

SECOND DIVISION

[G.R. Nos. 148404-05, April 11, 2002]

NELITA M. BACALING, REPRESENTED BY HER ATTORNEY-IN-FACT JOSE JUAN TONG, AND JOSE JUAN TONG, IN HIS PERSONAL CAPACITY, PETITIONERS, VS. FELOMINO MUYA, CRISPIN AMOR, WILFREDO JEREZA, RODOLFO LAZARTE AND NEMESIO TONOCANTE, RESPONDENTS.

D E C I S I O N

DE LEON, JR., J.:

Before us is a Petition for Review of the consolidated Decision^[1] dated January 31, 2001 of the Court of Appeals^[2] in CA-G.R. SP No. 54413,^[3] and in CA-G.R. SP No. 54414,^[4] and of its Resolution^[5] dated June 5, 2001 reversing the Decision^[6] dated May 22, 1998 and Resolution July 22, 1999 of the Office of the President.

The facts of the case are as follows:

Petitioner Nelita M. Bacaling and her spouse Ramon Bacaling were the owners of three (3) parcels of land, with a total area of 9.9631 hectares, located in Barangay Cubay, Jaro, Iloilo City, and designated as Lot No. 2103-A (Psd-24069), Lot No. 2103-B-12 (Psd 26685) and Lot No. 2295. These lots were duly covered by Transfer Certificates of Title Nos. T-5801, T-5833 and T-5834, respectively. In 1955 the landholding was subdivided into one hundred ten (110) sub-lots covered by TCT Nos. T-10664 to T-10773, inclusive of the Registry of Deeds of the City of Iloilo. On May 16, 1955, the landholding was processed and approved as "residential" or "subdivision" by the National Urban Planning Commission (NUPC).^[7] On May 24, 1955 the Bureau of Lands approved the corresponding subdivision plan for purposes of developing the said property into a low-cost residential community which the spouses referred to as the *Bacaling-Moreno Subdivision*.^[8]

In 1957, a real estate loan of Six Hundred Thousand Pesos (P600,000.00) was granted to the spouses Nelita and Ramon Bacaling by the Government Service Insurance System (GSIS) for the development of the subdivision.^[9] To secure the repayment of the loan, the Bacalings executed in favor of the GSIS a real estate mortgage over their parcels of land including the one hundred ten (110) sub-lots.^[10] Out of the approved loan of Six Hundred Thousand Pesos (P600,000.00), only Two Hundred Forty Thousand Pesos (P240,000.00) was released to them.^[11] The Bacalings failed to pay the amortizations on the loan and consequently the mortgage constituted on the one hundred ten (110) sub-lots was foreclosed by the GSIS.^[12] After a court case that reached all the way to this Court,^[13] Nelita Bacaling (by then a widow) in 1989 was eventually able to restore to herself ownership of the one hundred ten (110) sub-lots.^[14]

According to the findings of the Office of the President, in 1972 and thereafter, respondents Felomino Muya, Crispin Amor, Wilfredo Jereza, Rodolfo Lazarte and Nemesio Tonocante clandestinely entered and occupied the entire one hundred ten (110) sub-lots (formerly known as Lot No. 2103-A, Lot No. 2103-B-12 and Lot No. 2295) and grabbed exclusively for themselves the said 9.9631 hectare landholding. [15] Apparently, respondents took advantage of the problematic peace and order situation at the onset of martial law and the foreclosure of the lots by GSIS. [16] They sowed the lots as if the same were their own, and altered the roads, drainage, boundaries and monuments established thereon. [17]

Respondents, on the other hand, claim that in 1964 they were legally instituted by Bacaling's administrator/overseer as tenant-tillers of the subject parcels of land on sharing basis with two and a half (2½) hectares each for respondents Muya, Amor, Tonocante and Lazarte, and one and a half (1½) hectares for respondent Jereza. In 1974, their relationship with the landowner was changed to one of leasehold. They religiously delivered their rental payments to Bacaling as agricultural lessor. In 1980, they secured certificates of land transfer in their names for the one hundred ten (110) sub-lots. They have made various payments to the Land Bank of the Philippines as amortizing owners-cultivators of their respective tillage.

In 1977, however, the City Council of Iloilo enacted Zoning Ordinance No. 212 declaring the one hundred ten (110) sub-lots as "residential" and "non-agricultural," which was consistent with the conversion effected in 1955 by the NUPC and the Bureau of Lands. In 1978, Nelita Bacaling was able to register the subject property as the *Bacaling-Moreno Subdivision* with the National Housing Authority and to obtain therefrom a license to sell the subject one hundred ten (110) sub-lots comprising the said subdivision to consummate the original and abiding design to develop a low-cost residential community.

In August 21, 1990, petitioner Jose Juan Tong, together with Vicente Juan and Victoria Siady, bought from Nelita Bacaling the subject one hundred ten (110) sub-lots for One Million Seven Hundred Thousand Pesos (P1,700,000.00). [18] The said sale was effected after Bacaling has repurchased the subject property from the Government Service Insurance System. To secure performance of the contract of absolute sale and facilitate the transfer of title of the lots to Jose Juan Tong, Bacaling appointed him in 1992 as her attorney-in-fact, under an irrevocable special power of attorney with the following mandate-

1. To file, defend and prosecute any case/cases involving lots nos. 1 to 110 covered by TCT Nos. T-10664 to T-10773 of the Register of Deeds of the City of Iloilo;
2. To assume full control, prosecute, terminate and enter into an amicable settlement and compromise agreement of all cases now pending before the DARAB, Region VI, Iloilo City, which involved portion of Lots 1 to 110, covered by TCT Nos. T-10664 to T-10773 of the Register of Deeds of Iloilo City, which were purchased by Jose Juan Tong, Vicente Juan Tong and Victoria Siady;

3. To hire a lawyer/counsel which he may deem fit and necessary to effect and attain the foregoing acts and deeds; handle and prosecute the aforesaid cases;
4. To negotiate, cause and effect a settlement of occupation and tenants on the aforesaid lots;
5. To cause and effect the transfer of the aforesaid lots in the name of the VENDEES;
6. To execute and deliver document/s or instrument of whatever nature necessary to accomplish the foregoing acts and deeds.^[19]

It is significant to note that ten (10) years after the perfection and execution of the sale, or on April 26, 2000, Bacaling filed a complaint to nullify the contract of sale. The suit was, however, dismissed with prejudice and the dismissal has long become final and executory.^[20]

Following the sale of the one hundred ten (110) sub-lots and using the irrevocable special power of attorney executed in his favor, petitioner Tong (together with Bacaling) filed a petition for cancellation of the certificates of land transfer against respondents and a certain Jaime Ruel with the Department of Agrarian Reform (DAR) Region VI Office in Iloilo City.^[21] The DAR, however, dismissed the petition on the ground that there had been no legitimate conversion of the classification of the 110 sub-lots from agricultural to residential prior to October 21, 1972 when Operation Land Transfer under P.D. No. 72 took effect.^[22] Bacaling and Tong appealed to the DAR Central Office but their appeal was similarly rejected.^[23] The motion for reconsideration failed to overturn the ruling of the *Central Office Order*.^[24]

On September 19, 1997, Bacaling and Tong appealed the adverse DAR Orders to the Office of the President which reversed them *in toto* in a Decision^[25] dated May 22, 1998 (*OP Decision*, for brevity), the dispositive portion of which reads:

WHEREFORE, premises [considered], the assailed order of the Regional Director, DAR Region VI, dated April 3, 1996, as well as the orders of the DAR Secretary dated December 12, 1996 and September 4, 1997, are hereby REVERSED AND SET ASIDE and subject landholdings declared exempt from coverage of the CARL. The Certificates of Land Transfer (CLTs) issued to the appellees are hereby cancelled and the Department of Agrarian Reform directed to implement the voluntary offer made by appellant with respect to the payment of disturbance compensation and relocation of the affected parties.

SO ORDERED.^[26]

The *OP Decision* found that the one hundred ten (110) parcels of land had been completely converted from agricultural to residential lots as a result of the declarations of the NUPC and the Bureau of Lands and the factual circumstances, i.e., the GSIS loan with real estate mortgage, the division of the original three (3) parcels of land into one hundred ten (110) sub-lots under individual certificates of

title, and the establishment of residential communities adjacent to the subject property, which indubitably proved the intention of Nelita and Ramon Bacaling to develop a residential subdivision thereon. The *OP Decision* also categorically acknowledged the competence of the NUPC and the Bureau of Lands to classify the one hundred ten (110) sub-lots into residential areas. On July 22, 1999, separate motions for reconsideration thereof were denied.^[27]

Respondents elevated the *OP Decision* to the Court of Appeals on a petition for review under Rule 43 of the Rules of Civil Procedure.^[28] Before the petition was resolved, or on December 2, 1999, Nelita Bacaling manifested to the appellate court that she was revoking the irrevocable power of attorney in favor of Jose Juan Tong and that she was admitting the status of respondents as her tenants of the one hundred ten (110) sub-lots which allegedly were agricultural in character. The manifestation was however characterized by an obvious streak of ambivalence when her prayer therein urged the Court of Appeals to decide the case, curiously, "on the basis of the clear intent of Private Respondent" and "in accordance with the perception of this Honorable Court."^[29]

On January 31, 2001 the Court of Appeals reversed the *OP Decision* and validated the certificates of land transfers in favor of respondents without however promulgating a ruling on petitioner Tong's supposedly ensuing lack of material interest in the controversy as a result of the manifestation.^[30] The dispositive portion of the decision reads:

WHEREFORE, premises considered, petition is GRANTED; and the May 22, 1998 Decision of the Office of the President is hereby REVERSED and SET ASIDE. The April 3, 1996 Order of the Regional Director, DARAB, Region VI, is REINSTATED.^[31]

The appellate court refused to recognize the 1955 NUPC and Bureau of Lands classification of the subject lots as residential subdivision. Tong moved for reconsideration of the *CA Decision* which Bacaling did not oppose despite her manifestation. On June 5, 2001, again without a single reference to Bacaling's alleged repudiation of Tong's actions, the Court of Appeals denied reconsideration of its decision,^[32] Hence, this petition for review on certiorari based on the following assignment of errors:

I

SUBJECT LANDHOLDINGS ARE EXEMPT FROM THE COVERAGE OF P.D. 27 AND OPERATION LAND TRANSFER (1972, AS WELL (sic) THE COMPREHENSIVE AGRARIAN REFORM LAW (1988) AS THEY WERE CLASSIFIED AS RESIDENTIAL WAY BACK IN 1955 BY THE THEN NATIONAL PLANNING COMMISSION AND THE SUBDIVISION PLAN WAS APPROVED BY THE BUREAU OF LANDS. AS A CONSEQUENCE, THE CLTs ISSUED TO PRIVATE RESPONENTS IN OCTOBER, 1980 ARE INVALID AS HAVING BEEN ISSUED WITHOUT JURISDICTION.

II

PRIVATE RESPONDENTS ARE NOT BONA FIDE TENANTS OF THE LANDS

INVOLVED. PUBLIC RESPONDENT'S RULING THAT THE LATTER ARE SUCH IS CONTRARY TO LAW AS IT IGNORED THE FACT THAT THE LANDHOLDINGS ARE RESIDENTIAL AND NO COMPETENT PROOF OF CONSENT OF THE OWNER WAS EVER PRESENTED BY PRIVATE RESPONDENTS.

III

APPROVAL OF THE SECRETARY OF AGRARIAN REFORM IS NOT NECESSARY FOR THE VALID CLASSIFICATION OF THE LANDS INVOLVED INTO RESIDENTIAL BECAUSE THE CARL, AS ALSO THE RELATED AGRARIAN LAWS, HAVE NO RETROACTIVE APPLICATION.^[33]

Long after issues were joined in the instant proceedings, or on October 8, 2001, petitioner Nelita Bacaling resurrected her manifestation with the Court of Appeals and moved to withdraw/dismiss the present petition on the ground that the irrevocable power of attorney in favor of petitioner Jose Juan Tong had been nullified by her and that Tong consequently lacked the authority to appear before this Court.^[34] She also manifested that, contrary to the arguments of petitioner Tong, respondents were *bona fide* tenants of the one hundred ten (110) sub-lots which were allegedly agricultural and not residential pieces of realty.^[35] Accordingly, petitioner Tong was left all alone to pursue the instant case.

The issues in this case can be summarized as follows: (1) Does petitioner Tong have the requisite interest to litigate this petition for review on certiorari?; (2) Are the respondents agricultural lessees?; and (3) Are the one hundred ten (110) sub-lots admittedly classified for residential use by the National Urban Planning Commission and the Bureau of Lands prior to October 21, 1972^[36] covered by the Operation Land Transfer under P.D. No. 72?

We hold that petitioner Jose Juan Tong possesses adequate and legitimate interest to file the instant petition. Under our rules of procedure, interest means material interest, that is, an interest in issue and to be affected by the judgment,^[37] while a real party in interest is the party who would be benefited or injured by the judgment or the party entitled to the avails of the suit.^[38] There should be no doubt that as transferee of the one hundred ten (110) sub-lots through a contract of sale and as the attorney-in-fact of Nelita Bacaling, former owner of the subject lots, under an irrevocable special power of attorney, petitioner Tong stands to be benefited or injured by the judgment in the instant case as well as the orders and decisions in the proceedings *a quo*. The deed of sale categorically states that petitioner Tong and his co-sellers have fully paid for the subject parcels of land. The said payment has been duly received by Bacaling. Hence, it stands to reason that he has adequate and material interest to pursue the present petition to finality.

Respondents put too much weight on the motion to dismiss/withdraw filed by Nelita Bacaling. Under the facts obtaining in this case, the motion should be treated cautiously, and more properly, even skeptically. It is a matter of law that when a party adopts a certain theory in the court below, he will not be permitted to change his theory on appeal, for to permit him to do so would not only be unfair to the other party but it would also be offensive to the basic rules of fair play, justice and due process.^[39] Bacaling's motion to dismiss the instant petition comes at the heels