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EN BANC

[G.R. No. 179987, April 29, 2009]

HEIRS OF MARIO MALABANAN, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

TINGA, J.:

> One main reason why the informal sector has not become formal is that from Indonesia to Brazil, 90 percent of the informal lands are not titled and registered. This is a generalized phenomenon in the so-called Third World. And it has many consequences.
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> The question is: How is it that so many governments, from Suharto's in Indonesia to Fujimori's in Peru, have wanted to title these people and have not been able to do so effectively? One reason is that none of the state systems in Asia or Latin America can gather proof of informal titles. In Peru, the informals have means of proving property ownership to each other which are not the same means developed by the Spanish legal system. The informals have their own papers, their own forms of agreements, and their own systems of registration, all of which are very clearly stated in the maps which they use for their own informal business transactions.
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> If you take a walk through the countryside, from Indonesia to Peru, and you walk by field after field—in each field a different dog is going to bark at you. Even dogs know what private property is all about. The only one who does not know it is the government. The issue is that there exists a "common law" and an "informal law" which the Latin American formal legal system does not know how to recognize.
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> - Hernando De Soto[1]

This decision inevitably affects all untitled lands currently in possession of persons and entities other than the Philippine government. The petition, while unremarkable as to the facts, was accepted by the Court *en banc* in order to provide definitive clarity to the applicability and scope of original registration proceedings under Sections 14(1) and 14(2) of the Property Registration Decree. In doing so, the Court confronts not only the relevant provisions of the Public Land Act and the Civil Code, but also the reality on the ground. The countrywide phenomenon of untitled lands, as well as the problem of informal settlement it has spawned, has unfortunately been treated with benign neglect. Yet our current laws are hemmed in by their own circumscriptions in addressing the phenomenon. Still, the duty on our part is

primarily to decide cases before us in accord with the Constitution and the legal principles that have developed our public land law, though our social obligations dissuade us from casting a blind eye on the endemic problems.

I.

On 20 February 1998, Mario Malabanan filed an application for land registration covering a parcel of land identified as Lot 9864-A, Cad-452-D, Silang Cadastre,[2] situated in Barangay Tibig, Silang Cavite, and consisting of 71,324 square meters. Malabanan claimed that he had purchased the property from Eduardo Velazco,[3] and that he and his predecessors-in-interest had been in open, notorious, and continuous adverse and peaceful possession of the land for more than thirty (30) years.

The application was raffled to the Regional Trial Court of (RTC) Cavite-Tagaytay City, Branch 18. The Office of the Solicitor General (OSG) duly designated the Assistant Provincial Prosecutor of Cavite, Jose Velazco, Jr., to appear on behalf of the State.[4] Apart from presenting documentary evidence, Malabanan himself and his witness, Aristedes Velazco, testified at the hearing. Velazco testified that the property was originally belonged to a twenty-two hectare property owned by his great-grandfather, Lino Velazco. Lino had four sons- Benedicto, Gregorio, Eduardo and Esteban-the fourth being Aristedes's grandfather. Upon Lino's death, his four sons inherited the property and divided it among themselves. But by 1966, Esteban's wife, Magdalena, had become the administrator of all the properties inherited by the Velazco sons from their father, Lino. After the death of Esteban and Magdalena, their son Virgilio succeeded them in administering the properties, including Lot 9864-A, which originally belonged to his uncle, Eduardo Velazco. It was this property that was sold by Eduardo Velazco to Malabanan.[5]

Assistant Provincial Prosecutor Jose Velazco, Jr. did not cross-examine Aristedes Velazco. He further manifested that he "also [knew] the property and I affirm the truth of the testimony given by Mr. Velazco."[6] The Republic of the Philippines likewise did not present any evidence to controvert the application.

Among the evidence presented by Malabanan during trial was a Certification dated 11 June 2001, issued by the Community Environment & Natural Resources Office, Department of Environment and Natural Resources (CENRO-DENR), which stated that the subject property was "verified to be within the Alienable or Disposable land per Land Classification Map No. 3013 established under Project No. 20-A and approved as such under FAO 4-1656 **on March 15, 1982**."[7]

On 3 December 2002, the RTC rendered judgment in favor of Malabanan, the dispositive portion of which reads:

> WHEREFORE, this Court hereby approves this application for registration and thus places under the operation of Act 141, Act 496 and/or P.D. 1529, otherwise known as Property Registration Law, the lands described in Plan Csd-04-0173123-D, Lot 9864-A and containing an area of Seventy One Thousand Three Hundred Twenty Four (71,324) Square Meters, as supported by its technical description now forming part of the record of this case, in addition to other proofs adduced in the name of

MARIO MALABANAN, who is of legal age, Filipino, widower, and with residence at Munting Ilog, Silang, Cavite.

Once this Decision becomes final and executory, the corresponding decree of registration shall forthwith issue.

SO ORDERED.

The Republic interposed an appeal to the Court of Appeals, arguing that Malabanan had failed to prove that the property belonged to the alienable and disposable land of the public domain, and that the RTC had erred in finding that he had been in possession of the property in the manner and for the length of time required by law for confirmation of imperfect title.

On 23 February 2007, the Court of Appeals rendered a Decision[8] reversing the RTC and dismissing the application of Malabanan. The appellate court held that under Section 14(1) of the Property Registration Decree any period of possession prior to the classification of the lots as alienable and disposable was inconsequential and should be excluded from the computation of the period of possession. Thus, the appellate court noted that since the CENRO-DENR certification had verified that the property was declared alienable and disposable only on 15 March 1982, the Velazcos' possession prior to that date could not be factored in the computation of the period of possession. This interpretation of the Court of Appeals of Section 14(1) of the Property Registration Decree was based on the Court's ruling in *Republic v. Herbieto*.[9]

Malabanan died while the case was pending with the Court of Appeals;[10] hence, it was his heirs who appealed the decision of the appellate court. Petitioners, before this Court, rely on our ruling in *Republic v. Naguit*,[11] which was handed down just four months prior to *Herbieto*. Petitioners suggest that the discussion in *Herbieto* cited by the Court of Appeals is actually *obiter dictum* since the Metropolitan Trial Court therein which had directed the registration of the property had no jurisdiction in the first place since the requisite notice of hearing was published only after the hearing had already begun. *Naguit*, petitioners argue, remains the controlling doctrine, especially when the property in question is agricultural land. Therefore, with respect to agricultural lands, any possession prior to the declaration of the alienable property as disposable may be counted in reckoning the period of possession to perfect title under the Public Land Act and the Property Registration Decree.

The petition was referred to the Court *en banc*,[12] and on 11 November 2008, the case was heard on oral arguments. The Court formulated the principal issues for the oral arguments, to wit:

1. In order that an alienable and disposable land of the public domain may be registered under Section 14(1) of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, should the land be classified as alienable and disposable as of June 12, 1945 or is it sufficient that such classification occur at any time prior to the filing of the applicant for registration provided that it is established that the applicant has been in open, continuous,

exclusive and notorious possession of the land under a *bona fide* claim of ownership since June 12, 1945 or earlier?

2. For purposes of Section 14(2) of the Property Registration Decree may a parcel of land classified as alienable and disposable be deemed private land and therefore susceptible to acquisition by prescription in accordance with the Civil Code?

3. May a parcel of land established as agricultural in character either because of its use or because its slope is below that of forest lands be registrable under Section 14(2) of the Property Registration Decree in relation to the provisions of the Civil Code on acquisitive prescription?

4. Are petitioners entitled to the registration of the subject land in their names under Section 14(1) or Section 14(2) of the Property Registration Decree or both?[13]

Based on these issues, the parties formulated their respective positions.

With respect to Section 14(1), petitioners reiterate that the analysis of the Court in *Naguit* is the correct interpretation of the provision. The seemingly contradictory pronouncement in *Herbieto*, it is submitted, should be considered *obiter dictum*, since the land registration proceedings therein was void *ab initio* due to lack of publication of the notice of initial hearing. Petitioners further point out that in *Republic v. Bibonia*,[14] promulgated in June of 2007, the Court applied *Naguit* and adopted the same observation that the preferred interpretation by the OSG of Section 14(1) was patently absurd. For its part, the OSG remains insistent that for Section 14(1) to apply, the land should have been classified as alienable and disposable as of 12 June 1945. Apart from *Herbieto*, the OSG also cites the subsequent rulings in *Buenaventura v. Republic*,[15] *Fieldman Agricultural Trading v. Republic*[16] and *Republic v. Imperial Credit Corporation*,[17] as well as the earlier case of *Director of Lands v. Court of Appeals*.[18]

With respect to Section 14(2), petitioners submit that open, continuous, exclusive and notorious possession of an alienable land of the public domain for more than 30 years *ipso jure* converts the land into private property, thus placing it under the coverage of Section 14(2). According to them, it would not matter whether the land sought to be registered was previously classified as agricultural land of the public domain so long as, at the time of the application, the property had already been "converted" into private property through prescription. To bolster their argument, petitioners cite extensively from our 2008 ruling in *Republic v. T.A.N. Properties*.[19]

The arguments submitted by the OSG with respect to Section 14(2) are more extensive. The OSG notes that under Article 1113 of the Civil Code, the acquisitive prescription of properties of the State refers to "patrimonial property," while Section 14(2) speaks of "private lands." It observes that the Court has yet to decide a case that presented Section 14(2) as a ground for application for registration, and that the 30-year possession period refers to the period of possession under Section 48(b) of the Public Land Act, and not the concept of prescription under the Civil Code. The OSG further submits that, assuming that the 30-year prescriptive period can run

against public lands, said period should be reckoned from the time the public land was declared alienable and disposable.

Both sides likewise offer special arguments with respect to the particular factual circumstances surrounding the subject property and the ownership thereof.

II.

First, we discuss Section 14(1) of the Property Registration Decree. For a full understanding of the provision, reference has to be made to the Public Land Act.

A.

Commonwealth Act No. 141, also known as the Public Land Act, has, since its enactment, governed the classification and disposition of lands of the public domain. The President is authorized, from time to time, to classify the lands of the public domain into alienable and disposable, timber, or mineral lands.[20] Alienable and disposable lands of the public domain are further classified according to their uses into (a) agricultural; (b) residential, commercial, industrial, or for similar productive purposes; (c) educational, charitable, or other similar purposes; or (d) reservations for town sites and for public and quasi-public uses.[21]

May a private person validly seek the registration in his/her name of alienable and disposable lands of the public domain? Section 11 of the Public Land Act acknowledges that public lands suitable for agricultural purposes may be disposed of "by confirmation of imperfect or incomplete titles" through "judicial legalization."[22] Section 48(b) of the Public Land Act, as amended by P.D. No. 1073, supplies the details and unmistakably grants that right, subject to the requisites stated therein:

> Sec. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such land 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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> (b) 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 acquisition of ownership, since June 12, 1945, or earlier, immediately preceding the filing of the application for confirmation of title 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.

Section 48(b) of Com. Act No. 141 received its present wording in 1977 when the law was amended by P.D. No. 1073. Two significant amendments were introduced by P.D. No. 1073. *First*, the term "agricultural lands" was changed to "alienable and disposable lands of the public domain." The OSG submits that this amendment