

TWENTY-THIRD DIVISION

[CA-G.R. CV NO. 02799-MIN, February 27, 2015]

**JACINTO ALLER, JR. AND PRESENTACION ALLER^[1] AS
REPRESENTED BY DOMINADOR GABLINO, ATTORNEY-IN-FACT,
PLAINTIFFS-APPELLEES, VS. DIONELA BACANGCOY, DIONESTO
DAWAN, MORA DAYANGGA, PIANG^[2] SUNDOT, BERTO YAMA,
BENITO^[3] MALANTIC,^[4] LORETO BENITO, SAMMY SAN, TIBOR
YAMA, SHOIW TAWARE, GANDOLAN MANDAGIN, ENDE KINLONG
AND FELIPE BAGON, DEFENDANTS-APPELLANTS.**

DECISION

SANTOS, J.:^[5]

Before this Court is an appeal from the Decision^[6] dated October 20, 2010 of the Regional Trial Court, Branch 38, Alabel, Sarangani Province (trial court), in Civil Case No. 9930 for Recovery of Possession of Land with Damages and Prayer for Preliminary Injunction.

The Antecedents

On June 24, 2002, plaintiffs-appellees Jacinto Aller, Jr. (Aller, Jr.) together with his mother Presentacion Aller (Presentacion) instituted a Complaint^[7] for Recovery of Possession of Land with Damages and Prayer for Preliminary Injunction against defendants-appellants Dionela Bacangcoy, Dionesto Dawan, Mora Dayangga, Pyang Sundot, Berto Yama, Benito Malantoc, Loreto Benito, Sammy San, Tibor Yama, Shoiw Taware, Gandolan Mandagin, Ende Kinlong and Felipe Bagon.

In their Complaint, plaintiffs-appellees alleged that they are the lawful claimant of an agricultural land located at Sitio^[8] Kwangkolon, Barrio^[9] Tuyan, Municipality of Malapatan, Sarangani Province consisting of 22 hectares more or less bounded as follows: North by a creek, East by a public land, South by a creek and West by bisaya covered by tax declaration^[10] issued on September 24, 1973 and ARP No. 96-011-00252^[11] approved by Provincial Assessor Papias Bardina. According to plaintiffs-appellees, sometime in 1945 and 1965, Jacinto Aller, Sr. (Aller, Sr.), the father of plaintiff-appellee Jacinto Aller, Jr. and husband of Presentacion, allegedly acquired the subject property from the members of the cultural communities^[12] of the B'laan tribe of Sarangani Province. Aller, Sr. thereafter allegedly planted coconuts and other seasonable products on the subject property.^[13]

To prove this, plaintiffs-appellees presented several documents, all in the visayan dialect signed by the natives. An agreement^[14] dated October 28, 1956 signed by Dianda Dawan transferring her rights over a 12-hectare portion of the subject property with its improvements thereon to Aller, Sr. for a consideration of P250.00

payable in installments. Also presented were receipts^[15] signed by Dianda Dawan acknowledging receipt of the payment of Aller, Sr.

Plaintiff-appellees also presented a Contract¹⁶ dated October 22, 1960 between Aller, Sr. and his wife plaintiff-appellee Presentacion on one hand and Dianga Bila-an on the other hand selling a 12-hectare portion of the subject property together with the improvements thereon for P203.00. Also, in a Contract-Receipt^[17] dated February 1, 1961, Mandangin Maladian sold to Aller, Sr. his share of the subject property with the coconuts trees planted therein. Plaintiffs-appellees also presented receipts^[18] acknowledging payment of the subject property signed by Tawana^[19] Sundot and Potao Tuara.^[20]

Plaintiffs-appellees presented a *Sabut-Sabut Kun Contrato*^[21] (Agreement with Contract) signed by Sian Mandangin and Aller, Sr. on August 15, 1964 where the former agreed to plant only corn on the subject property and after one cropping, the subject property shall be returned to Aller, Sr. Also presented is another *Sabut-Sabut Kun Contrato*^[22] (Agreement with Contract) dated April 2, 1966 signed by Piang Tuara, Tuara Sundot, Fernando Mara and Siga Mandangin, Talunding Kaliwan, Benito Malantic, Laba Tuara, Mandangin Maladian, Gandulon Mandangin and Pedro Balantok. The Agreement with Contract stated that Aller, Sr. and plaintiff-appellee Aller, Jr. allow the natives to cultivate the subject property by planting rice and corn only until such time that the same will be needed by Aller, Sr. and plaintiff-appellee, Aller, Jr. The agreements also stated that the portion of the subject property cleared by the natives may be used by Aller, Sr. and plaintiff-appellee, Aller, Jr. to plant coconuts thereon.

Sometime in December 18, 1969, Aller, Sr. hired Dominador Gablino (Gablino) as an *encargador* or caretaker of the subject property. Gablino, along with 15 other companions, cultivated the subject property by planting coconuts, corn, bananas and mangoes thereon.^[23]

On July 5, 1978, Aller, Sr. executed an Affidavit of Transfer of Rights^[24] in favor of plaintiff-appellee Aller, Jr. confirming that he had already sold, transferred and ceded all his rights and interest over the subject property to his son for a valuable consideration sometime in May 1945.

On the same day, Aller, Sr. filed an Application for Free Patent^[25] over the subject property with the then Bureau of Lands, Department of Natural Resources (DENR) which application was docketed as Bureau of Land No. (XI-3) 12246. On July 12, 1989, the Agricultural Management Section of the Bureau of Lands ordered the conduct of an investigation of the subject property covered by the application.^[26] Thereafter, a survey was conducted on the subject property on September 2, 1978 where it was revealed that the subject property known as Lot No. F-11-03012246-D covered 214,760 square meters or 21 hectares, 47 ares and 60 centares.^[27] Subsequently on November 18, 1978, the Bureau of Lands through the Director of Lands issued a Notice of Application for Free Patent^[28] notifying all persons who have adverse claims on the subject property to file the same on or before December 18, 1978.

Plaintiffs-appellees further alleged that sometime in August and September of 1994, defendants-appellants took and stole coconuts from the subject property and forcibly ejected Gablino. Subsequently, defendants-appellants allegedly increased in number in occupying the subject property which prompted Gablino and the rest of plaintiffs-appellees' men to leave the same.^[29]

Sometime in 1994, plaintiff-appellee Presentacion instituted a complaint against defendant-appellant Dionesto Dawan before the Office of the *Barangay* Captain of *Barangay* Tuyan. On July 5, 1994, as shown in the minutes^[30] of the proceedings before the said Office, both parties agreed that they will not enter or harvest *copras* on the subject property. However, according to Gablino, the defendants-appellants violated the agreement and entered into the subject property.^[31]

Sometime around 1995, Aller, Sr. died.^[32]

On November 19, 1997, Gablino and defendant-appellant Piang Sundot entered into an Amicable Settlement^[33] written in the visayan dialect before the Office of the *Barangay* Captain of Tuyan which stated that Gablino agreed to share the proceeds of the *copras* harvested from the subject property. It was also stated that defendant-appellant Piang Sundot requested to get a half share of the proceeds of the *copras* due to his poverty and he promised that he will no longer harvest coconuts within the land of Presentacion.

During the pendency of the case before the trial court, plaintiff-appellee Presentacion died on November 12, 2002³⁴ and she was duly substituted by her son, Percival Aller.^[35]

On July 19, 2002, defendants-appellants filed an Answer with Counterclaim^[36] which denied the material allegations in the Complaint. Defendants-appellants claimed that they belong to the B'laan tribe who are natives of the place. They alleged that they have occupied the subject property continuously and without interruption through their predecessors-in-interest. They are the actual possessors of the subject property for more than a century up to the present while plaintiffs-appellees never possessed and cultivated the same. Defendants-appellants also claimed that they are processing the documents needed for the declaration of such property as an ancestral land. As an affirmative defense, defendants-appellants aver that they have no sufficient knowledge of the documents presented by plaintiffs-appellees, and the sales have never passed the approval of the National Commission on Indigenous People (NCIP). Also, the present case is an indirect action allegedly to deprive them of their ancestral land. Defendants-appellants therefore prayed that the Complaint be dismissed and that plaintiffs-appellees be directed to pay damages and attorney's fees to them.

To prove that they are the possessors of the subject property, defendants-appellants presented Agapito Guili (Guili),^[37] the former Development Management Officer II of the Provincial Southern Cultural Commission of the NCIP, who testified that on August 17, 1994, he conducted an ocular inspection on the subject property and found defendants-appellants occupying the same. He also saw burial sites of the ancestors of defendants-appellants on the subject property.^[38]

Defendants-appellants also presented a Certification^[39] dated August 17, 1994 issued by Gili, which certified that defendant-appellant Pyang Sundot together with one Marita Sundot, Sora Sundot and Laba Sundot are actual occupants of a 12-hectare portion of the subject property together with its improvements of fruit-bearing trees. Their late father Tawara Sundot, who is a member of the cultural minorities, had a claim over the same parcel of land during his lifetime. Also, presented were a Certification^[40] dated August 17, 1994 issued by Guili and a Certification^[41] dated March 24, 1997 issued by one Tuning Bayali, tribal chieftain of Tuyan, Malapatan. Both Certifications certified that Mora Lawgo and Dionila Lawgo are the heirs of the late Dayangga Lawgo who is also a member of the cultural minorities.

Defendants-appellants also presented defendant-appellant Deonila Bacanggoy who testified that they were not able to follow the settlement entered into on July 5, 1994 before the Office of the *Barangay* Captain of Tuyan, which is not to enter into the subject property entered into because their livelihood was there.^[42]

After the parties presented their respective pieces of evidence, the trial court rendered the assailed Decision^[43] on October 20, 2010, the dispositive portion of which reads:

WHEREFORE, premise considered, judgment is hereby rendered ordering:

1. All defendants herein, their heirs, assigns or successors-in-interest, representatives, agent or privies to vacate the land subject of this case and peacefully return the same including all the improvements thereon to the herein plaintiffs and/or their duly authorized representative, and;
2. (T)o pay the costs.

SO ORDERED.^[44]

On December 10, 2011, defendants-appellants filed a Motion for Reconsideration^[45] to the assailed Decision, which was, however, denied by the trial court in the Order^[46] dated July 29, 2011.

On August 31, 2011, defendants-appellants filed a Notice of Appeal^[47] which was subsequently granted by the trial court on January 9, 2012.^[48]

The Issue

In their Brief, defendants-appellants raised their sole assignment of error:

The court a quo erred by not applying the law and wrongfully appreciating good faith.^[49]

On April 19, 2013, plaintiffs-appellees filed their Appellees' Brief.^[50] Per the Court's Minute Resolution^[51] dated June 13, 2013, defendants-appellants failed to file a Reply Brief, hence, they were deemed to have waived the filing of the same, and the

case was subsequently declared submitted for decision.

This Court's Ruling

The bone of contention of defendants-appellants is that the trial court erred in recognizing as valid the conveyance of the subject property, originally owned by a cultural community, without the prior approval of the appropriate agency of the government.^[52]

The Court agrees.

The law which required that conveyance of real property by a member of the cultural community needs a prior approval can be traced back to the Administrative Code of Mindanao and Sulu^[53] under Section 145 and 146 thereof.^[54] Section 145^[55] declares that no contract or agreement relating to real property shall be made by any person with any non-Christian inhabitant of the Department of Mindanao and Sulu, unless such contract shall bear the approval of the provincial governor of the province wherein the contract was executed, or his representative duly authorized for such purpose in writing endorsed upon it. Section 146^[56] renders any contract entered in violation of Section 145 null and void.

This rule was carried over in Act No. 2874^[57] or The Public Land Act under Section 118^[58] thereof, which states that conveyance and encumbrance made by persons belonging to the so-called "non-Christian tribes," when proper shall not be valid unless duly approved by the Director of the Bureau of "non-Christian Tribes." A violation of this provision will render the conveyance null and void under Section 122^[59] of the same law.

Subsequently, the same provision was reflected under Section 120 of Commonwealth Act (CA) No. 141^[60] as amended by Republic Act No. 3872^[61] which stated that conveyances made by illiterate non-Christians shall not be valid unless duly approved by the Chairman of the Commission on National Integration.^[62] Section 120 provided:

Sec. 120. Conveyance and encumbrance made by persons belonging to the so-called "non-Christian Filipinos" or national cultural minorities, when proper, shall be valid if the person making the conveyance or encumbrance is able to read and can understand the language in which the instrument or conveyance or encumbrances is written. **Conveyances and encumbrances made by illiterate non-Christians or literate non-Christians where the instrument of conveyance or encumbrance is in a language not understood by the said literate non-Christians shall not be valid unless duly approved by the Chairman of the Commission on National Integration.** (Emphasis supplied)

The import of the foregoing provisions of Section 145 and 146 of the Administrative Code and Section 120 of CA No. 141 have been explained in the case of *Mangayao v. Lasud*^[63] viz: