

SIXTEENTH DIVISION

[CA-G.R. CV NO. 95736, June 05, 2014]

**JUANITA SERIL VDA. DE REYES,^[1] PLAINTIFF-APPELLEE, VS.
CONCEPCION SERIL VDA. DE TACBI, DEFENDANT-APPELLANT.**

DECISION

CORALES, J.:

This is an appeal^[2] from the August 5, 2010 Decision^[3] of the Regional Trial Court (RTC), Branch 39, Lingayen, Pangasinan in Civil Case No. 18698 declaring Original Certificate of Title (OCT) No. P-11754 in the name of defendant-appellant Concepcion Seril (Concepcion) null and void insofar as it includes the northern portion of plaintiff-appellee Juanita Seril's (Juanita) parcel of land.

The Antecedents

Concepcion and Juanita are among the Heirs of Mariano Seril (Mariano), the original owner of the subject parcel of land located in Bogtong Bolo, Mangatarem, Pangasinan. When Mariano died intestate, his heirs executed a Deed of Extra-judicial Partition of Estate dated May 16, 1953^[4] and the aforesaid property was adjudicated in the following proportions: 600 square meters (sq.m.) in the western portion belong to Juanita; 525 sq.m. in the northeastern in favor of Concepcion; and the remaining 525 sq.m. to their other sister Rufina. The siblings declared their shares for taxation purposes^[5] and after the cadastral survey in 1961, the same were subsequently denominated as Lot Nos. 12816, 12815, and 12817, respectively. Concepcion's Lot No. 12815 was later on covered by free patent which was registered as OCT No. P-11754^[6] on November 28, 1968.

On April 4, 2006, Juanita sought the annulment of Concepcion's OCT No. P-11754 alleging that the northern portion of her inherited land was fraudulently included in the latter's free patent application. According to Juanita, the boundaries of her property as stated in the tax declaration are "*North Jose Grande, South Pablo Garlitos, East Concepcion Seril, West Arroyo*" while that of Concepcion was bounded by "*North Jose Grande, South Rufina Seril, East Carretera Prov, and West Juanita Seril*". However, when the land was cadastrally surveyed while Juanita was in Sta. Ana, Manila, Concepcion allegedly "over-extended" her claim up to the creek on the west. She further averred that when she returned to Mangatarem, Pangasinan in 1985, she was surprised to find that the western and northern boundaries of her land adjoining that of Jose Grande were already fenced by Concepcion. She confronted her sister but the latter told her that she just needed the said area to house the cow and carabao and promised to return the same. In 2000, she asked Concepcion to clear the subject area but the latter produced her OCT No. P-11754 containing the erroneous description of boundaries. Upon investigation, Juanita discovered a forged deed of sale where she supposedly conveyed to Concepcion a portion of her inherited land and with the use of this document, the northern portion

of her property was fraudulently included in Concepcion's OCT No. P-11754. Efforts for amicable settlement before the *Katarungang Pambarangay* proved futile; hence the complaint praying for the annulment of OCT No. P-11754 insofar as it includes the northern part of Juanita's inherited land and for payment of damages plus attorney's fees.^[7]

Juanita died on June 11, 2006 and she was substituted by her children Imelda R. Santos, Ma. Conchita R. Budomo and Gloria R. Pagcaliwagan.^[8] Her son-in-law, Romeo Pagcaliwagan (Romeo), testified to support the allegations in the complaint. Romeo claimed that Juanita had been in possession of her inherited land since 1955 but this was disturbed in 2000 by Concepcion who presented a deed of absolute sale over the 1/2 portion of Juanita's property.^[9] Juanita denied having executed any deed of sale over her property^[10] and asked Romeo to verify its legality with the Register of Deeds (RD). Romeo found out that the deed of absolute sale was entered in the day book but was eventually brought out.^[11] Upon the advise of a certain Atty. Oscar Benson, Romeo also went to the assessor's office where he discovered that Juanita's tax declaration has not been cancelled and the realty taxes on the land had been paid since 1955 up to the time of Juanita's death in 2006. Thereafter, Romeo continued paying the realty taxes. Romeo further testified that Juanita only learned of the deed of absolute sale and OCT No. P-11754 when the Department of Environment and Natural Resources (DENR) inspected the property.^[12]

Atty. Rufino Moreno (Atty. Moreno), the RD of Pangasinan, was presented to identify the day book for the year 1982. He testified that the October 28, 1961 deed of absolute sale between Juanita and Spouses Concepcion and Emedio was entered on page 66 of the day book. Another entry for the same document was made on December 8, 1982 as shown by page 73 of the said day book. He also confirmed that there is a "*brought out by party*" entry under the remarks column of the day book pertaining to the deed of absolute sale.^[13]

Engr. Benjamin Corpuz, Jr. (Engr. Benjamin), the engineer contacted by Juanita to conduct a relocation survey, also testified to identify the plan depicting the relocation survey of the property covered by OCT No. P-11754. When he went to the property, there were already monuments and there was already a plan based on the approved records of the DENR wherein he based the relocation of the monuments. He allegedly observed that a stone monument is missing between corners one and two; and there is a fence on the southern side which appears to be a broken line in the plan. Engr. Benjamin also admitted that he knows that the lot he surveyed was registered on July 11, 1968 and the relocation survey was only for a proposed plan which was eventually discontinued.^[14]

Eusebio Oamil (Eusebio), an adjoining owner and a relative by affinity of the Seril sisters, corroborated Romeo's testimony as to Juanita's ownership of the litigated property. According to Eusebio, as early as 1952, he already knew that Mariano owned the subject land which was later on divided in the following manner: the northeastern portion was given to Concepcion; the southeastern portion was given to Rufina; and the western portion was given to Juanita. He also claimed that the fence built sometime in 2005 traversed points 6 and 3 while the other one is situated between the properties of Concepcion and Juanita in points 7 and 9.^[15]

In her defense, Concepcion averred that she is the absolute owner of the property covered by OCT No. P-11754. She acquired the northern portion of Juanita's property through a deed of absolute sale^[16] dated October 28, 1961 which has been registered in the RD of Pangasinan. As such, the total area she now owns is 825 sq.m.: 525 sq.m. as her inheritance and the 300 sq.m. she bought from Juanita.^[17] However, only 504 sq.m. appear in her OCT No. P-11754.^[18] She further alleged that from the time of the sale up to present, she is in possession the subject area with Juanita's knowledge, otherwise, the latter should have questioned in court the construction of the concrete fences which were made in earlier years and even recently. Concepcion also raised the affirmative defenses of prescription and laches. She argued that from the registration of her OCT No. P-11754 in 1968, more than 30 years had passed but Juanita failed to act on her supposed right over the subject property.^[19]

The Ruling of RTC

In its August 5, 2010 Decision,^[20] the RTC held that the land covered by OCT No. P-11754 is a private property having been owned by Mariano and inherited by his three (3) daughters; thus, the Director of Lands has no authority to grant a free patent over the said land and the title issued pursuant thereto is null and void. It did not give credence to Concepcion's affirmative defenses and ruled that an action to annul a void title does not prescribe. The relevant portions of this Decision reads:

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In fine, it is settled that a title emanating from a free patent which was secured through fraud and misrepresentation does not become indefeasible, precisely because the patent from whence the title sprung is itself void and of no effect whatsoever.

The fact that the area stated in the title is smaller than that what the defendant actually inherited and allegedly brought from the plaintiff, suffice it to state that what really defines a piece of ground is not the area, calculated with more or less certainty, mentioned its description, but the boundaries therein laid down, as enclosing the land and indicating its limits.

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WHEREFORE, in view of the foregoing, judgment is hereby rendered:

1. Declaring Original Certificate of Title No. P-11754 in the name of Concepcion Seril null and void insofar as it includes the northern part of plaintiff's property; and
2. Ordering defendant Concepcion Seril to pay plaintiffs the following:
 - a. Attorney's fees in the amount of Php 30,000; and
 - b. Litigation expenses in the amount of Php 8,000.

All other claims and counterclaims are dismissed for lack of merit.

SO ORDERED.

Feeling aggrieved, Concepcion interposed the instant appeal with the following assignment of errors:

- A. THE COURT A QUO ERRED WHEN IT RULED THAT FRAUD ATTENDED THE TITLING OF OCT P-11754 IN THE ABSENCE OF EVIDENCE TO THAT EFFECT.
- B. THE COURT A QUO ERRED, WHEN IT RULED THAT THE LOT OF DEFENDANT-APPELLANT IS A PRIVATE PROPERTY AND COULD NOT BE THE SUBJECT OF FREE PATENT APPLICATION.
- C. THE COURT A QUO ERRED, WHEN IT DISREGARDED THE CLAIM OF DEFENDANT-APPELLANT THAT THE ACTION HAS ALREADY PRESCRIBED, AND THAT LACHES HAS SET IN.
- D. THE COURT A QUO ERRED, WHEN IT FAILED TO CONSIDER THAT THE ISSUE IS NOT ACTUALLY THE LOT COVERED BY OCT P-11754 BUT THE LOT CONTAINED IN THE DEED OF ABSOLUTE SALE.
- E. THE COURT A QUO ERRED, WHEN IT DISREGARDED OR DID NOT GIVE WEIGHT TO THE TESTIMONY OF THE DEFENDANT-APPELLANT DESPITE HER OBJECTIVITY AND CREDIBILITY.
- F. THE COURT A QUO ERRED, WHEN IN THE BODY OF THE DECISION IT DECLARED THAT OCT P-11754 AS NULL AND VOID BUT IN THE DECRETEL PORTION, OCT P-11754 IS NULL AND VOID INSOFAR AS IT INCLUDES THE NORTHERN PART OF PLAINTIFF'S PROPERTY.
- G. THE COURT A QUO ERRED IN AWARDING DAMAGES TO PLAINTIFF-APPELLEE.

Concepcion insists that the RTC's findings that the property covered by her OCT No. P-11754 is a private land is baseless and there is no evidence showing that she committed fraud and misrepresentation in obtaining a free patent.^[21]

On the other hand, the Heirs of Juanita argue that the subject land is a residential property as shown by the classification stated in Mariano's tax declaration and the houses built therein. With respect to the metes and bounds of the subject property, they contend that the same were clearly indicated in Juanita and Concepcion's respective tax declarations. They further claim that Concepcion's inherited land should have bounded on the west by Juanita's share but when the former applied for a free patent, the west boundary of her property became the creek and wrongfully encroached the northern portion of Juanita's land.^[22]

This Court's Ruling

The appeal is meritorious.

A cause of action for declaration of nullity of free patent and certificate of title would require allegations of the plaintiff's ownership of the contested lot prior to the issuance of such free patent and certificate of title as well as the defendant's fraud or mistake, as the case may be, in successfully obtaining these documents of title over the parcel of land claimed by plaintiff.^[23] In relation thereto, fraud and misrepresentation as grounds for cancellation of patent and annulment of title