

THIRD DIVISION

[G.R. No. 204617, July 10, 2017]

**ESPERANZA BERBOSO, PETITIONER, VS. VICTORIA CABRAL,
RESPONDENT.**

DECISION

TIJAM, J.:

Before Us is a Petition for Review on *Certiorari* filed by petitioner Esperanza Berboso assailing the Decision^[1] dated May 7, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 100831, which reversed and set aside the Decision^[2] dated August 30, 2006 of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 12283, dismissing the case filed by respondent Victoria Cabral for cancellation of emancipation patents (EP).

The pertinent facts of the case are as follows:

The subject matter of this case is a parcel of land located in Barangay Saluysoy, Municipality of Meycauyan, Bulacan containing an area of 23,426 square meters (subject land). The subject land was awarded to Alejandro Berboso (Alejandro) by the Department of Agrarian Reform (DAR) on September 11, 1981 pursuant to Presidential Decree (P.D.) No. 27^[3] by virtue of a Certificate of Land Transfer (CLT) No. 0-056450. The same was duly registered with the Register of Deeds of Meycauyan, Bulacan.

On July 27, 1987, CLT No. 0-056450 was replaced by EP No. 445829 covering 22,426 sq m and EP No. 445830 covering the remaining 1,000 sq m.

On November 17, 1992, after Alejandro had fully complied with all the requirements for the final grant of title, the Register of Deeds of Meycauyan, Bulacan issued Transfer Certificate of Title (TCT) No. EP-046 and TCT No. EP-047 in the name of Alejandro. TCT Nos. EP-046 and EP-047 thereby cancelled EP Nos. 445829 and 445830.

On September 8, 1993, respondent filed with the DAR Provincial Agrarian Reform Adjudication Board (PARAB) her first petition to cancel EP Nos. 445829 and 445830.

Meanwhile, Alejandro died in 1994. After his death, his heirs settled his estate and executed an Extra-Judicial Settlement of Estate. Thus, on April 15, 1996, TCT Nos. EP-046 and EP-047 were cancelled and TCT Nos. 263885(M) and 263886(M) were issued in the name of the heirs of Alejandro, namely, Esperanza Vda. De Berboso, Juan Berboso, Benita Berboso Gonzales, Adelina Berboso Villegas and Rolando Berboso.

The PARAB rendered a decision in favor of Alejandro and accordingly affirmed the

validity of the EP Nos. 445829 and 445830. Respondent's appeal to the DARAB was denied. Respondent elevated the case to the CA via a Petition for Review docketed as CA-G.R. SP No. 44666. The CA in its Decision^[4] dated April 21, 1998, affirmed the decisions of the PARAB and the DARAB.

Respondent assailed the CA decision to this Court, but on December 9, 1998 Resolution,^[5] this Court dismissed the respondent's petition. Pending the resolution of the motion for reconsideration (MR) filed by the respondent, the latter filed on February 26, 1999, her second petition for the cancellation of the said EP Nos. 445829 and 445830 before the PARAB docketed as DARAB Case No. R-03-02-8506'99. Respondent claimed that petitioner sold a portion of the subject land to a certain Rosa Fernando (Fernando) within the prohibitory period under the existing rules and regulations of the DAR and prayed again for the cancellation of EP Nos. 445829 and 445830 awarded to Alejandro. Petitioner specifically denied the allegation of respondent that she sold a portion of the subject land to Fernando.

On March 17, 1999, this Court, in its Resolution^[6] denied with finality the MR filed by respondent.

Then, on December 20, 2000, the PARAB issued its Decision,^[7] in connection with the second petition of respondent, granting respondent's petition and ordered as follows:

WHEREFORE, judgment is hereby rendered in favor of the [respondent] and against [petitioner] and order is hereby issued:

1. ORDERING [petitioner] and other persons acting in her behalf to vacate the landholdings in question, subject of this present litigation;
2. ORDERING the cancellation of Emancipation Patent Nos. 445829 and 445830;
3. DIRECTING the DAR officers and personnel concerned to re-allocate the subject landholdings in favor of qualified farmer beneficiaries in accordance with its existing DAR laws, rules and regulations on the matter.

No pronouncement as to costs.

SO ORDERED.^[8]

Petitioner appealed the PARAB's decision to the DARAB, which the latter granted in its Decision^[9] dated August 30, 2006 in DARAB Case No. 12283, thus:

WHEREFORE, premises considered, the Decision of the Honorable Adjudicator a quo dated December 20, 2000 is hereby **SET ASIDE**. **A NEW JUDGMENT** is hereby rendered **DISMISSING** the petition filed by petitioner-appellee for lack of merit.

SO ORDERED.^[10]

Respondent herein appealed the DARAB's decision to the CA docketed as CA-G.R. SP No. 100831. The CA in its Decision^[11] dated May 7, 2012, reversed the DARAB and reinstated the PARAB's decision, to wit:

WHEREFORE, foregoing premises considered, the Petition for Review is **GRANTED** and the assailed 30 August 2006 Decision and the Resolution dated 21 June 2007 of the DARAB is [sic] **REVERSED** and **SET ASIDE**. Accordingly, the 20 December 2000 Decision of the Provincial Adjudicator is **REINSTATED**.

SO ORDERED.^[12]

Aggrieved, petitioner brought the present Petition for Review on *Certiorari* raising the following issues, viz.:

- I. DOES THE PROVINCIAL ADJUDICATOR HAVE JURISDICTION TO ACT ON A SECOND PETITION FOR CANCELLATION OF AN EMANCIPATION PATENT WHICH HAS ALREADY BEEN CANCELLED, FILED AFTER THE DEATH OF THE ORIGINAL GRANTEE/BENEFICIARY OF THE SAID EMANCIPATION PATENT[,] AND ONG REPLACED BY A CERTIFICATE OF TITLE ISSUED IN THE NAME OF THE PETITIONER AND HER CHILDREN WHO WERE NOT EVEN IMPEADED IN THE SAID PETITION AND WHEREIN THE PARTIES HAVE NO TENANCY RELATIONSHIP WHATSOEVER;
- II. CAN THE RESPONDENT QUESTION THE VALIDITY OF THE TORRENS TITLE ISSUED TO THE PETITIONER AND TO HER CHILDREN BEFORE THE PROVINCIAL ADJUDICATOR WITHOUT VIOLATING THE EXPRESS PROVISION OF SECTION 48 OF PRESIDENTIAL DECREE NO. 1529 WHICH EXPRESSLY PROVIDES THAT A CERTIFICATE OF TITLE SHALL NOT BE SUBJECT TO COLLATERAL ATTACK, IT CANNOT BE ALTERED, MODIFIED, OR CANCELLED EXCEPT IN A DIRECT PROCEEDING IN ACCORDANCE WITH LAW AND DOES THE PROVINCIAL ADJUDICATOR HAVE ANY JURISDICTION TO ISSUE AN ORDER WHICH WOULD AFFECT THE RIGHTS, OWNERSHIP, INTEREST AND POSSESSION OF THE REGISTERED OWNER OF A CERTIFICATE OF TITLE WHO WERE NOT EVEN IMPEADED IN THE PETITION;
- III. WHEN WILL THE TEN YEARS PROHIBITORY PERIOD PROVIDED FOR IN SECTION 24 OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (R.A. NO. 6657) COMMENCE, IS IT FROM THE DATE THE LAND WAS AWARDED TO THE BENEFICIARY, OR WILL IT COMMENCE TO RUN ONLY FROM THE DATE THE CLOA OR EMANCIPATION PATENT WAS ISSUED TO THE BENEFICIARY?
- IV. UNDER THE RULE OF EVIDENCE, WHICH WEIGHT [sic] MORE, A FINAL DECISION RENDERED BY A COMPETENT COURT OR THE FINDINGS AND OPINION OF THE PROVINCIAL ADJUDICATOR BASE [sic] ON UNVERIFIED AND UNIDENTIFIED PRIVATE DOCUMENTS WHOSE ORIGINAL COPY WERE NOT EVEN PRESENTED[;]

V. DOES FORUM SHOPPING AND THE PRINCIPLE OF RES JUDICATA APPLIES [sic] IN THIS SECOND PETITION FOR CANCELLATION OF EMANCIPATION PATENT FILED BY THE RESPONDENT[.]^[13]

Ultimately, the issues to be resolved in this case are: 1) whether the principle of *res judicata* and forum shopping apply in this case, such that the second petition for cancellation of EP Nos. 445829 and 445830 was barred by Our decision in G.R. No. 135317 dismissing respondent's first petition; 2) whether the petitioner sold the subject land to a certain Fernando in violation of the prohibition to transfer under the provisions of P.D. No. 27; and 3) whether the petition for cancellation of EP Nos. 445829 and 445830 constitute as a collateral attack to the certificate of title issued in favor of Alejandro.

The Court's Ruling

At the outset, a Rule 45 petition is limited to questions of law, and the factual findings of the lower courts are, as a rule, conclusive on this Court. Despite this Rule 45 requirement, however, Our pronouncements have likewise recognized exceptions, ^[14] such as the situation obtaining here - where the tribunals below conflict in their factual findings and when the judgment is based on a misapprehension of facts.^[15]

I

The principle of *res judicata* and forum shopping does not apply in the present case.

Petitioner alleges that the respondent in filing the second petition for cancellation of EP Nos. 445829 and 445830 raised issues which have been already resolved by this Court in the first petition. The second petition involves the same subject land, same parties, same cause of action and same reliefs prayed for. The respondent filed the second petition while the MR in G.R. No. 135317 was still pending for resolution before this Court. As such, respondent was guilty of forum shopping. Further, petitioner claims that the elements of *litis pendentia* were clearly present in this case. In the first petition, the validity of EP Nos. 445829 and 445830 was affirmed by this Court in G.R. 135317; as such, the same constitutes *res judicata* to the second petition.

We are not persuaded.

In *Daswani v. Banco de Oro Universal Bank, et al.*,^[16] the Court elucidated that:

In determining whether a party violated the rule against forum shopping, the most important factor to consider is whether the elements of *litis pendentia* concur, namely: a) there is identity of parties, or at least such parties who represent the same interests in both actions; b) there is identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and, c) that the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.^[17]

Meanwhile, in *Club Filipino Inc., et al. v. Bautista, et al.*,^[18] the Court enumerated, to wit:

The elements of *res judicata* are: 1) the judgment sought to bar the new action must be final; 2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; 3) the disposition of the case must be a judgment on the merits; and 4) there must be as between the first and second action, identity of parties, subject matter and causes of action.^[19]

In the case at bar, the first petition for cancellation of EP Nos. 445829 and 445830 was based on the validity of its issuance in favor of Alejandro, while the second petition was based on the alleged violation of the prohibition on the sale of the subject land. As such, there is no, as between the first petition and the second petition, identity of causes of action. Therefore, the final decision in G.R. No. 135317 does not constitute as *res judicata* on the second petition.

II

Respondent was not able to prove that petitioner violated the prohibition on the sale of the subject land.

It is a basic rule of evidence that each party must prove his affirmative allegation.^[20] The party who alleges an affirmative fact has the burden of proving it because mere allegation of the fact is not evidence of it. Verily, the party who asserts, not he who denies, must prove.^[21]

Respondent alleged that petitioner sold a portion of the subject land to Fernando as evidenced by the *Kasunduan*^[22] dated December 17, 1994. As such, respondent bears the burden of proving that there is indeed a sale between petitioner and Fernando, rather than petitioner to prove that there is no sale.

Examination of the records will show that the *Kasunduan* dated December 17, 1994 is a mere photocopy; as such, the same cannot be admitted to prove the contents thereof. The best evidence rule requires that the highest available degree of proof must be produced. For documentary evidence, the contents of a document are best proved by the production of the document itself to the exclusion of secondary or substitutionary evidence.^[23]

Rule 130, Section 3 of the Rules of Court states that:

Sec. 3. *Original document must be produced; exceptions.* - When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it