

## THIRD DIVISION

**[ G.R. No. 231116, February 07, 2018 ]**

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. CLARO YAP,  
RESPONDENT.**

### DECISION

**VELASCO JR., J.:**

#### **Nature of the Case**

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the March 16, 2017 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 05491. The CA affirmed the October 20, 2011 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Cebu City, Branch 6, granting respondent's petition for registration of a parcel of land located in Carcar, Cebu.

#### **The Facts**

On July 28, 2010, respondent Claro Yap (Yap) filed a petition<sup>[3]</sup> for cancellation and re-issuance of Decree No. 99500 covering Lot No. 922 of the Carcar Cadastre, and for the issuance of the corresponding Original Certificate of Title (OCT) pursuant to the re-issued decree. His petition alleged the following:

1. Lot No. 922 with an area of thirty four (34) square meters is covered by Decree No. 99500 issued on November 29, 1920 in the name of Andres Abellana, as Administrator of the Estate of Juan Rodriguez;
2. Ownership over Lot No. 922 was vested upon Yap by virtue of inheritance and donation and that he and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession of the said lot since June 12, 1945, or earlier, and/or by acquisitive prescription being possessors in good faith in the concept of an owner for more than thirty (30) years;
3. While a valid decree was issued for Lot No. 922, based on the certification from the Register of Deeds of the Province of Cebu, there is no showing or proof that an OCT was ever issued covering the said lot;
4. Lot No. 922 was registered for taxation purposes in the name of Heirs of Porfirio Yap; and
5. There is no mortgage or encumbrance of any kind affecting Lot No. 922, or any other person having any interest therein, legal or equitable, in possession, reversion or expectancy, other than Yap.<sup>[4]</sup>

Finding the petition sufficient in form and substance, the RTC issued an Order<sup>[5]</sup> dated August 3, 2010 setting the case for hearing on August 3, 2011 and ordering the requisite publication thereof. Since no oppositors appeared before the court during the said scheduled hearing, the RTC issued another Order<sup>[6]</sup> setting the case for hearing on petitioner's presentation of evidence.

During the *ex parte* hearing held on August 8, 2011, Yap presented the following documents, among others, as proof of his claim:

1. Certified true copy of Decree No. 99500 issued by the authorized officer of the Land Registration Authority (LRA);<sup>[7]</sup>
2. Index of decree showing that Decree No. 99500 was issued for Lot No. 922;<sup>[8]</sup>
3. Certification from the Register of Deeds of Cebu that no certificate of title covering Lot No. 922, Cad. 30 has been issued;<sup>[9]</sup>
4. Extrajudicial Settlement of the Estate of the Late Porfirio C. Yap with Deed of Donation;<sup>[10]</sup>
5. Certification from the Office of the City Assessor of Carcar indicating that the heirs of Porfirio Yap had been issued Tax Declarations for Lot No. 922 since 1948;
6. Tax Declarations covering Lot No. 922 from 1948 up to 2002;<sup>[11]</sup>
7. Blueprint of the approved consolidation and subdivision plan; and
8. Certification from Community Environment and Natural Resources Office (CENRO), Cebu City stating that there is no existing public land application for Lot No. 922.<sup>[12]</sup>

In its September 20, 2011 Order,<sup>[13]</sup> the RTC admitted petitioner's evidence and deemed the case submitted for decision.

### **RTC Ruling**

The RTC found that Yap had sufficiently established his claims and was able to prove his ownership and possession over Lot No. 922. As such, it granted the petition and ordered the Register of Deeds of the Province of Cebu to cancel Decree No. 99500, re-issue a new copy thereof, and on the basis of such new copy, issue an Original Certificate of Title in the name of Andres Abellana, as administrator of the Estate of Juan Rodriguez. The dispositive portion of the October 20, 2011 Decision states:

**WHEREFORE**, the court grants the petition in favor of the petitioner Claro Yap. The Land Registration Authority thru the Register of Deeds of the Province of Cebu is hereby directed to cancel Decree No. 99500 issued on November 29, 1920 and to re-issue a new copy thereof in the name of Andres Abellana, as Administrator of the Estate of Juan Rodriguez, and on the bases of the new copy of Decree No. 99500, to issue an Original Certificate of Title covering Lot No. [922] in the name of

Andres Abellana, as administrator of the Estate of Juan Rodriguez.

Further, the Register of Deeds is directed to furnish the petitioner, Claro Yap, with the re-issued copy of Decree No. 99500 and the copy of its title upon payment of any appropriate fees.

**SO ORDERED.**<sup>[14]</sup>

Since the order of the RTC was for the re-issuance of the decree under the name of its original adjudicate, Yap filed a Partial Motion for Reconsideration<sup>[15]</sup> stating that the new decree and OCT should be issued under his name instead of Andres Abellana.

On the other hand, petitioner, through the Office of the Solicitor General (OSG), filed its Comment<sup>[16]</sup> mainly arguing that Yap's petition and motion should be denied since the Republic was not furnished with copies thereof.

In its Joint Order<sup>[17]</sup> dated August 26, 2014, the RTC denied Yap's motion ruling that the law provides that the decree, which would be the basis for the issuance of the OCT, should be issued under the name of the original adjudicate. Likewise, the RTC also denied the OSG's motion finding that the records of the case show that it was furnished with copies of the Petition as well as the Partial Motion for Reconsideration.<sup>[18]</sup>

The OSG then interposed an appeal before the CA arguing that Yap's petition should have been denied due to insufficiency of evidence and failure to implead indispensable parties such as the heirs of Juan Rodriguez and/or Andres Abellana.

**CA Ruling**

In its March 16, 2017 Decision, the CA upheld the RTC's ruling finding that the pieces of evidence submitted by Yap were sufficient to support the petition. It ruled that since it has been established that no certification of title or patent had been issued over Lot No. 922, the RTC did not err in ordering the re-issuance of Decree No. 99500 in the name of Andres Abellana, as Administrator of the Estate of Juan Rodriguez.<sup>[19]</sup>

As regards the OSG's argument on non-joinder of indispensable parties, the CA highlighted that it is not a ground for dismissal of an action. Nevertheless, it ruled that the heirs of either Andres Abellana or Juan Rodriguez were not deprived of the opportunity to be heard as the proceeding before the RTC was an *in rem* proceeding. Thus, when the petition was published, all persons including the said heirs were deemed notified.<sup>[20]</sup>

Lastly, while the CA delved into the issues ventilated by the OSG on appeal, it also noted that it was too late to raise the same due to the latter's failure to file a motion for reconsideration of the RTC's decision or submit a comment on the merits of Yap's Partial Motion for Reconsideration.<sup>[21]</sup> The dispositive portion of the CA decision reads:

WHEREFORE, the appeal is DENIED. The assailed Decision dated October 20, 2011 of the Regional Trial Court, Branch 06, Cebu City, in LRC REC. NO. Lot No. 922, Cad. 30, Carcar City, Cebu, is hereby AFFIRMED *in toto*.

SO ORDERED.<sup>[22]</sup>

Thus, the OSG filed the instant petition raising essentially the same arguments but this time also advancing the theory that Yap's action had already prescribed.

### **The Issue**

The principal issue before this Court is whether or not the RTC correctly ordered the cancellation of Decree No. 99500, the re-issuance thereof, and the issuance of the corresponding Original Certificate of Title covering Lot No. 922.

### **The Court's Ruling**

We deny the petition.

At the threshold, settled is the rule that prescription cannot be raised for the first time on appeal;<sup>[23]</sup> the general rule being that the appellate court is not authorized to consider and resolve any question not properly raised in the courts below.<sup>[24]</sup>

In any event, prescription does not lie in the instant case.

***There is nothing in the law that limits the period within which the court may order or issue a decree***

The OSG now postulates that the petition should be denied due to Yap and his predecessors' failure to file the proper motion to execute Decree No. 99500 as prescribed under Section 6, Rule 39 of the Rules of Court.<sup>[25]</sup> It also subscribes that the petition is now barred by the statute of limitations<sup>[26]</sup> since nine (9) decades had already passed after the issuance of the said decree in November 1920 without any action brought upon by Yap or his predecessors-in-interest.<sup>[27]</sup>

Further, the OSG asseverates that there is no proof that Decree No. 99500 has attained finality and the decision granting the issuance thereof was not appealed or modified.

The foregoing arguments are specious.

Decree No. 99500 covering Lot No. 922 had been issued on November 29, 1920 by the Court of First Instance, Province of Cebu pursuant to the court's decision in Cadastral Case No. 1, GLRO Cadastral Record No. 58.<sup>[28]</sup> The issuance of the said decree creates a strong presumption that the decision in Cadastral Case No. 1 had become final and executory. Thus, it is incumbent upon the OSG to prove otherwise. However, no evidence was presented to support its claims that the decision in Cadastral Case No. 1 and the issuance of Decree No. 99500 had not attained finality.

The fact that the ownership over Lot No. 922 had been confirmed by judicial declaration several decades ago does not, however, give room for the application of

the statute of limitations or laches, nor bars an application for the re-issuance of the corresponding decree.

In the landmark case of *Sta. Ana v. Menla*,<sup>[29]</sup> the Court elucidated the *raison d'etre* why the statute of limitations and Section 6, Rule 39 of the Rules of Court do not apply in land registration proceedings, viz:

We fail to understand the arguments of the appellant in support of the above assignment, except in so far as it supports his theory that after a decision in a land registration case has become final, it may not be enforced after the lapse of a period of 10 years, except by another proceeding to enforce the judgment, which may be enforced within 5 years by motion, and after five years but within 10 years, by an action (Sec. 6, Rule 39.) This provision of the Rules refers to civil actions and is not applicable to special proceedings, such as a land registration case. This is so because a party in a civil action must immediately enforce a judgment that is secured as against the adverse party, and his failure to act to enforce the same within a reasonable time as provided in the Rules makes the decision unenforceable against the losing party. **In special proceedings the purpose is to establish a status, condition or fact; in land registration proceedings, the ownership by a person of a parcel of land is sought to be established. After the ownership has been proved and confirmed by judicial declaration, no further proceeding to enforce said ownership is necessary, except when the adverse or losing party had been in possession of the land and the winning party desires to oust him therefrom.**

Furthermore, there is no provision in the Land Registration Act similar to Sec. 6, Rule 39, regarding the execution of a judgment in a civil action, except the proceedings to place the winner in possession by virtue of a writ of possession. The decision in a land registration case, unless the adverse or losing party is in possession, becomes final without any further action, upon the expiration of the period for perfecting an appeal.

The third assignment of error is as follows:

THAT THE LOWER COURT ERRED IN ORDERING THE ISSUANCE OF A DECREE OF REGISTRATION IN THE NAMES OF THE OPPOSITORS-APPELLEES BASED ON A DECISION WHICH HAS ALLEGEDLY NOT YET BECOME FINAL, AND IN ANY CASE ON A DECISION THAT HAS BEEN BARRED BY THE STATUTE OF LIMITATIONS.

We also find no merit in the above contention. **There is nothing in the law that limits the period within which the court may order or issue a decree. The reason is what is stated in the consideration of the second assignment error, that the judgment is merely declaratory in character and does not need to be asserted or enforced against the adverse party.** Furthermore, the issuance of a decree is a ministerial duty both of the judge and of the Land Registration Commission; failure of the court or of the clerk to issue the decree for the reason that no motion therefore has been filed cannot