

## SECOND DIVISION

[ G.R. No. 223763, November 23, 2020 ]

**ADORACION L. BASILIO AND LOLITA P. LUCERO, PETITIONERS,  
VS. PERLA CALLO, RESPONDENT.**

### DECISION

**PERLAS-BERNABE, J.:**

Before the Court is a petition for review on *certiorari*<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated September 30, 2015 and the Resolution<sup>[3]</sup> dated March 18, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 97617, which reversed and set aside the Decision<sup>[4]</sup> dated July 5, 2011 of the Regional Trial Court of Iba, Zambales, Branch 71 (RTC) in Civil Case No. RTC-2450-I that granted the complaint for reconveyance, *accion publiciana*, and cancellation of title with damages filed by petitioners Adoracion L. Basilio and Lolita P. Lucero (Lolita; collectively, petitioners) against respondent Perla Callo (respondent).

#### The Facts

The instant controversy stemmed from a complaint<sup>[5]</sup> for reconveyance, *accion publiciana*, and cancellation of title with damages filed by petitioners against respondent before the RTC, seeking to: (a) recover a 12,459-square meter parcel of land located at West Dirita, San Antonio, Zambales, designated as Lot No. 4462 (subject lot), covered by Original Certificate of Title (OCT) No. P-24666<sup>[6]</sup> in respondent's name; and (b) annul OCT No. P-24666.

Petitioners claimed to be direct descendants of Eduveges Bafiaga<sup>[7]</sup> (Eduveges) who died intestate on September 24, 1921, leaving several parcels of land, including the subject lot which was declared in Eduveges' name. Per Final Project of Partition<sup>[8]</sup> of Eduveges' estate executed in 1973,<sup>[9]</sup> the subject lot was awarded to petitioners, among others, as children of Eduveges' daughter Rufina Pascasio (Rufina) who passed away on December 30, 1943.<sup>[10]</sup>

On March 25, 1971, Librada<sup>[11]</sup> Lucero, one of Rufina's eight (8) children,<sup>[12]</sup> mortgaged a one-half (1/2) undivided portion of the subject lot to spouses Edilberto and respondent Perla Callo (Sps. Callo) for the amount of P2,800.00 under a Deed of Mortgage of Real Property<sup>[13]</sup> (1971 mortgage), which allowed Sps. Callo to enter and till the land until payment of the loan.<sup>[14]</sup> In March 1974, a 5/8 portion of the same lot was mortgaged<sup>[15]</sup> to Sps. Callo by Librada, petitioners and their other sibling, Remedios<sup>[16]</sup> (collectively, *Luceros*), for the amount of P6,300.00,<sup>[17]</sup> while the remaining 3/8 was mortgaged to Eulalia Callo, Edilberto's father, for the amount of P3,800.00 (1974 mortgage). The mortgage, which allowed the mortgagees to

cultivate the land, was redeemable within five (5) years.<sup>[18]</sup> The mortgage was supposedly extinguished by the full payment of the loan on March 29, 1996, and the corresponding Release of Mortgage<sup>[19]</sup> (1996 Release of Mortgage) was executed by Sps. Callo. Thereafter, petitioners demanded Sps. Callo to vacate the subject lot but they refused. Instead, they filed a petition for security of tenure against Lolita before the Department of Agrarian Reform Adjudication Board (DARAB), seeking to be recognized as tenants over the subject lot, and not to be ejected therefrom, which was, however, dismissed.<sup>[20]</sup>

On May 25, 2006, petitioners went to Olongapo City to process the survey of the subject lot preliminary to its titling in their names, but learned that the same was already registered in the name of respondent under OCT No. P-24666, prompting the filing of the complaint alleging that the said title was secured through fraud and under a fictitious and anomalous claim of ownership.<sup>[21]</sup>

In her Answer with Compulsory Counterclaim,<sup>[22]</sup> respondent averred that: (a) she acquired her title legally after complying with the requirements of the law; (b) whatever rights petitioners may have over the subject lot had long been waived, the subject lot being a public land, untitled, with no pending application for patent prior to her application; (c) she had been in uninterrupted possession of the subject lot for over 35 years publicly in the concept of owner; and (d) petitioners have no cause of action against her and are not the real parties-in-interest.<sup>[23]</sup>

### **The RTC Ruling**

In a Decision<sup>[24]</sup> dated July 5, 2011, the RTC found that respondent committed fraud in procuring a free patent and later, a torrens title in her name when she: (a) misrepresented that she had lawful claim to the subject lot; and (b) concealed the fact that her occupancy and possession thereof were by virtue of a mortgage which had already been terminated. Thus, it declared OCT No. P-24666 null and void *ab initio*, and without legal force and effect, and accordingly, ordered respondent to reconvey and peacefully surrender possession of the subject lot to petitioners, and to pay P50,000.00 attorney's fees and the costs of suit.<sup>[25]</sup>

Aggrieved, respondent appealed to the CA.

### **The CA Ruling**

In a Decision<sup>[26]</sup> dated September 30, 2015, the CA reversed and set aside the RTC Decision, holding that petitioners failed to show clear and convincing evidence of their title to the subject lot and the fact of fraud on the part of respondent in registering the same, and thereby dismissed the complaint.<sup>[27]</sup>

Dissatisfied, petitioners sought reconsideration, which was, however, denied in a Resolution<sup>[28]</sup> dated March 18, 2016; hence, this petition.

### **The Issue Before the Court**

The sole issue for the Court's resolution is whether or not the CA correctly dismissed

the complaint.

### The Court's Ruling

The petition is partly meritorious.

At the time respondent filed her free patent application before the Community Environment and Natural Resources Office III-3, Olongapo City (CENRO) on February 9, 2006,<sup>[29]</sup> the governing law was Section 44, Chapter VII of Commonwealth Act No. (CA) 141,<sup>[30]</sup> as amended by Republic Act No. (RA) 6940,<sup>[31]</sup> which laid down the requirements an applicant must satisfy before a free patent is granted, thus:

SECTION 44. Any **natural-born citizen of the Philippines** who is **not the owner of more than twelve (12) hectares** and who, for **at least thirty years (30) prior to the effectivity of this amendatory Act**, has **continuously occupied and cultivated**, either by himself or through his predecessors-in-interest a tract or tracts of **agricultural public lands** subject to disposition, who shall **have paid the real estate tax thereon while the same has not been occupied by any person** shall be entitled, under the provisions of this Chapter to have a free patent issued to him for such tract or tracts of such land not to exceed twelve (12) hectares. (Emphases supplied).

The case of *Taar v. Lawan*<sup>[32]</sup> summarized the concurring requirements a free patent applicant must satisfy, namely: (1) the applicant must be a natural-born citizen of the Philippines; (2) the applicant must not own more than 12 hectares of land; (3) the applicant or his or her predecessor-in-interest must have continuously occupied and cultivated the land; (4) the continuous occupation and cultivation must be for a period of at least 30 years before April 15, 1990, which is the date of effectivity of RA 6940; and (5) payment of real estate taxes on the land while it has not been occupied by other persons.<sup>[33]</sup>

In the present case, respondent admitted having come into possession and cultivation of the subject lot only by virtue of the mortgage executed by the *Luceros*.<sup>[34]</sup> Hence her possession fell short of the legal requisites considering that: (a) possession was **not** (i) in the concept of owner since she had effectively affirmed petitioners' ownership when she and her husband filed the DARAB petition for security of tenure as tenants in 1996 after the mortgage was redeemed and (ii) continuous for at least 30 years prior to April 15, 1990 or at least since April 15, 1960 as required by law; and (b) payment of real taxes was made after the same land had been occupied and continuously declared under the name of Eduveges.

Under Section 91 of CA 141, as amended, "the statements made in the application shall be considered as essential conditions and parts of any concession, title, or permit issued on the basis of such application, and any false statements therein or omission of facts altering, changing, or modifying the consideration of the facts set forth in such statements, and any subsequent modification, alteration, or change of the material facts set forth in the application shall *ipso facto* produce the cancellation of the concession, title, or permit granted. x x x." While respondent's free patent application was not presented before the courts below, records show

that she admitted the fact of mortgage, and that she unilaterally appropriated the subject lot despite the redemption of the mortgage. Only the possession acquired and enjoyed in the concept of owner can serve as a title for acquiring dominion.<sup>[35]</sup> Verily, possession by virtue of a mortgage, especially one which had already been redeemed is incompatible with possession in the concept of owner. For this reason alone, respondent was not entitled to a free patent to the subject lot.

Neither can respondent claim possession in the concept of owner by virtue of the mere lapse of the redemption period because the same would amount to *pactum commissorium*, which is prohibited by law. Settled is the rule that the mortgagor's default does not operate to vest the mortgagee the ownership of the mortgaged property. Before perfect title over a mortgaged property may be secured by the mortgagees, they must, in case of non payment of the debt, foreclose the mortgage first and thereafter purchase the mortgaged property at the foreclosure sale.<sup>[36]</sup> Thus, upon the expiration of the five (5) year redemption period, mortgagees Sps. Callo *should have* foreclosed the mortgage, but they did not do so. *Instead*, they accepted payment from Lolita despite the lapse of the redemption period, and executed the corresponding release of mortgage. Respondent even admitted that the March 1974 mortgage, which was a renewal of the 1971 mortgage,<sup>[37]</sup> had indeed been redeemed.<sup>[38]</sup>

Respondent's failure to state in her free patent application that the mortgage by reason of which she took possession of the subject lot had already been redeemed, and that she unilaterally appropriated the subject lot without foreclosing the mortgage amounted to a concealment of material facts belying claim of possession in the concept of owner. These acts were constitutive of fraud and misrepresentation within the context of Section 91 of CA 141, as amended, and were sufficient to cause *ipso facto* the cancellation of her free patent and title. Accordingly, the nullity of respondent's Free Patent No. 037109 0617641 and the title issued pursuant thereto should be declared.

On the other hand, petitioners' claim of ownership over the subject lot was based on their alleged right as heirs of the averred owner Eduveges, who had declared the same for tax purposes under her name, and which rights they acquired on the basis of a Final Project of Partition<sup>[39]</sup> of Eduveges' estate. Records show that Eduveges was the prior occupant and cultivator of the subject lot, and was the recorded survey claimant as of 1944,<sup>[40]</sup> whose heirs had continuously possessed and cultivated the subject lot until the same was mortgaged to Sps. Callo in 1974, redeemable within five (5) years.<sup>[41]</sup>

At that time, the law governing the acquisition of alienable and disposable agricultural lands of the public domain was CA 141, as amended by RA 3872.<sup>[42]</sup> Applicants were free to avail of any of the two (2) modes, *i.e.*, administrative legalization or judicial legalization. However, under both modes, there must be continuous occupation and cultivation either by the applicant himself or through his predecessors-in-interest of agricultural lands of the public domain for a certain length of time. Section 44<sup>[43]</sup> thereof, which governs the administrative legalization by free patent requires possession from July 4, 1926 or prior thereto. On the other hand, Section 48 (b)<sup>[44]</sup> provides that when the conditions specified therein - *i.e.* (a) continuous, exclusive, and notorious possession and occupation of agricultural

lands of the public domain, (b) *bona fide* claim of acquisition or ownership, and (c) possession and occupation for at least thirty years - are complied with, **the possessor is deemed to have acquired, by operation of law, a right to a government grant, without necessity of a certificate of title being issued, and the land ceases to be part of the public domain and beyond the authority of the Director of Lands.** Thus, if by legal fiction, the possessor had acquired the land in question by grant of the State, it had already ceased to be part of the public domain and **had become private property, at least by presumption, beyond the control of the Director of Lands.**<sup>[45]</sup> Case law has, thus, recognized, that in such cases, confirmation proceedings would, in truth be little more than a formality, at the most limited to ascertaining whether the possession claimed is of the required character and length of time; and registration thereunder would not confer title, but simply recognize a title already vested. The proceedings would not *originally* convert the land from public to private land, but only **confirm such a conversion already effected by operation of law from the moment the required period of possession became complete.**<sup>[46]</sup>

In this case, no less than the land investigator who recommended the grant of respondent's application for free patent recognized petitioners' and their predecessor's occupation and cultivation as early as 1944. Thus, when the mortgage was constituted in 1974,<sup>[47]</sup> petitioners have been possessors in the concept of owners of the subject lot, which is an alienable and disposable land,<sup>[48]</sup> for at least thirty (30) years, and as such, have in their favor the **conclusive presumption** that the subject lot had ceased to be public land.

That the subject lot was not registered under the name of the heirs of Eduveges (Eduveges heirs) prior to the issuance of OCT No. P-24666 in respondent's name would not effectively deny the remedy of reconveyance to the former. An action for reconveyance is a legal and equitable remedy granted to the rightful landowner, whose land was wrongfully or erroneously registered in the name of another, to compel the registered owner to transfer or reconvey the land to him.<sup>[49]</sup> At the time the subject lot was mortgaged in 1974, the Eduveges heirs already possessed the essential requisites for judicial confirmation of an imperfect title under CA 141, having completed the required thirty (30)-year period of open, continuous, adverse and public possession of the subject lot in the concept of owners. Thus, it cannot be gainsaid that the Eduveges heirs, by themselves and through their predecessors-in-interest, had already acquired a **vested right** over the subject lot, which conferred an effective title on them as such possessors on account of which the land ceased to be public, to become private property, at least by presumption. Notably, respondent continuously recognized the Eduveges heirs' ownership as she even allowed the redemption of the subject lot despite the long lapse of the redemption period, and thereafter, filed the DARAB case seeking to be recognized as tenants thereon. If at all, she only started claiming an adverse interest thereon in 2006 when she tiled the free patent application, secured an assessment notice over the subject lot, and paid the realty taxes thereon for the first time in her name. Meanwhile, the subject lot was continuously declared in Eduveges' name. Considering the foregoing, the Eduveges heirs' real right of possession over the subject lot cannot be said to have already been lost.<sup>[50]</sup> Hence, petitioners' right, as heirs of Eduveges, to ask for the reconveyance of the subject lot is irrefutable.

As a rule, a free patent that was fraudulently acquired, and the certificate of title