

SECOND DIVISION

[G.R. No. 130352, November 03, 1998]

**ROGELIA P. DIAZ-DUARTE, PETITIONER, VS. SPS. BEN AND
ETHYL ONG, AND THE COURT OF APPEALS, RESPONDENTS.**

DECISION

PUNO, J.:

Before us is a petition for review on certiorari under Rule 45 of the Revised Rules of Court to set aside the decision of the Court of Appeals awarding Lot 1208 to respondent spouses Ben and Ethyl Ong.^[1]

The facts are as succinctly summarized by the trial court, *viz*:

"Macario Diaz married Encarnacion Reyes sometime in 1895. Out of this union, Trinidad Diaz was born in 1896. Sometime in 1903, Encarnacion Reyes died. In 1905, Macario Diaz married Cristina Pedrosa. Out of this union, x x x, Rogelia-Diaz Duarte was born in 1910.

"Trinidad Diaz, x x x, married Filomeno Arteche. This marriage was blessed by nine children, including Encarnacion Arteche and all the other plaintiffs in the case in the trial court. Trinidad Arteche died on March 21, 1977.

"On October 28, 1932, in Cadastral Case No. 17, GLRO Cad. Record No. 1040, Judge Luciano Ortiz adjudicated Lot 1208 of the Tacloban Cadastre, located in Marasbaras, Tacloban City, containing 26,738 square meters to 'Macario Diaz married to Cristina Pedrosa, of Tacloban, Province of Leyte, Philippines'. The decision having become final, Decree No. 639202 was issued by the General Land Registration Office on August 18, 1937, and Original Certificate of Title No. 19486 was issued.

"On April 30, 1941, Macario Diaz died and on October 2, 1962, his second wife Cristina died. On June 6, 1979, Rogelia Diaz-Duarte issued an Affidavit of Adjudication and Sale of Lot 1208 of the Tacloban Cadastre in favor of Wilfredo M. Corregidor for P20,000.00 before Notary Public Atty. Antonio F. Mendiola of Tacloban City who entered the same as Doc. No. 445, Page 40, Book 29, Series of 1979. By virtue of this sale, OCT No. 19486 of Macario Diaz was cancelled and in its place TCT No. T-17501 was issued by the Register of Deeds of Tacloban City in favor of Wilfredo Corregidor on June 25, 1979.

"On October 12, 1979, Wilfredo Corregidor sold back Lots 1208, 3332, and 3364 of the Tacloban Cadastre to Mrs. Rogelia Diaz-Duarte for P33,000.00 as evidenced by a deed of repurchase executed by him on

said date before Notary Public Atty. Victor C. Veloso of Tacloban City who entered the same as Doc. No. 5, Page 2, Book I, Series of 1979.

"On October 17, 1979, Mrs. Rogelia Diaz-Duarte executed an adverse claim to Lot 1208 covered by TCT No. T-17501 of Wilfredo Corregidor on the basis of the deed of sale executed by Wilfredo to her on October 12, 1979.

"On April 10, 1980, 30 days having elapsed, the affidavit of adverse claim of Diaz-Duarte was cancelled by the Register of Deeds of Tacloban City, albeit erroneously, pursuant to Sec. 70 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree of the Philippines.

"On February 28, 1981, notwithstanding the resale of the property made by him in favor of Mrs. Rogelia Diaz-Duarte in 1979, Wilfredo Corregidor sold again Lot 1208 to Ben S. Ong and his wife Ethyl Ong for P35,000.00 under a deed of absolute sale executed by him on said date before a Notary Public who entered the same as Doc. No. 380, Page 79, Book I, series of 1981.

"On July 21, 1981, Ben S. Ong mortgaged Lot 1208 and some other properties to the Rizal Commercial Banking Corporation to secure a loan of P450,000.00.

"On February 17, 1983, Encarnacion A. Arteche and the other children and heirs of the deceased Trinidad Diaz-Arteche, filed a civil case for recovery of Lot 1208 of the Tacloban Cadastre against herein petitioner Rogelia Diaz-Duarte, Wilfredo Corregidor and his wife, Ben S. Ong and his wife, and the Rizal Commercial Banking Corporation and Pablo G. Amascual Jr., the Register of Deeds of Tacloban City."^[2]

On October 28, 1985, the Regional Trial Court, 8th Judicial Region decided the civil case for the recovery of Lot 1208 in favor of Encarnacion Arteche, et. al., to wit:^[3]

"Wherefore, judgment is hereby rendered as follows:

"1. Declaring the affidavit of Adjudication and Sale of Lot 1208 of the Tacloban Cadastre executed by Rogelia Diaz-Duarte on June 6, 1979 as null and void being a false document it having been established to the satisfaction of the court that Mrs. Rogelia-Diaz Duarte is not the sole heir of Macario Diaz, original owner of Lot 1208;

"2. Ordering the Register of Deeds of Tacloban City, to cancel Transfer Certificate of Title No. T-17501 of Wilfredo Corregidor and Roseanna F. Corregidor of Lot 1208 of the Tacloban Cadastre and all certificates of title emanating therefrom including TCT No. 20338 of Ben S. Ong and Ethyl Ong;

"3. Ordering the Register of Deeds of Tacloban to cancel TCT No. 20338 of Ben S. Ong and his wife Ethyl Y. Ong to Lot 1208 of the Tacloban Cadastre and issue in lieu thereof a new transfer certificate of title to the following persons: Mrs. Rogelia Diaz-Duarte, of legal age, widow and

residing in Tacloban City, three-fourth or 20,052 square meters; and to the Heirs of Trinidad Diaz Arteché, represented by Mrs. Encarnacion A. Benedicto of Tacloban City, Philippines, one-fourth or 6,684 square meters, subject to the mortgage lien of the Rizal Commercial Banking Corporation.

"4. Ordering the defendants to pay the costs.

"SO ORDERED."

The defendants appealed but only the appeal of spouses Ben and Ethyl Ong was considered by the Court of Appeals as Wilfredo Corregidor, Rizal Banking Corporation and Pablo Amascual failed to file their respective briefs.^[4] In their appeal, appellant-spouses raised the following errors, to wit:

I

"The trial court erred in admitting as evidence and giving it any probative value the parol testimony of the defendant Rogelia Diaz-Duarte as to the affidavit of adjudication with deed of absolute sale of the land in question executed by Rogelia Diaz Duarte in favor of Wilfredo Corregidor on June 6, 1979."

II

"The trial court erred in not finding or declaring that the affidavit of adjudication with deed of absolute sale of the land in question executed by Rogelia Diaz Duarte in favor of Wilfredo Coregidor was valid and legal.

III

"The trial court erred in not finding or declaring the deed of repurchase of the land in question executed by Wilfredo Corregidor in favor of Rogelia Diaz-Duarte on October 17, 1979 was absolutely simulated or fictitious.

IV

"The trial court erred in not declaring or finding that the deed of sale of the land in question executed by Wilfredo Corregidor in favor of the spouses Ben S. Ong and Ethyl Y. Ong on February 28, 1981 as valid and legal.

V

"The trial court erred in not declaring or finding that Rogelia Diaz-Duarte was the sole heir of Macario Diaz with respect to the property in question.

VI

"The trial court erred in ordering the cancellation of Transfer Certificate of Title No. T-20338 of Ben S. Ong and Ethyl Y. Ong of the land in question