

THIRD DIVISION

[G.R. No. 177797, December 04, 2008]

**SPS. PEDRO TAN AND NENA ACERO TAN, PETITIONERS, VS.
REPUBLIC OF THE PHILIPPINES, RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

This case is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure seeking to reverse and set aside the Decision^[1] dated 28 February 2006 and Resolution^[2] dated 12 April 2007 of the Court of Appeals in CA-G.R. CV No. 71534. In its assailed Decision, the appellate court reversed and set aside the Decision^[3] dated 9 May 2001 of the Regional Trial Court (RTC) of Misamis Oriental, 10th Judicial Region, Branch 39, Cagayan de Oro City, in LRC Case No. N-2000-055, and ordered herein petitioners, spouses Pedro and Nena Tan (spouses Tan), to return the parcel of land known as Lot 1794, Ap-10-002707, Pls-923, with an area of 215,698 square meters, located in Calingagan, Villanueva, Misamis Oriental (subject property) to herein respondent, Republic of the Philippines (Republic). In its assailed Resolution, the appellate court denied the spouses Tan's Motion for Reconsideration.

The factual milieu of this case is as follows:

The spouses Tan were natural-born Filipino citizens, who became Australian citizens on 9 February 1984.^[4] They seek to have the subject property registered in their names.

The subject property was declared alienable and disposable on 31 December 1925, as established by a Certification^[5] dated 14 August 2000 issued by the Department of Environment and Natural Resources (DENR), Community Environment and Natural Resources Office (CENRO), Cagayan de Oro City.

Prior to the spouses Tan, the subject property was in the possession of Lucio and Juanito Neri and their respective spouses. Lucio and Juanito Neri had declared the subject property for taxation purposes in their names under Tax Declarations No. 8035 (1952),^[6] No. 1524^[7] and No. 1523 (1955).^[8]

The spouses Tan acquired the subject property from Lucio and Juanito Neri and their spouses by virtue of a duly notarized Deed of Sale of Unregistered Real Estate Property^[9] dated 26 June 1970. The spouses Tan took immediate possession of the subject property on which they planted rubber, gemelina, and other fruit-bearing trees. They declared the subject property for taxation purposes in their names, as evidenced by Tax Declarations No. 5012^[10] (1971); No. 11155,^[11] No. 10599,^[12]

No. 10598^[13] (1974); No. 11704^[14] (1976); No. 01224^[15] (1980); No. 06316^[16] (1983); and No. 943000^[17] (2000); and paid realty taxes thereon.

However, a certain Paternateo Casiño (Casiño) claimed a portion of the subject property, prompting the spouses Tan to file a Complaint for Quieting of Title against him before the RTC of Cagayan de Oro City, Branch 24, where it was docketed as Civil Case No. 88-204. On 29 August 1989, the RTC rendered a Decision^[18] in Civil Case No. 88-204 favoring the spouses Tan and declaring their title to the subject property thus "quieted." Casiño appealed the said RTC Decision to the Court of Appeals where it was docketed as CA-G.R. CV No. 26225. In a Resolution^[19] dated 15 November 1990, the appellate court dismissed CA-G.R. CV No. 26225 for lack of interest to prosecute. Casiño elevated his case to this Court *via* a Petition for Review on *Certiorari*, docketed as UDK-10332. In a Resolution^[20] dated 13 March 1991 in UDK-10332, the Court denied Casiño's Petition for being insufficient in form and substance. The said Resolution became final and executory on 3 June 1991.^[21]

Refusing to give up, Casiño filed an Application for Free Patent on the subject property before the Bureau of Lands.^[22] On 8 December 1999, Casiño's application was ordered cancelled^[23] by Officer Ruth G. Sabijon of DENR-CENRO, Cagayan de Oro City, upon the request of herein petitioner Pedro Tan, the declared owner of the subject property pursuant to the 29 August 1989 Decision of the RTC in Civil Case No. 88-204. Similarly, survey plan Csd-10-002779 prepared in the name of Casiño was also ordered cancelled^[24] by the Office of the Regional Executive Director, DENR, Region X, Macabalan, Cagayan de Oro City.

In 2000, the spouses Tan filed their Application for Registration of Title^[25] to the subject property before the RTC of Cagayan de Oro City, Branch 39, where it was docketed as LRC Case No. N-2000-055. The application of the spouses Tan invoked the provisions of Act No. 496^[26] and/or Section 48 of Commonwealth Act No. 141,^[27] as amended. In compliance with the request^[28] of the Land Registration Authority (LRA) dated 29 August 2000, the spouses Tan filed on 5 October 2000 an Amended Application for Registration of Title^[29] to the subject property.

The Office of the Solicitor General (OSG) entered its appearance in LRC Case No. N-2000-055 on behalf of the Republic, but failed to submit a written opposition to the application of the spouses Tan.

When no opposition to the application of the spouses Tan was filed by the time of the initial hearing of LRC Case No. N-2000-055, the RTC issued on 23 April 2001 an order of general default, except as against the Republic. Thereafter, the spouses Tan were allowed to present their evidence *ex-parte*.

After the establishment of the jurisdictional facts, the RTC heard the testimony of John B. Acero (Acero), nephew and lone witness of the spouses Tan. Acero recounted the facts already presented above and affirmed that the spouses Tan's possession of the subject property had been open, public, adverse and continuous.^[30]

After Acero's testimony, the spouses Tan already made a formal offer of evidence,

which was admitted by the court *a quo*.^[31]

On 9 May 2001, the RTC rendered a Decision in LRC Case No. N-2000-055 granting the application of the spouses Tan, the dispositive portion of which reads:

WHEREFORE, [Spouses Tan] having conclusively established to the satisfaction of this Court their ownership of the [subject property], Lot 1794, Pls-923, situated in Villanueva, Misamis Oriental, should be as it is hereby adjudicated to the [Spouses Tan] with address at #166 Capistrano Street, Cagayan de Oro City.

Once this judgment becomes final, let the Order for the issuance of decree and corresponding Certificate of Title issue in accordance with Presidential Decree No. 1529, as amended.^[32]

In its appeal of the afore-mentioned RTC Decision to the Court of Appeals, docketed as CA-G.R. CV No. 71534, the Republic made the following assignment of errors:

- I. The trial court erred in ruling that [herein petitioners Spouses Tan] and their predecessors-in-interest have been in open, continuous and notorious possession of subject property for the period required by law.
- II. The trial court erred in granting the application for land registration despite the fact that there is a disparity between the area as stated in [the Spouses Tan's] application and the tax declarations of Juanito Neri, Lucio Neri, and [herein petitioner Pedro Tan].
- III. The trial court erred in granting the application for land registration despite the fact that [the Spouses Tan] failed to present the original tracing cloth plan.
- IV. The trial court erred in relying on the Decision dated [29 August 1989] by the RTC-Branch 24, Cagayan de Oro City which declared [the Spouses Tan's] "title" on the subject [property] "quieted."
- V. The trial court erred in not finding that [the Spouses Tan] failed to overcome the presumption that all lands form part of the public domain.^[33]

On 28 February 2006, the Court of Appeals rendered a Decision in CA-G.R. CV No. 71534 granting the appeal of the Republic, and reversing and setting aside the 9 May 2001 Decision of the RTC on the ground that the spouses Tan failed to comply with Section 48(b) of Commonwealth Act No. 141, otherwise known as the Public Land Act, as amended by Presidential Decree No. 1073, which requires possession of the subject property to start on or prior to 12 June 1945.^[34] Hence, the appellate court ordered the spouses Tan to return the subject property to the Republic.

The spouses Tan filed a Motion for Reconsideration of the foregoing Decision of the Court of Appeals. To refute the finding of the appellate court that they and their predecessors-in-interest did not possess the subject property by 12 June 1945 or

earlier, the spouses Tan attached to their Motion a copy of **Tax Declaration No. 4627** covering the subject property issued in **1948** in the name of their predecessor-in-interest, Lucio Neri. They called attention to the statement in Tax Declaration No. 4627 that it cancelled **Tax Declaration No. 2948**. Unfortunately, no copy of Tax Declaration No. 2948 was available even in the Office of the Archive of the Province of Misamis Oriental. The spouses Tan asserted that judicial notice may be taken of the fact that land assessment is revised by the government every four years; and since Tax Declaration No. 4627 was issued in the year 1948, it can be presupposed that Tax Declaration No. 2948 was issued in the year **1944**.

The Court of Appeals denied the Motion for Reconsideration of the spouses Tan in a Resolution dated 12 April 2007.

The spouses Tan now come before this Court raising the sole issue of *whether or not [the Spouses Tan] have been in open, continuous, exclusive and notorious possession and occupation of the subject [property], under a bona fide claim of acquisition or ownership, since [12 June 1945], or earlier, immediately preceding the filing of the application for confirmation of title.*^[35]

The Court rules in the negative and, thus, finds the present Petition devoid of merit.

To recall, the spouses Tan filed before the RTC their Application for Registration of Title to the subject property in the year 2000 generally invoking the provisions of Act No. 496 and/or Section 48 of Commonwealth Act No. 141, as amended.

The Public Land Act,^[36] as amended by Presidential Decree No. 1073,^[37] governs lands of the public domain, except timber and mineral lands, friar lands, and privately owned lands which reverted to the State.^[38] It explicitly enumerates the means by which public lands may be disposed of, to wit:

- (1) For homestead settlement;
- (2) By sale;
- (3) By lease; and
- (4) By confirmation of imperfect or incomplete titles;
 - (a) By judicial legalization.
 - (b) By administrative legalization (free patent).^[39]

Each mode of disposition is appropriately covered by separate chapters of the Public Land Act because there are specific requirements and application procedure for every mode.^[40] Since the spouses Tan filed their application before the RTC, then it can be reasonably inferred that they are seeking the **judicial confirmation or legalization of their imperfect or incomplete title** over the subject property.

Judicial confirmation or legalization of imperfect or incomplete title to land, not exceeding 144 hectares, may be availed of by persons identified under Section 48 of the Public Land Act, as amended by Presidential Decree No. 1073,^[41] which reads -

Section 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 thereafter, under the Land Registration Act, to wit:

(a) [Repealed by Presidential Decree No. 1073].

(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 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.

(c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of the public domain suitable to agriculture whether disposable or not, under a *bona fide* claim of ownership since June 12, 1945 shall be entitled to the rights granted in subsection (b) hereof. (Emphasis supplied.)

Not being members of any national cultural minorities, spouses Tan may only be entitled to judicial confirmation or legalization of their imperfect or incomplete title under Section 48(b) of the Public Land Act, as amended.

The Court notes that Presidential Decree No. 1073, amending the Public Land Act, clarified Section 48, paragraph "b" thereof, by specifically declaring that it applied only to alienable and disposable lands of the public domain. Thus, based on the said provision of Commonwealth Act No. 141, as amended, the two requisites which the applicants must comply with for the grant of their Application for Registration of Title are: (1) the land applied for is alienable and disposable; and (2) the applicants and their predecessors-in-interest have occupied and possessed the land openly, continuously, exclusively, and adversely since 12 June 1945.^[42]

To prove that the land subject of an application for registration is alienable, an applicant must conclusively establish the existence of a positive act of the government such as a presidential proclamation or an executive order or administrative action, investigation reports of the Bureau of Lands investigator or a legislative act or statute. Until then, the rules on confirmation of imperfect title do not apply.^[43]

In the case at bar, the spouses Tan presented a Certification from the DENR-CENRO, Cagayan de Oro City, dated 14 August 2000, to prove the alienability and disposability of the subject property. The said Certification stated that the subject property became alienable and disposable on **31 December 1925**. A certification from the DENR that a lot is alienable and disposable is sufficient to establish the true nature and character of the property and enjoys a presumption of regularity in the