780 Phil. 764

SECOND DIVISION

[G.R. No. 199537, February 10, 2016]

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. ANDREA TAN, RESPONDENT.

D E C I S I O N

BRION, J.:

This is a petition for review on *certiorari* filed by the Republic of the Philippines (*Republic*) from the May 29, 2009 decision[1] and October 18, 2011 resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CEB-CV No. 00702. The CA denied the Republic's appeal from **LRC Case No. N-144**[3] wherein the Municipal Trial Court in Consolacion, Cebu, granted respondent Andrea Tan's application for land title registration.

Antecedents

On October 2, 2002, Tan applied for the original registration of title of **Lot No. 4080, Cad. 545-D (new)** situated in Casili, Consolacion, Cebu (*the subject lot*). She alleged that she is the absolute owner in fee simple of the said 7,807 square-meter parcel of residential land she purchased from a certain Julian Gonzaga on September 17, 1992. Her application was docketed as LRC Case No. N-144.

After complying with the jurisdictional requirements, the land registration court issued an order of general default, excepting the State which was duly represented by the Solicitor General.

During the trial, Tan proved the following facts:

1. The subject lot is within Block 1, Project No. 28, per LC Map No. 2545 of Consolacion, Cebu;

2. The subject lot was declared alienable and disposable on September 1, 1965, pursuant to Forestry Administrative Order No. 4-1063;

3. Luciano Gonzaga who was issued Tax Declaration Nos. 01465 in 1965 and 02983 in 1972 initially possessed the subject lot.

4. After Luciano's death, Julian Gonzaga inherited the subject lot;

5. Andrea Tan purchased the subject lot from Julian Gonzaga on September 17, 1992;

6. She, through her predecessors, had been in peaceful, open, continuous, exclusive, and notorious possession of the subject lot in the concept of an owner for over thirty (30) years.

On 28 April 2004, the land registration court granted Tan's application. The court confirmed her title over the subject lot and ordered its registration.

The Republic appealed the case to the CA, arguing that Tan failed to prove that she is a Filipino citizen who has been in open, continuous, exclusive, and notorious possession and occupation of the subject lot, in the concept of an owner, since June 12, 1945, or earlier, immediately preceding the filing of her application. The appeal was docketed as **CA-G.R. CEB-CV No. 00702.**

On May 29, 2009, the CA denied the appeal. The CA observed that under the Public Land Act, there are two kinds of applicants for original registration: (1) those who had possessed the land since June 12, 1945; and (2) those who already acquired the property through prescription. The respondent's application fell under the second category.

The CA noted that before land of the public domain can be acquired by prescription, it must have been declared alienable and disposable agricultural land. The CA pointed to the certification issued by the Community Environment and Natural Resources Office (CENRO) as evidence that the subject was classified as alienable and disposable on September 1, 1965, pursuant to Land Classification Project No. 28. The CA concluded that Tan had already acquired the subject lot by *prescription.*

On July 2, 2009, the Republic moved for reconsideration. Citing *Republic v. Herbieto*,[4] it argued that an applicant for judicial confirmation of title must have been in possession and occupation of the subject land since June 12, 1945, or earlier, and that the subject land has been likewise already declared alienable and disposable since June 12, 1945, or earlier.[5]

On October 18, 2011, the CA denied the motion for reconsideration citing the then recent case of *Heirs of Mario Malabanan v. Rep. of the Philippines*[6] which abandoned the ruling in Herbieto. Malabanan declared that our law does not require that the property should have been declared alienable and disposable since June 12, 1945, as long as the declaration was made before the application for registration is filed.[7]

On January 5, 2012, the Republic filed the present petition for review on *certiorari.*

The Petition

The Republic argues: (1) that the CA misapplied the doctrine in *Malabanan*; and (2) that the CENRO certification and tax declarations presented were insufficient to prove that the subject lot was no longer intended for public use.

Meanwhile, the respondent insists that she has already proven her title over the subject lot. She maintains that the classification of the subject lot as alienable and disposable public land by the DENR on September 1, 1965, per Land Classification

Project No. 28, converted it into patrimonial property of the State.

From the submissions, the lone issue is whether a declaration that Government-owned land has become alienable and disposable sufficiently converts it into patrimonial property of the State, making it susceptible to acquisitive prescription.

Our Ruling

We find the petition meritorious.

All lands of the public domain belong to the State. It is the fountain from which springs any asserted right of ownership over land. Accordingly, the State owns all lands that are not clearly within private ownership. This is the Regalian Doctrine which has been incorporated in all of our Constitutions and repeatedly embraced in jurisprudence.[8] Under the present Constitution, lands of the public domain are not alienable except for **agricultural lands.**[9]

The Public Land Act[10] (*PLA*) governs the classification, grant, and disposition of alienable and disposable lands of the public domain. It is the primary substantive law on this matter. Section 11 thereof recognizes judicial confirmation of imperfect titles as a mode of disposition of alienable public lands.[11] Relative thereto, Section 48(b) of the PLA identifies who are entitled to judicial confirmation of their title:

> (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, since June 12, 1945, immediately preceding the filing of the application for confirmation of title, except when prevented by war or force majeure. Those 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. (As amended by PD 1073.)

The Property Registration Decree[12] (*PRD*) complements the PLA by prescribing how registrable lands, including alienable public lands, are brought within the coverage of the Torrens system. Section 14 of the PRD enumerates the qualified applicants for original registration of title:

> 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;

(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.[13]

The PRD also recognizes prescription as a mode of acquiring ownership under the Civil Code.[14] Nevertheless, prescription under Section 14(2) must not be confused with judicial confirmation of title under Section 14(1). Judicial confirmation of title requires:

1. That the applicant is a Filipino citizen;[15]

2. That the applicant, by himself or through his predecessors-in- interest, has been in open, continuous, exclusive and notorious possession and occupation of the property since June 12, 1945;[16]

3. That the property had been declared *alienable* and *disposable* as of the filing of the application.[17]

Only private property can be acquired by prescription. Property of public dominion is outside the commerce of man.[18] It cannot be the object of prescription[19] because prescription does not run against the State in its sovereign capacity.[20] However, when property of public dominion is no longer intended for public use or for public service, it becomes part of the patrimonial property of the State.[21] When this happens, the property is withdrawn from public dominion and becomes property of private ownership, albeit still owned by the State.[22] The property is now brought within the commerce of man and becomes susceptible to the concepts of legal possession and prescription.

In the present case, respondent Tan's application is not anchored on judicial confirmation of an imperfect title because she does not claim to have possessed the subject lot since June 12, 1945. Her application is based on acquisitive prescription on the claim that: (1) the property was declared alienable and disposable on September 1, 1965; and (2) she had been in open continuous, public, and notorious possession of the subject lot in the concept of an owner for over thirty (30) years.

In our 2009 decision and 2013 resolution[23] in *Malabanan*, we already held *en banc* that a declaration that property of the public dominion is alienable and disposable does not *ipso facto* convert it into patrimonial property. We said:

Accordingly, there must be an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. **Without such express declaration, the**