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THIRD DIVISION

[G.R. NO. 152570, September 27, 2006]

SAAD AGRO-INDUSTRIES, INC., PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENT.

PEDRO URGELLO, INTERVENOR-APPELLANT.

D E C I S I O N

TINGA, J.:

The instant petition for review assails the Decision and Resolution of the Court of Appeals dated 18 July 2001 and 18 March 2002 in CA-G.R. CV No. 64097, reversing and setting aside the Decision of the Regional Trial Court of Cebu, Branch 11, Cebu City in Civil Case No. CEB-17173.

The antecedents follow.

On 18 October 1967, Socorro Orcullo (Orcullo) filed her application for Free Patent for Lot No. 1434 of Cad-315-D, a parcel of land with an area of 12.8477 hectares located in Barangay Abugon, Sibonga, Cebu.Thereafter, on 14 February 1971, the Secretary of Agriculture and Natural Resources issued Free Patent No. 473408 for Lot No. 1434, while the Registry of Deeds for the Province of Cebu issued Original Certificate of Title (OCT) No. 0-6667 over the said lot.[1] Subsequently, the subject lot was sold[2] to SAAD Agro- Industries, Inc. (petitioner) by one of Orcullo's heirs.

Sometime in 1995, the Republic of the Philippines, through the Solicitor General, filed a complaint[3] for annulment of title and reversion of the lot covered by Free Patent No. 473408 and OCT No. 0-6667 and reversion of Lot No. 1434 of Cad-315-D to the mass of the public domain, on the ground that the issuance of the said free patent and title for Lot No. 1434 was irregular and erroneous, following the discovery that the lot is allegedly part of the timberland and forest reserve of Sibonga, Cebu. The discovery was made after Pedro Urgello filed a letter- complaint with the Regional Executive

Director of the Forest Management Sector, Department of Environment and Natural Resources (DENR) Region VII, Cebu City, about the alleged illegal cutting of mangrove trees and construction of dikes within the area covered by Urgello's Fishpond Lease Agreement. [4] On 14 July 1995, Urgello filed a complaint-in-intervention against the heirs of Orcullo, adopting the allegations of respondent.[5] However, the heirs failed to file their answer to the complaint and were thus declared in default.[6]

In its Decision[7] dated 15 May 1999, the trial court dismissed the complaint, finding that respondent failed to show that the subject lot is part of the timberland or forest

reserve or that it has been classified as such before the issuance of the free patent and the original title. According to the trial court, the issuance of the free patent and title was regular and in order, and must be accorded full faith. Considering the validity of the free patent and the OCT, petitioner's purchase of the property was also declared legal and valid. The trial court also denied the complaint-in-intervention filed by Urgello.

On appeal, the Court of Appeals in its Decision[8] reversed and set aside the trial court's judgment. It held that timber or forest lands, to which the subject lot belongs, are not subject to private ownership, unless these are first classified as agricultural lands. Thus, absent any declassification of the subject lot from forest to alienable and disposable land for agricultural purposes,[9] the officers erred in approving Orcullo's free patent application and in issuing the OCT; hence, title to the lot must be cancelled.[10] Consequently, the Court of Appeals invalidated the sale of the lot to petitioner. However, it declared that Urgello's Fishpond Lease Agreement may continue until its expiration because lease does not pass title to the lessee; but thereafter, the lease should not be renewed. Accordingly, the Court of Appeals decreed:

> WHEREFORE, the decision appealed from is hereby *REVERSED* and *SET ASIDE* and another one issued declaring Free Patent No. 473408 and the corresponding OCT [No.] 0-6667 as *NULL* and *VOID* *ab initio*.
>
> SAAD Agro-Industries, Inc. is directed to surrender the owner's duplicate copy of OCT [No.] 0-6667 to the Register of Deeds of Cebu City.
>
> The Register of Deeds of Cebu City is hereby ordered to cancel OCT [No.] 0-6667 and all other transfer certificates of title that may have been subsequently issued.
>
> Lot No. 1434, CAD 315[-]D located at Barangay Abugon, Sibonga, Cebu, subject matter of this case, is hereby *REVERTED* as part of [the] public domain and to be classified as timberland.[11]

Petitioner's motion for reconsideration, claiming insufficiency of evidence and failure to consider pertinent laws, proved futile as it was dismissed for lack of merit. The Court of Appeals categorically stated that there was a preponderance of evidence showing that the subject lot is within the timberland area.[12]

Petitioner now claims that the Court of Appeals erred in relying on the DENR officer's testimony. It claims that the testimony was a mere opinion to the effect that if there was no classification yet of an area, such area should be considered as a public forest. Such opinion was premised on the officer's construction of a provision of Presidential Decree (P.D.) No. 705, otherwise known as the Revised Forestry Code, [13] the pertinent portion of which reads:

> Those still to be classified under the present system shall continue to remain as part of the public forest.[14]

Petitioner points out that P.D. No. 705 took effect on 19 May 1975, or long after the issuance of the free patent and title in question. Thus, the provision stating that all public lands should be considered as "part of the public forests" until a land

classification team has declassified them is applicable only after the effectivity of P.D. No. 705 and cannot be made retroactive to cover and prejudice vested rights acquired prior to the effectivity of said law, petitioner concludes.[15] It adds that if the subject lot was encompassed by the term "public forest," the same should have been designated as a "Timberland Block," not as Cadastral Lot No. 1434, CAF-315-D, Sibonga Cadastre which was the designation made by the Republic prior to 1972. [16]

Petitioner also questions the Court of Appeals' reliance on the land classification map (L.C. Map) presented by respondent. The trial court had previously declared L.C. Map No. 2961 as inadmissible, finding that "the plaintiff has not duly proved the authenticity and contents." According to petitioner, the L.C. Map presented in court is neither a certified true copy nor one attested to be a true copy by any DENR official having legal custody of the original thereof, and thus should not have been made the basis of the cancellation of the free patent and title.[17]

Petitioner further contends that the projection survey conducted by the DENR to determine if the subject lot falls within the forest area "is not clear, precise and conclusive," since the foresters who conducted the survey used a magnetic box compass, an unreliable and inaccurate instrument, whose results are easily affected by high tension wires and stones with iron minerals.[18]

Finally, petitioner claims that respondent failed to overcome the presumption of regularity of the issuance of the free patent and title in favor of Socorro Orcullo.

In sum, petitioner asserts that respondent failed to show that the subject lot is inside the timberland block, thereby casting doubt on the accuracy of the survey conducted by the Bureau of Forestry and the opinions of DENR officers. Since respondent is the original plaintiff in the reversion case, the burden is on it to prove that the subject lot is part of the timberland block, petitioner adds.

There is merit in the petition.

Under the Regalian doctrine or *jura regalia*, all lands of the public domain belong to the State, and the State is the source of any asserted right to ownership in land and charged with the conservation of such patrimony.[19] Under this doctrine, lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State.[20] In instances where a parcel of land considered to be inalienable land of the public domain is found under private ownership, the Government is allowed by law to file an action for reversion,[21] which is an action where the ultimate relief sought is to revert the land to the government under the Regalian doctrine. Considering that the land subject of the action originated from a grant by the government, its cancellation is a matter between the grantor and the grantee. [22]

It has been held that a complaint for reversion involves a serious controversy, involving a question of fraud and misrepresentation committed against the government and it is aimed at the return of the disputed portion of the public domain. It seeks to cancel the original certificate of registration, and nullify the original certificate of title, including the transfer certificate of title of the successors-in-interest because the same were all procured through fraud and

misrepresentation.[23] Thus, the State, as the party alleging the fraud and misrepresentation that attended the application of the free patent, bears that burden of proof. Fraud and misrepresentation, as grounds for cancellation of patent and annulment of title, should never be presumed but must be proved by clear and convincing evidence, mere preponderance of evidence not even being adequate.[24]

It is but judicious to require the Government, in an action for reversion, to show the details attending the issuance of title over the alleged inalienable land and explain why such issuance has deprived the State of the claimed property.

In the instant case, the Solicitor General claimed that "Free Patent No. 473408 and Original Certificate of Title No. 0-6667 were erroneously and irregularly obtained as the Bureau of Lands (now Lands Management Bureau) did not acquire jurisdiction over the land subject thereof, nor has it the power and authority to dispose of the same through [a] free patent grant, hence, said patent and title are null and void *ab initio.*"[25] It was incumbent upon respondent to prove that the free patent and original title were truly erroneously and irregularly obtained. Unfortunately, respondent failed to do so.

The Court finds that the findings of the trial court rather than those of the appellate court are more in accord with the law and jurisprudence.

In concluding that the subject parcel of land falls within the timberland or forest reserve, the Court of Appeals relied on the testimony of Isabelo R. Montejo that as it had remained unclassified until 1980 and consequently became an unclassified forest zone, it was incapable of private appropriation. The pertinent portions of Montejo's testimony read:

> Q: And in that particular [R]evised Forestry Code, there is that statement that unless classified by a land classification team, an area can never be released.
> A: Yes sir.
>
> x x x
>
> Q: Prior to 1980, there was no classification was [sic] ever of the lands of the public domain in the town of Sibonga?
> A: Yes, sir.
>
> Q: In other words, nobody knew in the whole DNR before and now DENR what areas were timberland and what areas are not timberland in the town of Sibonga prior to 1980?
>
> A: Yes, sir, that is why the law states that if there is no classification should be [sic] considered as the public forest in order to protect the resources.[26]

Obviously, respondent's counsel and witness were referring to P.D. No. 705 particularly Section 13 thereof which reads:

CHAPTER II
CLASSIFICATION AND SURVEY

> SEC. 13. System of Land Classification.-The Department Head shall study, devise, determine and prescribe the criteria, guidelines and methods for the proper and accurate classification and survey of all lands of the public domain into agricultural, industrial or commercial, residential, settlement, mineral, timber or forest, and grazing lands, and into such other classes as now or may hereafter be provided by law, rules and regulations.
>
> In the meantime, the Department Head shall simplify through inter-bureau action the present system of determining which of the unclassified lands of the public domain are needed for forest purposes and declare them as permanent forest to form part of the forest reserves. He shall declare those classified and determined not to be needed for forest purposes as alienable and disposable lands, the administrative jurisdiction and management of which shall be transferred to the Bureau of Lands: *Provided*, That mangrove and other swamps not needed for shore protection and suitable for fishpond purposes shall be released to, and be placed under the administrative jurisdiction and management of, the Bureau of Fisheries and Aquatic Resources. **Those still to be classified under the Present system shall continue to remain as part of the public forest**. (Emphasis supplied.)

Reliance on this provision is highly misplaced. P.D. No. 705 was promulgated only on 19 May 1975, or four (4) years after the free patent and title were awarded to Orcullo. Thus, it finds no application in the instant case. Prior forestry laws, including P.D. No. 389,[27] which was revised by P.D. No. 705, does not contain a similar provision. Article 4 of the Civil Code provides that "laws shall have no retroactive effect unless the contrary is provided." The Court does not infer any intention on the part of then President Marcos to ordain the retroactive application of Sec. 13 of P.D. No. 705. Thus, even assuming for the nonce that subject parcel was unclassified at the time Orcullo applied for a free patent thereto, the fact remains that when the free patent and title were issued thereon in 1971, respondent in essence segregated said parcel from the mass of public domain. Thus, it can no longer be considered unclassified and forming part of the public forest as provided in P.D. No. 705.

Respondent's main basis for asserting that the subject lot is part of the timberland or forest reserve is a purported L.C. Map No. 2961.[28] However, at the hearing on 6 June 1997, the trial court denied admission of the map for the purpose of showing that the subject lot falls within a timberland reserve after respondent had failed to submit either a certified true copy or an official publication thereof.[29] The Court observes that the document adverted to is a mere photocopy of the purported original, and not the blue print as insisted by respondent.[30] A mere photocopy does not qualify as competent evidence of the existence of the L.C. Map. Under the best evidence rule, the original document must be produced, except:

1. When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

2. When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to