

SECOND DIVISION

[G.R. No. 221869, August 14, 2019]

**ANTHONY U. UNCIANO, PETITIONER, VS. FEDERICO U. GOROSPE
AND LEONA TIMOTEA U. GOROSPE, RESPONDENTS.**

DECISION

REYES, J. JR., J.:

Before us is a Petition for Review^[1] seeking reversal of the October 23, 2015 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 135946.^[3] The assailed decision reversed and set aside the April 21, 2014 Decision^[4] of the Regional Trial Court (RTC)^[5] of Aparri, Cagayan, which, in turn, affirmed *in toto* the judgment^[6] rendered by the Municipal Trial Court (MTC) of Buguey, Cagayan, in an *accion reivindicatoria* instituted by petitioner Anthony U. Unciano against respondents Federico U. Gorospe and Leona Timotea U. Gorospe.

The Facts

Enrique Unciano, Sr., petitioner's father, had filed a free patent application over a parcel of land located in Barangay Leron, Buguey, Cagayan.^[7] During the pendency of the application, he advertised the property for sale because he needed financial assistance. He sold it to his daughter, herein petitioner, for P70,000.00,^[8] after signing a waiver by which he expressly relinquished in favor of petitioner his rights as a free patent applicant.^[9] Later on, he executed a Deed of Absolute Sale,^[10] followed by a Deed of Confirmation of Sale.^[11]

Following approval of the application, the corresponding Original Certificate of Title (OCT) No. P-80515 was issued in the name of Enrique Sr.^[12] He immediately executed a Deed of Reconveyance in favor petitioner.^[13] The OCT does not contain an annotation of the previous transactions affecting the property.^[14] Thereafter, Transfer Certificate of Title (TCT) No. T-134942 was issued in the name of petitioner,^[15] and she commenced paying realty taxes on the property.^[16]

It appeared that respondents Federico Gorospe and Leona Timotea Gorospe, petitioner's sister, have been cultivating the land when the underlying transactions were entered into by petitioner and Enrique, Sr. Controversy arose when, after Enrique's death, respondents refused to surrender the property to petitioner. Although the parties entered into mediation before the *Lupong Tagapamayapa*, they failed to settle amicably.^[17]

This impelled petitioner to file an *accion reivindicatoria* with prayer for a temporary

restraining order and damages^[18] before the MTC.

The MTC Ruling

In her complaint, petitioner, under claim of ownership by virtue of the Deeds of Absolute Sale and Reconveyance and the TCT in her name, prayed that respondents be ordered to vacate the property so that she could cultivate it herself.^[19] For their part, respondents lamented that the sale was void under Section 118 of Commonwealth Act (C.A.) No. 141 which prohibits the sale or encumbrance of awarded public lands within five (5) years from the issuance of the patent.^[20]

The MTC found petitioner to be the lawful owner of the land after having derived her title from Enrique, Sr., through the Deed of Absolute Sale. As the sale was perfected prior to the registration and titling of the property, the MTC held that the same was not prohibited under Section 118 of C.A. No. 141. It pointed out that the approval of Enrique, Sr.'s free patent application and the issuance of the OCT in his name were conclusive proof of his ownership from which petitioner derives her right. It declared the OCT indefeasible and imprescriptible, and not subject to collateral attack in the instant action for recovery of possession but rather in a direct proceeding assailing its validity. In the same vein, it held that questions as to the validity of the Deed of Reconveyance and the consequent deprivation of the other heirs of their share by virtue thereof, must likewise be resolved in the proper forum.^[21]

The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendants and hereby ORDERS (sic):

- (i) defendants and any and all persons acting under them and in their behalf to vacate the subject property described as Lot No. 2926 Pls-570 located at Leron, Buguey, Cagayan and covered by Transfer Certificate of Title No. T-134942 and surrender the possession of the same to the plaintiff;
- (ii) defendants to pay plaintiff reasonable rent in the amount of Five Thousand Pesos (P5,000.00) per annum from December 2002 up to the time they actually vacate the subject property;
- (iii) defendants to pay plaintiff moral damages in the amount of Fifty Thousand Pesos (P50,000.00);
- (iv) defendants to pay plaintiff litigation expenses and attorney's fees in the amount of Fifty Thousand Pesos (P50,000.00); and,
- (v) Cost against defendants[.]

SO ORDERED.^[22]

The RTC Ruling

The RTC, in its April 21, 2014 Decision, affirmed the findings and conclusion of the MTC as follows:

WHEREFORE, premises considered, the Decision of the Municipal Trial Court, Buguey, Cagayan dated August 27, 2013, appealed from is **AFFIRMED IN TOTO**.

[SO ORDERED].^[23]

The Court of Appeals' Ruling

Disagreeing with the rulings below, the CA held that the waiver, the Deed of Absolute Sale and the Deed of Confirmation of Sale were all inconsequential because they were executed pending approval of the free patent application, as in fact they were not annotated on the OCT. With that, the Deed of Reconveyance, executed after the issuance of the OCT, was likewise ineffective and not binding because any alienation or encumbrance of the property is proscribed under the terms of Section 118 of C.A. No. 141. Accordingly, it declared petitioner's TCT as null and void, and the OCT in Enrique, Sr.'s name, valid and subsisting as follows:

WHEREFORE, premises considered, the Petition for Review is **PARTLY GRANTED**. The assailed Decision dated April 21, 2014 and Order dated June 10, 2014 of the RTC, Branch 10, Aparri, Cagayan in Civil Case No. 11-5511 are hereby **SET ASIDE**. Transfer Certificate of Title (TCT) No. T-134942 is hereby declared null and void, while Original Certificate of Title (OCT) No. P-80515 is declared valid and subsisting. Accordingly, the Register of Deeds of the Province of Cagayan is hereby **ORDERED** to cancel TCT No. T-134942 in the name of respondent Anthony Unciano and to reinstate OCT No. P-80515 in the name of Enrique Unciano, Sr.

SO ORDERED.^[24]

Hence, this Petition.

The Issues

The Honorable Court of Appeals erred in ruling that:

- 1) the provision in Section 118 of Commonwealth Act No. 141

applies to alienation before the approval of a Patent;

- 2) a Counterclaim is a [permissible [d]irect [a]ttack to the validity of a Torrens Title; and
- 3) the Transfer Certificate of Title (TCT) No. T-134942 in the name of herein petitioner is [n]ull and [v]oid.^[25]

The Court's Ruling

The Court shall address the issues jointly as we resolve to deny the Petition.

Verily, the validity or invalidity of the subject Deed of Absolute Sale is the lynchpin that holds all the other issues raised in this petition.

Petitioner posits that the prohibition against alienation or encumbrance under Section 118 of C.A. No. 141 does not apply to a sale made prior to the approval of the patent application supposedly because the prohibition applies only from the approval of the application and for five years from the date of the issuance of the patent.^[26]

Section 118 states:

SEC. 118. Except in favor of the Government or any of its branches, units, or institutions, **lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant**, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Commerce, which approval shall not be denied except on constitutional and legal grounds. (Emphasis supplied)

The proscription against the sale or encumbrance of property subject of a pending free patent application is not pointedly found in the aforementioned provision. Rather, it is embodied in the regalian doctrine enshrined in the Constitution, which declares all lands of the public domain as belonging to the State, and are beyond the commerce of man and not susceptible of private appropriation and acquisitive prescription.^[27] What divests the Government of its title to the land is the issuance of the patent and its subsequent registration in the Office of the Register of Deeds. Such registration is

the operative act that would bind the land and convey its ownership to the applicant.^[28] It is then that the land is segregated from the mass of public domain, converting it into private property.^[29]

In property law, fundamental is the principle that no one can give what he does not have.^[30] In other words, a seller may sell only what he or she owns, or that which he does not own but has authority to transfer, and a buyer can acquire only what the seller can legally transfer.^[31] In fact, the Civil Code states that in a contract of sale, the seller binds himself to transfer the ownership of the thing sold,^[32] and to do so, he must have the right to convey ownership of the thing at the time it is delivered.^[33] The thing must be licit.^[34]

Based on these precepts, the contested lot in this case, during the pendency of the free patent application, was still part of the public domain and, therefore, an illicit subject of a contract of sale between Enrique, Sr. and petitioner. At the time, Enrique, Sr. did not have the right to transfer ownership inasmuch as he merely had an inchoate right as a patent applicant. By lodging an application for free patent, he had thereby acknowledged and recognized the land to be part of the public domain.^[35] His application is an unmistakable recognition of his non-ownership of the subject land, such that his waiver of rights and the execution of the subsequent Deed of Absolute Sale – both in favor of petitioner – only suggest bad faith on his part for violating the condition of the sworn application that the same is for his exclusive benefit alone.^[36] Indeed, the fact that the OCT was later issued in his name is an affirmation that the state will award homestead lots only to the person in whose name the application was filed and to no one else.

Thus, in *Development Bank of the Philippines v. Court of Appeals*,^[37] the Court affirmed the nullification of a mortgage on a piece of public land constituted during the pendency of the free patent application therefor. In holding that the petitioner bank did not acquire valid title as mortgagee under the deed of mortgage, the open, continuous and public possession of the land by the mortgagor for thirty 30 years did not change the character of the land as still being part of the public domain prior to the issuance of the patent.^[38] *Visayan Realty v. Meer*^[39] pointed out that the grant of a sales application merely authorizes the applicant to take possession of the land so that he could comply with the requirements prescribed by law before a final patent can be issued in his favor.^[40] Before these requirements shall have been complied with, *Javier v. Court of Appeals*^[41] emphasizes that the Government still remains the owner of the property, as in fact the application could still be cancelled and the land awarded to another applicant should it be shown that the legal requirements had not been complied with.^[42]

Upon this disquisition and on the basis of Section 118 in relation to Section 124^[43] of C.A. No. 141 did the Court, in *Egao v. Court of Appeals*^[44] invalidate two sale transactions involving portions of a homestead lot – one entered into by petitioner therein during pendency of the application and the other, after issuance of the free patent but within the 5-year ban on encumbrance and alienation. There, the Court upheld the petitioner's OCT in spite of the contracts of sale which were perfected prior to the approval of the patent application and during the prohibitory period and therefore null and void.^[45]