

FIRST DIVISION

[G.R. No. 164356, July 27, 2011]

HEIRS OF MARGARITO PABAUS, NAMELY, FELICIANA P. MASACOTE, MERLINDA P. CAILING, MAGUINDA P. ARCLETA, ADELAIDA PABAUS, RAUL MORGADO AND LEOPOLDO MORGADO, PETITIONERS, VS. HEIRS OF AMANDA YUTIAMCO, NAMELY, JOSEFINA TAN, AND MOISES, VIRGINIA, ROGELIO, ERLINDA, ANA AND ERNESTO, ALL SURNAMED YUTIAMCO, RESPONDENTS.

D E C I S I O N

VILLARAMA, JR., J.:

By way of petition^[1] for review on certiorari, petitioners Heirs of Margarito Pabaus challenge the June 10, 2004 Decision^[2] of the Court of Appeals (CA) in CA-G.R. CV No. 65854. The CA affirmed the October 8, 1999 Judgment^[3] of the Regional Trial Court (RTC) of Butuan City, Branch 1 in Civil Case No. 4489 declaring void petitioners' title and ordering them and all those claiming any right under them to vacate the land covered by said title and deliver possession thereof to the respondents.

Subject of this controversy are three adjoining parcels of land located in Barangay Cabayawa, Municipality of Tubay, Agusan Del Norte. Lot 1, Plan Psu-213148 with an area of 58,292 square meters, and Lot 2, Plan Psu-213148, consisting of 1,641 square meters, are registered in the name of Amanda L. Yutiamco under Original Certificate of Title (OCT) No. O-104^[4] and Transfer Certificate of Title (TCT) No. T-1428,^[5] respectively. Lot 2994, Pls-736, with an area of 35,077 square meters, is owned by Margarito Pabaus and covered by OCT No. P-8649.^[6]

OCT No. O-104 was issued pursuant to Judicial Decree No. R-130700 dated July 9, 1970 which covered Lots 1 and 2. A separate title, TCT No. T-1428, was subsequently issued to Amanda Yutiamco for Lot 2, thus partially canceling OCT No. O-104. Meanwhile, OCT No. P-8649 was issued to Margarito Pabaus on March 12, 1974 pursuant to Free Patent No. (X-2)102.

On December 26, 1996, respondents Josefina Tan, and Moises, Virginia, Rogelio, Erlinda, Ana and Ernesto, all surnamed Yutiamco, representing themselves as the heirs of Amanda L. Yutiamco, filed a Complaint^[7] for Cancellation of OCT No. P-8649, Recovery of Possession and Damages against the heirs of Margarito Pabaus, namely, petitioners Feliciano P. Masacote, Merlinda P. Cailing, Maguinda P. Arcleta, Adelaida Pabaus, Raul Morgado and Leopoldo Morgado. The case was docketed as Civil Case No. 4489 in the RTC of Butuan City, Branch 1.

Respondents alleged that petitioners illegally entered upon their lands, harvested coconuts therein and built a house on the premises, thus encroaching a substantial

portion of respondents' property. Despite repeated demands and objection by Moises Yutiamco, petitioners continued to occupy the encroached portion and harvest the coconuts; petitioners even filed a criminal complaint against the respondents before the Office of the Provincial Prosecutor. Respondents averred that OCT No P-8649 issued to Margarito Pabaus is invalid as it substantially includes a land already covered by Decree No. N-130700 and OCT No. O-104 issued on July 9, 1970 in the name of Amanda Yutiamco. When Moises Yutiamco caused a resurvey of the land, the relocation plan confirmed that the free patent title of Margarito Pabaus overlapped substantially the lot covered by OCT No. O-104.

In their Answer with Counterclaim,^[8] petitioners admitted having gathered coconuts and cut trees on the contested properties, but asserted that they did so in the exercise of their rights of dominion as holders of OCT No. P-8649. They also contended that it was respondents who unlawfully entered their property and harvested coconuts therein. Citing a sketch plan prepared by Engr. Rosalinda V. De Casa, petitioners claimed it was the respondents who encroached Lot 1708, Cad-905 which is within and part of OCT No. P-8649. It was pointed out that with the claim of respondents of an alleged encroachment, respondents' land area would have increased by 5,517.50 square meters (or a total of 65,447.5) while that of petitioners would be decreased to only 29,546 square meters. Petitioners likewise averred that the complaint states no cause of action since the case was not referred for *barangay* conciliation and respondents' cause of action was, in any event, already barred by prescription, if not laches.

In the pre-trial conference held on March 12, 1997, the RTC issued an Order^[9] which directed the conduct of a relocation survey to determine if the land covered by petitioners' title overlaps those in defendants' titles. The three commissioners who conducted the said survey were Engr. Romulo Estaca, a private surveyor and the court-appointed commissioner, Antonio Libarios, Jr., the representative of respondents, and Engr. Regino Lomarda, Jr., petitioners' representative.^[10] It was agreed that the relocation survey shall be done by having the commissioners examine the titles in question and then survey the land to determine if there was indeed an overlapping of titles and who has better right to the contested lands.^[11]

During the same pre-trial conference, petitioners manifested their intention to file an amended answer. The RTC gave them five days within which to seek leave of court to file the amended answer but they failed to comply. Thus, the court considered petitioners to have waived the filing of said pleading.

At the continuation of the pre-trial conference on June 23, 1997, the trial court informed the parties of the following findings in the Relocation Survey Report^[12] dated May 27, 1997:

x x x x

That, Lot 2, Psu-213148 covered by TCT#T-1428 issued in favor of Amanda L. [Yutiamco] is inside the lot covered by OCT#[P]-8649, issued in favor of Margarito Pabaus;

That, Portion of Lot 1, Psu-213148 covered by OCT#O-104, issued in

favor of Amanda L. [Yutiamco] containing an area of 15,675 Sq. M. is inside the lot covered by OCT#P-8649, issued in favor of Margarito Pabaus;

That, there is actually an overlapping in the issuance of title[s] on the above-mentioned two (2) parcels of land, please refer to accompanying relocation plan and can be identified through color legend;

That, the Technical Description of Lot 1, Psu-213148 of OCT#O-104 has been properly verified and checked against approved plan of Psu-213148, approved in the name of Amanda L. [Yutiamco];

Finally, that during the relocation survey nobody objected and oppose[d] the findings conducted by the undersigned.

x x x x^[13]

The Report was accompanied by a Relocation Plan^[14] which was certified by Engr. Estaca as accurately indicating the boundaries of the subject properties. Engr. Libarios, Jr. and Engr. Lomarda, Jr. also signed the Relocation Plan, expressing their conformity thereto.

In the pre-trial conference held on July 17, 1997, petitioners' counsel sought leave of court to file an amended answer. In their Amended Answer with Counterclaim, ^[15] petitioners reiterated that in Engr. De Casa's sketch plan which was plotted in accordance with the description in the cadastral survey, it was respondents who encroached and claimed Lot 1708, Cad-905 within and part of OCT P-8649. They further alleged -

x x x x

10. That plaintiffs['] title to the property in [question], known as O.C.T. No. 104 and TCT No. 1428 both registered in the name of Amanda Yutiamco were both secured thru fraud, if not the said properties are situated away, for a distance as adjoining of defendants property, under the following circumstances:

10.a. The subject property was surveyed by a private surveyor Antonio A. Libarios, Jr. on November 3 and 5, 1960, nonetheless, his license as Geodetic Engineer was issued only on November 11, ^[1965];

10.b. Base[d] on this fact, the survey plan or relocation survey was approved by the Director of Land[s], Nicanor G. Jorge on June 9, 1965;

10.c. Perspicacious examination of the technical description of plaintiffs['] title under OCT No. 104 and TCT No. 1428, the BLLM is marked as No. 4, which the tie line of PSU No.

213148, as compared [to] defendants['] title under OCT No. P-8649, the BLLM is marked as No. 1, which the tie line of PLS 736;

11. Actually, based on the foregoing observation, the properties of plaintiffs are away situated with the property of defendants; should plaintiffs insisted (*sic*) based on the relocation survey conducted by the commissioner appointed by this Honorable Court, which defendants believed that there was a maneuver to hoax and hoodwink themselves, into believing that plaintiffs properties are situated in the heart of defendants property, then their titles, covering their properties were secured thru fraud, which annulment of the same is proper and within the bounds of the law.

x x x x^[16]

At the trial, plaintiffs presented as witnesses Moises Yutiamco (adopted son of Amanda Yutiamco), Figuracion Regala, Sr. (former barangay captain of Tubay), Antonio Payapaya (tenant of Moises Yutiamco) and court-appointed commissioner Engr. Estaca, while the defendants presented Raul P. Morgado (one of the heirs of Margarito Pabaus), Francisco Baylen (retired Land Management Officer/Deputy Land Inspector of the Bureau of Lands, Butuan City), Engr. Rosalinda V. De Casa (Geodetic Engineer I, DENR) and Ambrocio P. Alba (retired Land Management Officer-Chief of Lands Management Services, CENRO-Cabadbaran, Agusan del Norte).

On October 8, 1999, the RTC rendered judgment in favor of the respondents and against the petitioners. Said court gave credence to the finding in the Relocation Survey Report that petitioners' lot overlap respondents' lands. It held that since the land in dispute was already under the private ownership of the respondents and no longer part of the public domain, the same could not have been the subject of a free patent. As to the presumption of regularity in the performance of official duty invoked by the petitioners as far as the issuance of the free patent and title, the trial court pointed out that this cannot be appreciated in view of the testimony of Engr. De Casa that in conducting the cadastral survey, she was not able to secure a copy of the title of the landholdings of Amanda Yutiamco from the Register of Deeds, which is a vital document in the scheme of operations. The trial court thus applied the rule that in case of two certificates of title issued to different persons over the same land, the earlier in date must prevail. Hence, respondents' OCT No. O-104 is superior to petitioners' OCT No. P-8649 which is a total nullity.

The *fallo* of the RTC decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants, as follows:

1. Declaring as null and void *ab initio* [Original] Certificate of Title No. [P]-8649 and ordering defendants and all those claiming any right under them to vacate the land covered by said title and deliver

possession thereof to the plaintiffs and/or otherwise refrain and desist perpetually from exercising any act of dispossession and encroachment over the subject premises;

2. Declaring the plaintiffs as the true and legal owner of the property subject of this case;
3. Ordering defendants to render an accounting to the plaintiffs with respect to the income of the coconuts in the area in conflict starting from December 26, 1996 up to the time...reconveyance as herein directed is made, and to deliver or pay to the plaintiffs the income with legal interest thereon from the date of filing of the complaint in this case[,] which is December 26, 1996, until the same is paid or delivered; and
4. Ordering defendants to pay the plaintiffs, jointly and severally, the amount of P13,175.00 by way of actual damages, P50,000.00 by way of moral damages, the sum of P30,000.00 by way of attorney's fees and the cost of litigation in the amount of P720.00.

SO ORDERED.^[17]

On appeal, the CA affirmed the RTC ruling and emphasized that petitioners are bound by the findings contained in the Relocation Survey Report and the Relocation Plan because not only did they agree to the appointment of the three commissioners but the commissioner representing them also manifested his conformity to the findings. It noted that neither party posed any objection while the survey was ongoing and that petitioners disputed the findings only after it turned out adverse to them. Since the settled rule is that a free patent issued over a private land is null and void and produces no legal effects whatsoever, and with the trial court's finding that the properties of respondents and petitioners overlapped as to certain areas, the CA held that the trial court correctly declared as void the title of the petitioners. Moreover, the CA cited previous rulings stating that "a certificate of title over a land issued pursuant to the Public Land Law, when in conflict with one obtained on the same date through judicial proceedings, must give way to the latter," and that "a certificate of title issued pursuant to a decree of registration and a certificate of title issued in conformity therewith are on a higher level than a certificate of title based upon a patent issued by the Director of Lands."^[18]

Aggrieved, petitioners filed the instant petition arguing that --

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN AFFIRMING THE LOWER COURT DECISION THAT PETITIONERS' LOT NO. 2994, COVERED BY OCT NO. P-8649[,] REGISTERED IN THE NAME OF MARGARITO PABAUS OVERLAPPED RESPONDENTS['] LOT 2 AND LOT 1, [RESPECTIVELY] COVERED [BY] TCT NO. T-1428 AND OCT NO. O-