mirabueno and Perdiguez who had supposedly been in possession since 1960. However, neither the testimonial nor the documentary evidence presented by appellee Tan during the ex-parte hearing clearly and conclusively establish the following facts, namely, the year Mirabueno began his possession over the subject property; the year Mirabueno's possession ended and the year Perdiguez's possession began; the mode of acquisition of Perdiguez over the subject property from Mirabueno; and appellee Tan's mode of acquisition from Perdiguez. The allegation of appellee Tan that he bought Lot No. 563 from his mother Marcela Tan, who likewise supposedly bought the same property from Mirabueno is self-serving and uncorroborated. Hence, appellee Tan's alleged possession over Lot No. 563 is not the "possession" contemplated by the Public Land Act which could ripen into ownership.

Appellant OSG likewise contends that "possession under a bona fide claim of ownership for at least 30 years" as contemplated under Section 48(b) of Com. Act No. 141, as amended by RA 1942 was further amended by Section 4 of PD No. 1073 by substituting the phrase "for at least thirty (30) years" with "since June 12, 1945." Likewise, under Section 14(1) of PD No. 1529^[18] it was provided therein that only "[T]hose who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive 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" may file an application for registration of title. The OSG argues that in this case, there is no evidence that clearly and convincingly shows that Lot No. 563 forms part of the disposable and alienable agricultural lands of the public domain and that appellee Tan's possession together with his predecessors-in-interest were done in "open, continuous, adverse and actual possession" since June 12, 1945 or earlier.

We find the contentions of appellant OSG tenable.

The Com. Act No. 141 or the Public Land Act, governs the classification and disposition of lands of the public domain. Under Section 11 thereof, one of the modes of disposing of public lands suitable for agricultural purposes is by "confirmation of imperfect or incomplete titles".^[19] On the other hand, Section 48 provides the grant to the qualified possessor of an alienable and disposable public land. Thus:

SEC. 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

(a) Those who prior to the transfer of sovereignty from Spain to the United States have applied for the purchase, composition or other form of grant of lands of the public domain under the laws and royal decrees then in force and have instituted and prosecuted the proceedings in connection therewith, but have with or without default upon their part, or for any other cause, not received title therefor, if such applicants or grantees and their heirs have occupied and cultivated said lands continuously since the filing of their applications.

(b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

(c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of the public domain suitable to agriculture, whether disposable or not, under a bona fide claim of ownership for at least 30 years shall be entitled to the rights granted in sub-section (b) hereof.

Consequently, Presidential Decree No. 1073 (PD No. 1073), which was issued on January 25, 1977, deleted subsection (a) and amended subsection (b) as follows:

SECTION 4. The provisions of Section 48 (b) and Section 48 (c), Chapter VIII of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant thru himself or thru his predecessor-in-interest under a bona fide claim of ownership since June 12, 1945.

Likewise, Presidential Decree No. 1529 (PD No. 1529), otherwise known as the "Property Registration Decree," which was enacted on June 11, 1978, codified all the laws relative to the registration of property. Section 14 thereof provides inter alia:

Section 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.

From the aforequoted provisions, it is explicit that Section 14(1) of PD No. 1529 in relation to Com. Act No. 141, as amended, an applicant for judicial confirmation of imperfect and incomplete title to an alienable and disposable land in the public domain must prove that he and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of an alienable and disposable land under a bona fide claim of ownership since June 12, 1945, or earlier. On the other hand, under Section 14(2) of PD No. 1529, in relation to Com. Act No. 141, as amended, the applicant must prove that he and his predecessors-in-interest have been, prior to the effectivity of PD No. 1073 on January 25, 1977, in open, continuous, exclusive and notorious possession and occupation of agricultural lands of public domain, under a bona fide claim of acquisition of ownership for at least 30 years, or at least since January 24, 1947.^[20]

Stated differently, when PD No. 1073 was passed on January 25, 1977, the requirement for possession and occupation for a period of 30 years was changed to possession and occupation since June 12, 1945, or earlier. Hence, when an application under Section 48(b) of Com. Act No. 141, as amended, is filed after the promulgation of PD No. 1073, the applicant should allege and prove possession and occupation that dated back to June 12, 1945, or earlier. Nonetheless, vested rights may have been acquired under Section 48(b) prior to its amendment by PD No. 1073. However, it must be shown that the applicant's possession and occupation is at least 30 years already prior to the passage of PD No. 1073.

It should be stressed also that possession alone is insufficient to acquire title to alienable lands of the public domain because the law requires possession and occupation. As held in *Republic of the Philippines v. Alconaba*:^[21]

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 other. 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 an applicant to qualify, his possession