

## THIRD DIVISION

[ G.R. NO. 139843, August 21, 2005 ]

**CONSUELO N. VDA. DE GUALBERTO, FE GUALBERTO-CHAVEZ,  
AMADOR GUALBERTO, CESAR GUALBERTO, RODOLFO  
GUALBERTO, LUZVIMINDA GUALBERTO MIRANA, AND VIRGINIA  
GUALBERTO, PETITIONERS, VS. FRANCISCO H. GO, RAYMUNDO  
J. GO, MIRIAM J. GO, MIRIAM G. SON, VICENTE J. GO, BELEN GO,  
AND ROSA JAVIER GO, RESPONDENTS.**

### D E C I S I O N

**GARCIA, J.:**

Before the Court is this petition for review on certiorari under Rule 45 of the Rules of Court to nullify and set aside the following issuances of the Court of Appeals in CA-G.R. CV No. 57690, to wit:

- 1) **Decision<sup>[1]</sup> dated May 21, 1999**, affirming, with modification, an earlier decision of the Regional Trial Court at Siniloan, Laguna in an action for conveyance, accion publiciana, and quieting of title with damages, thereat commenced by the petitioners against the herein respondents; and
- 2) **Resolution<sup>[2]</sup> dated August 25, 1999**, denying petitioners' motion for reconsideration.

The pertinent factual antecedents as found by the two (2) courts below may be briefly summarized, as follows:

Petitioners are the heirs of the late Generoso Gualberto, former registered owner of a parcel of land situated at Redor Street, Barangay Redor, Siniloan, Laguna under Transfer Certificate of Title (TCT) No. 9203, containing an area of 169.59 square meters, more or less, and declared for taxation purposes under Tax Declaration No. 4869.

Sometime in 1965, the subject parcel of land was sold by Generoso Gualberto and his wife, herein petitioner Consuelo Natividad Vda. De Gualberto (Consuelo, for brevity), to respondents' father Go S. Kiang for P9,000.00, as evidenced by a deed entitled "Kasulatan ng Bilihang Tuluyan"<sup>[3]</sup> dated January 15, 1965 ("Kasulatan", for brevity), which deed appears to have been duly notarized by then Municipal Judge Pascual L. Serrano of the Municipal Court of Siniloan, Laguna and recorded in his registry as Doc. No. 9, Page No. 12, Book No.12, Series of 1965<sup>[4]</sup>.

On April 1, 1973, petitioner Consuelo executed an Affidavit<sup>[5]</sup> attesting to the fact that the aforementioned parcel of land had truly been sold by her and her husband Generoso to the spouses Go S. Kiang and Rosa Javier Go, as borne by the said

"Kasulatan". Evidently, the affidavit was executed for purposes of securing a new tax declaration in the name of the spouses Go.

In December, 1973, in a case for Unlawful Detainer filed by a certain Demetria Garcia against herein petitioners, the latter alleged that therein plaintiff Garcia "is not a real party in interest and therefore has no legal capacity and cause of action to sue the defendants; that the real parties in interest of the parcel of commercial land and the residential apartment in question are Generoso Gualberto and Go S. Kiang respectively as shown by TCT No. 9203 issued by the Register of Deeds of Laguna."<sup>[6]</sup>

In a Forcible Entry case filed by respondents against petitioners before the Municipal Circuit Trial Court of Siniloan-Famy, Siniloan, Laguna docketed as Civil Case No. 336, a decision was rendered in favor of respondents, which decision was affirmed *in toto* by the RTC of Siniloan, Laguna. When elevated to the Court of Appeals, that same decision was affirmed by the latter court, saying that "the Court finds that the judgment of the court a quo affirming the previous judgment of the municipal court is supported by sufficient and satisfactory evidence and there is no reason for the Court to hold otherwise."<sup>[7]</sup>

In the meantime, on June 14, 1978, Original Certificate of Title (OCT) No. 1388 was issued in the name of respondent Rosa Javier Go, wife of Go S. Kiang.

Such was the state of things when, on August 10, 1995, in the Regional Trial Court at Siniloan, Laguna petitioners filed against respondents their complaint<sup>[8]</sup> in this case for Conveyance, Accion Publiciana, and Quieting of Title with Damages, thereat docketed as Civil Case No. S-690. After due proceedings, the trial court, in a decision<sup>[9]</sup> dated August 28, 1997, dismissed petitioners' complaint and ordered them to pay attorney's fees to respondents, thus:

WHEREFORE, premises considered, judgment is hereby rendered ordering the dismissal of the complaint. Plaintiffs are hereby ordered to pay defendants the amount of P10,000.00 for and as Attorney's fees. To pay the cost.

SO ORDERED.

On appeal to the Court of Appeals in **CA-G.R. CV No. 57690**, the appellate court, in the herein assailed **decision dated May 21, 1999**,<sup>[10]</sup> affirmed that of the trial court, minus the award of attorney's fees, to wit:

WHEREFORE, subject to the modification as above indicated, the decision appealed from is hereby **AFFIRMED**. Without pronouncement as costs.

SO ORDERED.

With their motion for reconsideration having been denied by the same court in its **resolution of August 25, 1999**, petitioners are now with us, commending for our resolution the following issues:

I. WHETHER OR NOT A TITLED PROPERTY CAN BE THE SUBJECT OF A FREE PATENT TITLE.

II. WHETHER OR NOT THE RIGHT OF A REGISTERED OWNER TO DEMAND THE RETURN OF HIS PROPERTY CAN BE LOST BY PRESCRIPTION OR LACHES.

III. WHETHER AN ACTION FOR RECONVEYANCE OF PROPERTY BASED ON A NULLITY OF TITLE PRESCRIBES.

We **DENY**.

The first issue raised by petitioners attacks the validity of respondent Rosa Javier Go's free patent title. This cannot be done in the present recourse for two (2) basic reasons: first, the validity of a torrens title cannot be assailed collaterally; and second, the issue is being raised for the first time before this Court.

In *Trinidad vs. Intermediate Appellate Court*,<sup>[11]</sup> the Court reiterated the doctrine on the indefeasibility of a torrens title in this wise:

The said property is covered by TCT No. 102167 of the Registry of Deeds of Quezon City. Under the Land Registration Act, title to the property covered by a Torrens certificate becomes indefeasible after the expiration of one year from the entry of the decree of registration. Such decree of registration is incontrovertible and is binding on all persons whether or not they were notified of or participated in the registration proceedings.

If such title is to be challenged, it may not be done collaterally, as in the present case, because the judicial action required is a direct attack. Section 48 of the Property Registration Decree expressly provides that a certificate of title cannot be subject to collateral attack and can be altered, modified or cancelled only in a direct proceeding in accordance with law. This was the same rule under Act 496.

To stress, the action filed by petitioners is one for "Conveyance, *Accion Publiciana*, and Quieting of Title With Damages", and not an action for annulment of OCT No. 1388 issued to Rosa Javier Go. We, therefore, cannot entertain the issue in the present petition for review on *certiorari*.

Besides, as it may readily be noted, petitioners never raised this issue before any of the two (2) courts below. As it is, the issue is being raised only for the first time in this petition before this Court. Settled is the rule that issues not raised in the proceedings below cannot be raised for the first time on appeal.

In *Labor Congress of the Philippines vs. NLRC*,<sup>[12]</sup> we have made it clear that "to allow fresh issues on appeal is violative of the rudiments of fair play, justice and due process."<sup>[13]</sup> Likewise, in *Orosa vs. Court of Appeals*<sup>[14]</sup>, the Court disallowed it because "it would be offensive to the basic rule of fair play, justice and due process if it considered issue raised for the first time on appeal." We cannot take an opposite stance in the present case.

The next two (2) remaining issues boil down to whether or not a registered owner's

right to assail the validity of his defendant's title and to thereafter seek reconveyance thereof, may be lost by prescription or laches. Being interrelated, these will be addressed jointly.

The doctrine governing prescription of actions for reconveyance of real property was clearly stated by the Court in Salvatierra vs. Court of Appeals,<sup>[15]</sup> as follows:

At this juncture, we find the need to remind the court a quo as well as other trial courts to keep abreast with the latest jurisprudence so as not to cause possible miscarriages of justice in the disposition of the cases before them. In the relatively recent case of *Caro v. CA*, 180 SCRA 401, the Supreme Court clarified the seemingly confusing precedents on the matter of prescription of actions for reconveyance of real property, as follows:

'We disagree. The case of *Liwalug Amerold, et al. v. Molok Bagumbaran*, G.R. L-33261, September 30, 1987, 154 SCRA 396 illuminated what used to be a gray area on the prescriptive period for an action to reconvey the title to real property and corrolarily, its point of reference:

'x x x. It must be remembered that before August 30, 1950, the date of the effectivity of the new Civil Code, the Old Code of Civil Procedure (Act No. 190) governed prescription. It provided:

'SEC. 43. Other civil actions; how limited. - Civil actions other than for the recovery of real property can only be brought within the following periods after the right of action accrues:

'3. Within four years: x x x An action for relief on the ground of fraud, but the right of action in such case shall not be deemed to have accrued until the discovery of the fraud:

x x x    x x x x x x

'In contract (sic) under the present Civil Code, we find that just as an implied or constructive trust in (sic) an offspring of the law (Art. 1465, Civil Code), so is the corresponding obligation to reconvey the property and the title thereto in favor of the true owner. In this context, and vis-à-vis prescription, Article 1144 of the Civil Code is applicable.

'Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

- 1) Upon a written contract;
- 2) Upon an obligation created by law;
- 3) Upon a judgment;

x x x        x x x x x x

'An action for reconveyance based on an implied or constructive trust