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SECOND DIVISION

[G.R. No. 173423, March 05, 2014]

SPS. ANTONIO FORTUNA AND ERLINDA FORTUNA, PETITIONERS, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

BRION, J.:

Before the Court is a petition for review on *certiorari*[1] filed by the petitioners, spouses Antonio and Erlinda Fortuna, assailing the decision dated May 16, 2005[2] and the resolution dated June 27, 2006[3] of the Court of Appeals (CA) in CA-G.R. CV No. 71143. The CA reversed and set aside the decision dated May 7, 2001[4] of the Regional Trial Court (*RTC*) of San Fernando, La Union, Branch 66, in Land Registration Case (*LRC*) No. 2372.

THE BACKGROUND FACTS

In December 1994, the spouses Fortuna filed an **application for registration** of a 2,597-square meter land identified as **Lot No. 4457**, situated in Bo. Canaoay, San Fernando, La Union. The application was filed with the RTC and docketed as **LRC No. 2372**.

The spouses Fortuna stated that Lot No. 4457 was originally owned by **Pastora Vendiola**, upon whose death was succeeded by her children, Clemente and Emeteria Nones. Through an affidavit of adjudication dated August 3, 1972, Emeteria renounced all her interest in Lot No. 4457 in favor of Clemente. Clemente later sold the lot in favor of Rodolfo Cuenca on May 23, 1975. Rodolfo sold the same lot to the spouses Fortuna through a deed of absolute sale dated May 4, 1984.

The spouses Fortuna claimed that they, through themselves and their predecessors-in-interest, have been **in quiet, peaceful, adverse and uninterrupted possession of Lot No. 4457 for more than 50 years**, and submitted as evidence the lot's survey plan, technical description, and certificate of assessment.

Although the respondent, Republic of the Philippines (*Republic*), opposed the application,[5] it did not present any evidence in support of its opposition. Since no private opposition to the registration was filed, the RTC issued an order of general default on November 11, 1996 against the whole world, except the Republic.[6]

In its Decision dated May 7, 2001,[7] the RTC granted the application for registration in favor of the spouses Fortuna. The RTC declared that "[the spouses Fortuna] have established [their] possession, including that of their

predecessors-in-interest of the land sought to be registered, has been open, continuous, peaceful, adverse against the whole world and in the concept of an owner **since 1948, or for a period of over fifty (50) years."**[8]

The Republic appealed the RTC decision with the CA, arguing that the spouses Fortuna did not present an official proclamation from the government that the lot has been classified as alienable and disposable agricultural land. It also claimed that the spouses Fortuna's evidence – **Tax Declaration No. 8366** – showed that possession over the lot dates back only to 1948, thus, failing to meet the June 12, 1945 cut-off period provided under Section 14(1) of Presidential Decree (*PD*) No. 1529 or the *Property Registration Decree* (*PRD*).

In its decision dated May 16, 2005,[9] **the CA reversed and set aside the RTC decision.** Although it found that the spouses Fortuna were able to establish the alienable and disposable nature of the land,[10] they failed to show that they complied with the length of possession that the law requires, i.e., since June 12, 1945. It agreed with the Republic's argument that Tax Declaration No. 8366 only showed that the spouses Fortuna's predecessor-in-interest, Pastora, proved that she had been in possession of the land only since 1948.

The CA denied the spouses Fortuna's motion for reconsideration of its decision in its resolution dated June 27, 2006.[11]

THE PARTIES' ARGUMENTS

Through the present petition, the spouses Fortuna seek a review of the CA rulings.

They contend that the applicable law is Section 48(b) of Commonwealth Act No. 141 or the *Public Land Act (PLA)*, as amended by Republic Act (RA) No. 1942. **RA No. 1942 amended the PLA by requiring *30 years*** of open, continuous, exclusive, and notorious possession to acquire imperfect title over an agricultural land of the public domain. **This 30-year period, however, was removed by PD No. 1073 and instead required that the possession should be *since June 12, 1945*.** The amendment introduced by PD No. 1073 was carried in Section 14(1) of the PRD. [12]

The spouses Fortuna point out that **PD No. 1073 was issued on January 25, 1977 and published on May 9, 1977**; and the PRD was issued on June 11, 1978 and published on January 2, 1979. On the basis of the Court's ruling in *Tañada, et al. v. Hon. Tuvera, etc., et al*.,[13] they allege that PD No. 1073 and the PRD should be deemed effective only on May 24, 1977 and January 17, 1979, respectively. By these dates, they claim to have already satisfied the 30-year requirement under the RA No. 1942 amendment because Pastora's possession dates back, at the latest, to 1947.

They allege that although Tax Declaration No. 8366 was made in 1948, this does not contradict that fact that Pastora possessed Lot No. 4457 *before 1948*. The failure to present documentary evidence proving possession earlier than 1948 was explained by Filma Salazar, Records Officer of the Provincial Assessor's Office, who testified that the records were lost beyond recovery due to the outbreak of World War II.

Notwithstanding the absence of documents executed earlier than 1948, the spouses Fortuna contend that evidence exists indicating that Pastora possessed the lot even before 1948. *First*, Tax Declaration No. 8366 does not contain a statement that it is a new tax declaration. *Second*, the annotation found at the back of Tax Declaration No. 8366 states that "this declaration cancels Tax Nos. 10543[.]"[14] Since Tax Declaration No. 8366 was issued in 1948, the cancelled Tax Declaration No. 10543 was issued, at the latest, in 1947, indicating that there was already an owner and possessor of the lot before 1948. *Third*, they rely on the testimony of one Macaria Flores in **LRC No. 2373**. LRC No. 2373 was also commenced by the spouses Fortuna to register **Lot Nos. 4462, 27066, and 27098**,[15] which were also originally owned by Pastora and are adjacent to the subject Lot No. 4457. Macaria testified that she was born in 1926 and resided in a place a few meters from the three lots. She stated that she regularly passed by these lots on her way to school since 1938. She knew the property was owned by Pastora because the latter's family had constructed a house and planted fruit-bearing trees thereon; they also cleaned the area. On the basis of Macaria's testimony and the other evidence presented in LRC No. 2373, the RTC granted the spouses Fortuna's application for registration of Lot Nos. 4462, 27066, and 27098 in its decision of January 3, 2005.[16] The RTC's decision has lapsed into finality unappealed.

The spouses Fortuna claim that Macaria's testimony in LRC No. 2373 should be considered to prove Pastora's possession prior to 1948. Although LRC No. 2373 is a separate registration proceeding, it pertained to lots adjacent to the subject property, Lot No. 4457, and belonged to the same predecessor-in-interest. Explaining their failure to present Macaria in the proceedings before the RTC in LRC No. 2372, the spouses Fortuna said "it was only after the reception of evidence x x x that [they] were able to trace and establish the identity and competency of Macaria[.]"[17]

Commenting on the spouses Fortuna's petition, the Republic relied mostly on the CA's ruling which denied the registration of title and prayed for the dismissal of the petition.

THE COURT'S RULING

We deny the petition for failure of the spouses Fortuna to sufficiently prove their compliance with the requisites for the acquisition of title to alienable lands of the public domain.

The nature of Lot No. 4457 as alienable and disposable public land has not been sufficiently established

The Constitution declares that all lands of the public domain are owned by the State.[18] Of the four classes of public land, *i.e.*, agricultural lands, forest or timber lands, mineral lands, and national parks, only agricultural lands may be alienated.[19] Public land that has not been classified as alienable agricultural land remains part of the inalienable public domain. Thus, **it is essential for any applicant for registration of title to land derived through a public grant to establish foremost the alienable and disposable nature of the land**. The PLA provisions on the grant and disposition of alienable public lands, specifically, Sections 11 and

48(b), will find application only from the time that a public land has been classified as agricultural and declared as alienable and disposable.

Under Section 6 of the PLA,[20] the classification and the reclassification of public lands are the prerogative of the Executive Department. The President, through a presidential proclamation or executive order, can classify or reclassify a land to be included or excluded from the public domain. The Department of Environment and Natural Resources (DENR) Secretary is likewise empowered by law to approve a land classification and declare such land as alienable and disposable.[21] Accordingly, jurisprudence has required that an applicant for registration of title acquired through a public land grant must present incontrovertible evidence that the land subject of the application is alienable or disposable by establishing the existence of a *positive act of the government*, such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute.

In this case, the CA declared that the alienable nature of the land was established by the **notation in the survey plan**,[22] which states:

> This survey is *inside alienable and disposable* area as per Project No. 13 L.C. Map No. 1395 certified August 7, 1940. It is outside any civil or military reservation.[23]

It also relied on the **Certification dated July 19, 1999** from the DENR Community Environment and Natural Resources Office (*CENRO*) that "there is, per record, neither any public land application filed nor title previously issued for the subject parcel[.]"[24] However, we find that ***neither of the above documents is evidence of a positive act from the government reclassifying the lot as alienable and disposable agricultural land of the public domain.***

Mere notations appearing in survey plans are inadequate proof of the covered properties' alienable and disposable character.[25] These notations, at the very least, only establish that the land subject of the application for registration falls within the approved alienable and disposable area per verification through survey by the proper government office. **The applicant, however, must also present a copy of the original classification of the land into alienable and disposable land, as declared by the DENR Secretary or as proclaimed by the President.**[26] In *Republic v. Heirs of Juan Fabio*,[27] the Court ruled that

> [t]he applicant for land registration must prove that *the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable*, **and** that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO[28] or CENRO. In addition, the applicant must present **a copy of the original classification of the land into alienable and disposable, as declared by the DENR Secretary, or as proclaimed by the President.**

The survey plan and the DENR-CENRO certification are not proof that the President or the DENR Secretary has reclassified and released the public land as alienable and disposable. The offices that prepared these documents are ***not the official repositories or legal custodian*** of the issuances of the President or the DENR Secretary declaring the public land as alienable and disposable.[29]

For failure to present incontrovertible evidence that Lot No. 4457 has been reclassified as alienable and disposable land of the public domain though a positive act of the Executive Department, the spouses Fortuna's claim of title through a public land grant under the PLA should be denied.

In judicial confirmation of imperfect or incomplete title, the period of possession should commence, at the latest, as of May 9, 1947

Although the above finding that the spouses Fortuna failed to establish the alienable and disposable character of Lot No. 4457 serves as sufficient ground to deny the petition and terminate the case, we deem it proper to continue to address the other important legal issues raised in the petition.

As mentioned, the PLA is the law that governs the grant and disposition of alienable agricultural lands. Under Section 11 of the PLA, alienable lands of the public domain may be disposed of, among others, by **judicial confirmation of imperfect or incomplete title.** This mode of acquisition of title is governed by Section 48(b) of the PLA, the *original version* of which states:

> 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:
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> x x x x
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> (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, except as against the Government, **since July twenty-sixth, eighteen hundred and ninety-four**, 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. [emphasis supplied]

On June 22, 1957, the cut-off date of July 26, 1894 was replaced by a 30-year period of possession under RA No. 1942. Section 48(b) of the PLA, as amended by