

SECOND DIVISION

[G.R. No. 193747, June 05, 2013]

**JOSELITO C. BORROMEO, PETITIONER, VS. JUAN T. MINA,
RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the April 30, 2010 Decision^[2] and September 13, 2010 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 101185, dismissing petitioner Joselito C. Borromeo's petitions which identically prayed for the exemption of his landholding from the coverage of the government's Operation Land Transfer (OLT) program as well as the cancellation of respondent Juan T. Mina's title over the property subject of the said landholding.

The Facts

Subject of this case is a 1.1057 hectare parcel of agricultural land, situated in Barangay Magsaysay, Naguilian, Isabela, denominated as Lot No. 5378 and covered by Transfer Certificate of Title (TCT) No. EP-43526,^[4] registered in the name of respondent (subject property). It appears from the foregoing TCT that respondent's title over the said property is based on Emancipation Patent No. 393178 issued by the Department of Agrarian Reform (DAR) on May 2, 1990.^[5]

Petitioner filed a Petition dated June 9, 2003^[6] before the Provincial Agrarian Reform Office (PARO) of Isabela, seeking that: (a) his landholding over the subject property (subject landholding) be exempted from the coverage of the government's OLT program under Presidential Decree No. 27 dated October 21, 1972^[7] (PD 27); and (b) respondent's emancipation patent over the subject property be consequently revoked and cancelled.^[8] To this end, petitioner alleged that he purchased the aforesaid property from its previous owner, one Serafin M. Garcia (Garcia), as evidenced by a deed of sale notarized on February 19, 1982 (1982 deed of sale). For various reasons, however, he was not able to effect the transfer of title in his name. Subsequently, to his surprise, he learned that an emancipation patent was issued in respondent's favor without any notice to him. He equally maintained that his total agricultural landholdings was only 3.3635 hectares and thus, within the landowner's retention limits under both PD 27 and Republic Act No. 6647, otherwise known as the "Comprehensive Agrarian Reform Law of 1988." In this regard, he claimed that the subject landholding should have been excluded from the coverage of the government's OLT program.^[9]

Petitioner filed a subsequent Petition dated September 1, 2003^[10] also with the PARO which contained identical allegations as those stated in his June 9, 2003 Petition (PARO petitions) and similarly prayed for the cancellation of respondent's

emancipation patent.

After due investigation, the Municipal Agrarian Reform Officer (MARO) Joey Rolando M. Unblas issued a Report dated September 29, 2003,^[11] finding that the subject property was erroneously identified by the same office as the property of petitioner's father, the late Cipriano Borromeo. In all actuality, however, the subject property was never owned by Cipriano Borromeo as its true owner was Garcia — notably, a perennial PD 27 landowner^[12] — who later sold the same to petitioner.

Based on these findings, the MARO recommended that: (a) the subject landholding be exempted from the coverage of the OLT; and (b) petitioner be allowed to withdraw any amortizations deposited by respondent with the Land Bank of the Philippines (LBP) to serve as rental payments for the latter's use of the subject property. ^[13]

The Ruling of the PARO

In an undated Resolution, the PARO adopted the recommendation of the MARO and accordingly (a) cancelled respondent's emancipation patent; (b) directed petitioner to allow respondent to continue in the peaceful possession and cultivation of the subject property and to execute a leasehold contract over the same pursuant to the provisions of Republic Act No. 3844 (RA 3844), otherwise known as the "Agricultural Land Reform Code"; and (c) authorized petitioner to withdraw from the LBP all amortizations deposited by respondent as rental payments for the latter's use of the said property.^[14]

Aggrieved, respondent filed an administrative appeal to the DAR Regional Director.

The Ruling of the DAR Regional Director

On November 30, 2004, DAR Regional Director Renato R. Navata issued an Order, ^[15] finding that petitioner, being the true owner of the subject property, had the right to impugn its coverage from the government's OLT program. Further, considering that the subject property was erroneously identified as owned by Cipriano Borromeo, coupled with the fact that petitioner's total agricultural landholdings was way below the retention limits prescribed under existing agrarian laws, he declared the subject landholding to be exempt from OLT coverage.

While affirming the PARO's Decision, the DAR Regional Director did not, however, order the cancellation of respondent's emancipation patent. He merely directed petitioner to institute the proper proceedings for such purpose before the DAR Adjudication Board (DARAB).

Consequently, respondent moved for reconsideration,^[16] challenging petitioner's ownership of the subject property for lack of sufficient basis to show that his averred predecessor-in-interest, Garcia, was its actual owner. In addition, respondent pointed out that petitioner never filed a protest against the issuance of an emancipation patent in his favor. Hence, petitioner should be deemed to have slept on his rights on account of his inaction for 21 years.

The aforesaid motion was, however, denied in the Resolution dated February 10,

2006,^[17] prompting respondent to elevate the matter to the DAR Secretary.

The Ruling of the DAR Secretary

On September 12, 2007, then DAR Secretary Nasser C. Pagandaman issued DARCO Order No. EXC-0709-333, series of 2007,^[18] affirming *in toto* the DAR Regional Director's ruling. It upheld the latter's findings that the subject landholding was improperly placed under the coverage of the government's OLT program on account of the erroneous identification of the landowner,^[19] considering as well the fact that petitioner's total agricultural landholdings, *i.e.*, 3.3635 hectares, was way below the retention limits under existing agrarian laws.^[20]

Undaunted, respondent filed a petition for review with the CA.

The Ruling of the CA

In a Decision dated April 30, 2010,^[21] the CA reversed and set aside the DAR Secretary's ruling. It doubted petitioner's claim of ownership based on the 1982 deed of sale due to the inconsistent allegations regarding the dates of its notarization divergently stated in the two (2) PARO Petitions, this alongside the fact that a copy of the same was not even attached to the records of the case for its examination. In any case, the CA found the said sale to be null and void for being a prohibited transaction under PD 27 which forbids the transfers or alienation of covered agricultural lands after October 21, 1972 except to the tenant-beneficiaries thereof, of which petitioner was not.^[22] It also held^[23] that petitioner cannot mount any collateral attack against respondent's title to the subject property as the same is prohibited under Section 48 of the Presidential Decree No. 1529 (PD 1529), otherwise known as the "Property Registration Decree."

Petitioner moved for reconsideration which was, however, denied in a Resolution dated September 13, 2010.^[24]

Hence, this petition.

The Petition

Petitioner contends that the CA erred in declaring the sale between him and Garcia as null and void. In this connection, he avers that there was actually an oral sale entered into by him and Garcia (through his son Lorenzo Garcia) in 1976. The said oral sale was consummated on the same year as petitioner had already occupied and tilled the subject property and started paying real estate taxes thereon. He further alleges that he allowed respondent to cultivate and possess the subject property in 1976 only out of mercy and compassion since the latter begged him for work. The existing sale agreement had been merely formalized by virtue of the 1982 deed of sale which in fact, expressly provided that the subject property was not tenanted and that the provisions of law on pre-emption had been complied with.^[25] In this regard, petitioner claims that respondent cannot be considered as a tenant and as such, the issuance of an emancipation patent in his favor was erroneous. Likewise, petitioner claims that his right to due process was violated by the issuance of the aforesaid emancipation patent without any notice on his part.

In his Comment,^[26] respondent counters that petitioner cannot change his theory regarding the date of sale between him and Garcia nor even raise the same factual issue on appeal before the Court.^[27] Moreover, he asserts that the 1982 deed of sale was not registered and therefore, does not bind him. In any event, he posits that the sale between petitioner and Garcia was null and void.^[28] Finally, he argues that petitioner's PARO petitions constitute collateral attacks to his title to the subject property which are disallowed under PD 1529.^[29]

The Court's Ruling

The petition lacks merit.

A. Petitioner's change of theory on appeal

The Court first resolves the procedural matter.

Settled is the rule that a party who adopts a certain theory upon which the case is tried and decided by the lower courts or tribunals will not be permitted to change his theory on appeal,^[30] not because of the strict application of procedural rules, but as a matter of fairness.^[31] Basic considerations of due process dictate that theories, issues and arguments not brought to the attention of the trial court would not ordinarily be considered by a reviewing court,^[32] except when their factual bases would not require presentation of any further evidence by the adverse party in order to enable him to properly meet the issue raised,^[33] such as when the factual bases of such novel theory, issue or argument is (a) subject of judicial notice; or (b) had already been judicially admitted,^[34] which do not obtain in this case.

Records show that petitioner changed his theory on appeal with respect to two (2) matters:

First, the actual basis of his ownership rights over the subject property, wherein he now claims that his ownership was actually based on a certain oral sale in 1976 which was merely formalized by the 1982 deed of sale;^[35] and

Second, the status of respondent as tenant of the subject property, which he never questioned during the earlier stages of the proceedings before the DAR but presently disputes before the Court.

Clearly, the factual bases of the foregoing theories require the presentation of proof as neither of them had been judicially admitted by respondent nor subject of judicial notice. Therefore, the Court cannot entertain petitioner's novel arguments raised in the instant petition. Accordingly, he must rely on his previous positions that **(a) his basis of ownership over the subject property rests on the 1982 deed of sale; and (b) that respondent's status as the tenant of the subject property remains undisputed.**

Having settled the foregoing procedural issue, the Court now proceeds to resolve the