

ELEVENTH DIVISION

[CA-G.R. CV NO. 66568, August 30, 2006]

THERESA L. MICHELENA BY HER ATTORNEY-IN-FACT, ARTURO J. SESTINA, PLAINTIFF-APPELLANT, VS. ARIEL W. ISIDRO, DEFENDANT-APPELLEE.

D E C I S I O N

VILLON, J.:

Before Us is an ordinary appeal under Rule 41, Sec. 2 (a) of the Rules of Court^[1] assailing the order dated May 6, 1999^[2] issued by the Regional Trial Court (RTC) of Balanga, Bataan, Branch 4^[3] in Civil Case No. 342-ML dismissing appellant's complaint for cancellation of title; as well as the order dated December 16, 1999 which denied her motion for reconsideration.

The antecedents of the case are the following:

On June 9, 1998, appellant filed a complaint^[4] against appellee before the RTC for cancellation of title, damages and injunction on the ground that appellee, through fraud, misrepresentation and falsification, succeeded in causing the issuance of Original Certificate of Title (OCT) No. O-2595 covering a parcel of land with an area of 30,002 square meters which allegedly encroached into the property possessed by appellant for the last thirty (30) years in the concept of an owner. Appellant claims that subject property used to be an agricultural land which was awarded by the government to appellee by virtue of Free-Patent No. (III-14)-0003348.

On July 10, 1998, appellee filed a motion to dismiss^[5] on the ground a) that appellant has no legal personality to institute the instant action for the cancellation of title (Free Patent) granted by the government over a parcel of public agricultural land; b) that the case should have been instituted by the Solicitor General in the name of the Government because it is in effect an action for reversion and pursuant to Section 101 of the Public Land Act, "all actions for the reversion to the Government of lands of public domain or improvements thereon shall be instituted by the Solicitor General or the Officer acting in his stead, in the the proper courts, in the name of the Commonwealth of the Philippines; c) and that the institution of the instant action in the RTC during the pendency of the administrative proceeding before the Department of Environment and Natural Resources (DENR) involving the same subject matter constitutes forum shopping, thereby warranting the summary dismissal of the action.

On August 18, 1998, appellant filed an opposition to the motion to dismiss stating that she has a legal personality to file the instant case and that no forum shopping was committed in view of the Memorandum^[6] of the Office of the Solicitor General

(OSG) to the Director of the Lands Management Bureau (LMB) dated October 24, 1994, which states that:

"It has come to the OSG's attention and observation that more and more affected private parties are filing protests/complaints for cancellation of title and/ for cancellation of free patent and reversion before the OSG through your office, the Land Management Bureau (LMB), seemingly using your good office to ventilate their grievances, instead of initiating the appropriate actions for said cancellation themselves.

The OSG can only represent government agencies and entities and not private parties. The rule is that where the land covered by the title in question concerns private land, it should be the affected private party who must file the appropriate action for either the cancellation of patent and its derivative titles or cancellation of title.

Because of the proliferation of complaints filed by private parties through the LMB, for representation by the OSG, our Office is evaluating the situation for appropriate action and recommendation. In the meantime, we are holding in abeyance the filing of all proposed actions in court specifically as regards the above-enumerated cases."

On May 6, 1999, the court *a quo* issued an order granting the motion to dismiss filed by appellee, based on the following ratiocination:

"We find the stand of defendant well taken. In the cases of Ungay Malobago Mine Inc. vs. Intermediate Appellate Court, *supra*, and Ortigas Company, Limited partnership vs. Ruiz, *supra*, the Supreme Court had occasion to rule that in an action which is in effect an action for reversion, the same should be instituted by the Solicitor General in the name of the government and not by the plaintiff who does not have personality to do the same. In the instant case, plaintiff seeks the annulment and cancellation of OCT No. 2595 in the name of the defendant covering a parcel of land in Lusung, Mariveles, Bataan which used to be an agricultural land and which was awarded by the government to herein defendant by virtue of free patent number (III-14)-0003348 as according to plaintiff, defendant obtained title thereto by means of fraud, misrepresentation and falsification. This is in effect is an action for reversion. Plaintiff has no legal personality to institute the present action for cancellation of the title and patent issued by the government in favor of herein defendant over a parcel of what used to be a public agricultural land, hence the complaint states no cause of action.

Besides plaintiff filed with the office of the Regional Director of the Department of Environment and Natural Resources a letter-protest dated February 17, 1997, an administrative proceeding which involves the same parties and subject matter which is undoubtedly an instance of forum shopping not tolerated and favored upon in our jurisdiction (Villanueva vs. Adre, 172 SCRA 876)

As to the allegation of plaintiff that she filed this case in accordance with the Memorandum of the Office of the Solicitor General to the Director of