

## SECOND DIVISION

[ G.R. No. 211947, July 03, 2017 ]

**HEIRS OF CAYETANO CASCAYAN, REPRESENTED BY LA PAZ MARTINEZ, PETITIONERS, VS. SPOUSES OLIVER AND EVELYN GUMALLAOI, AND THE MUNICIPAL ENGINEER OF BANGUI, ILOCOS NORTE, RESPONDENTS.**

### RESOLUTION

**LEONEN, J.:**

This resolves a Petition for Review on Certiorari<sup>[1]</sup> filed under Rule 45 of the Rules of Court praying that the Court of Appeals Decision<sup>[2]</sup> dated July 31, 2013 and Resolution<sup>[3]</sup> dated February 25, 2014 in CA-G.R. CV No. 96900 be reversed and set aside.

On September 10, 2007, La Paz Cascayan-Martinez, Elpidio Cascayan, Evangeline Cascayan-Siapco, Flor Cascayan, Nene Cascayan-Alupay, and Virginia Cascayan-Avida (the Cascayan Heirs),<sup>[4]</sup> all heirs of Cayetano Cascayan (Cayetano), filed a complaint for Recovery of Possession, Demolition, and Damages against the spouses Oliver and Evelyn Gumallaoi (Spouses Gumallaoi) before Branch 19, Regional Trial Court, Bangui, Ilocos Norte.<sup>[5]</sup> The Cascayan Heirs alleged that by virtue of a free patent application, they were co-owners of a parcel of land covered by Original Certificate of Title (OCT) No. P-78399,<sup>[6]</sup> denominated as Lot No. 20028, described as follows:

A parcel of cornland (Lot No. 20028, Cad. 734-D, Bangui Cadastre), bounded on the Northeast by Lot No. 20026; on the Southeast by an Alley; and on the Southwest by Lots Nos. 20029 and 20027 of Cad. 734-D, containing an aggregate area of 1,083 sq. mts., more or less, covered under Katibayan ng Orihinal naTitulo Blg. No. P-78399 with Tax Declaration No. 03-006-00652 with Market Value of Php 3,510.00.<sup>[7]</sup>

The Cascayan Heirs affirmed that the Spouses Gumallaoi bought Lot No. 20029, an adjacent lot, described as follows:

A parcel of land (Lot No. 20029, Cad. 734-D, Bangui Cadastre), bounded on the Northeast by Lot No. 20028; on the Southeast by an Alley; and on the Southwest by Lot No. 20030; and on the Northwest by Lot No. 20027 of Cad. 734-D, containing an aggregate area of 999 sq. mts., more or less, covered under Tax Declaration No. 03-006-00673.<sup>[8]</sup>

The Spouses Gumallaoi built a residential house on Lot No. 20029 which the Cascayan Heirs alleged encroached on Lot No. 20028 after renovations and improvements.<sup>[9]</sup> The Spouses Gumallaoi ignored the notifications that they had encroached into Lot No. 20028.<sup>[10]</sup> On May 31, 2001, the Spouses Gumallaoi applied for a Building Permit. Due to renovations on their residential house, they further encroached on Lot No. 20028.<sup>[11]</sup> Thus, the Cascayan Heirs prayed that the Spouses Gumallaoi be directed to vacate Lot No. 20028 and to restore it to their possession. They likewise prayed that the municipal engineer of Bangui issue the necessary demolition permit as well as cause the demolition of the portion of the house that encroached on Lot No. 20028. Finally, they prayed to be paid damages.<sup>[12]</sup>

In response, and by way of counterclaim, the Spouses Gumallaoi maintained that they were the true owners of both Lot Nos. 20029 and 20028.<sup>[13]</sup> They claimed that the Cascayan Heirs secured a free patent to Lot No. 20028 through manipulation. They asserted that the supporting affidavits for the Cascayan Heirs' free patent application were obtained through fraud and deception. They attached in their Amended Answer the affidavits by the same affiants disowning the latter's previous affidavits.<sup>[14]</sup> Thus, the Spouses Gumallaoi prayed that they be declared the legal owners of Lot No. 20028, that OCT No. P-78399 be annulled, and that they be paid damages.<sup>[15]</sup>

By agreement of the parties, Engr. Gregorio Malacas was appointed to determine whether Lot No. 20028 was included in the lot claimed by the Spouses Gumallaoi. In his report, he said:

From the datas (sic) of the verification survey that was executed over the premises of the subject, it appears that a two (2)[-]storey residential [b]uilding owned by the defendants was erected partly on Lot 20028 and partly on Lot 20029.<sup>[16]</sup>

The parties decided to submit the case for resolution with the position papers and the evidence on record as bases.<sup>[17]</sup>

On January 21, 2010, the Regional Trial Court<sup>[18]</sup> rendered a Decision declaring the Spouses Gumallaoi the legal owners of Lot No. 20028. It ruled that petitioners did not prove that they or their predecessor-in-interest had been in possession of it. Conversely, noting that the bigger portion of the Spouses Gumallaoi's residence had been constructed on this land, the Regional Trial Court found that it was more likely that the residence was intended to be constructed on Lot No. 20028.<sup>[19]</sup> The Regional Trial Court found inconsistencies between the claims of the Cascayan Heirs and the evidence they presented in support of their free patent application. It concluded that OCT No. P-78399 had been secured through fraud, without legal and proper basis, and hence, disregarded it:

It can be gleaned from the documentary evidence of the plaintiffs that their predecessor Cayetano Cascayan was the declared owner of a parcel of sugarland with an area of 1,600 square meters under Tax Declaration No. 28278-A, series of 1926 which cancelled Tax Declaration No. 28278. Tax Declaration No. 28278-A was later cancelled by Tax Declaration No. 28278-B which was issued in 1932, also covering the same area. Later, it was revised in 1949 under Tax Declaration No. 005179, this time covering a bigger area of 1,950 square meters. As per the plaintiffs, the same parcel of land was issued Tax Declaration No. 601683, series of 1985 although the land area is indicated only to be 1,940 square meters.

Sometime in the year 1984, a parcel of land designated as Lot No. 20028 consisting of 1,083 square meters was surveyed for Marcelino Alupay as shown in the technical description issued by the Community Environment and Natural Resources Office (CENRO), Bangui, Ilocos Norte which conducted the survey from November 2 to 25, 2002 and approved the said technical description on October 12, 1984. Almost 20 years after the said survey or on February 25, 2004, plaintiffs through La Paz Cascayan filed an Application for Free Patent over Lot No. 20028. In support of the application, said plaintiff submitted as one of the requirements an Affidavit executed by Marcelino Alupay dated March 24, 2004 stating that there was a mistake in placing his name as survey claimant over the said lot. The applicant also submitted, among others, the Affidavit of Estrelita Balbag and Jalibert Malapit who then attested that plaintiffs as heirs of Cayetano Cascayan have continuously occupied and cultivated Lot No. 20028; the Affidavit of Isauro Pinget, Elvira Pinget and Sixto Rigates stating that the lot was declared in the name of Cayetano Cascayan under Tax Declaration No. 03-006-00652, series of 2003; and a Certification from Christopher Malapit, Barangay Chairman of Brgy. Dadaor, Bangui that the notice of application for free patent was posted from February 24 to March 24, 2004. As per an Order issued on July 1, 2004, the CENRO approved the application and Katibayang ng Orighinal na Titulo Blg. P-78399 was issued on the same date.

From these evidences of the plaintiffs, there is clear and serious disconnect in their claim that the parcel of land declared earlier in the name of their predecessor is the same as Lot No. 20028. The Court notes that indeed the tax declarations issued in the name of Cayetano Cascayan in 1926, 1932, 1949 and 1985 bear the same boundaries – Florencio Molina on the north, Bernardo Acido on the East and Pedro Corpuz on the south and west. It also notes that as shown at the back of the tax declaration issued in 1985, it cancelled Tax Declaration No. 501883 and not the tax declaration issued in 1949. At any rate, granting that said tax declaration issued in 1985 refers to the same lot mentioned in the tax declarations issued in 1926, 1932 and 1949 because of the similar boundaries indicated, there is simply no basis to show that it is the same as Lot No. 20028. The Court even wonders why the 1985 tax declaration still refer[red] to a lot with an area of 1,940 square meters if it was already surveyed earlier in 1982 and was found to have an area of only 1,083 square meters. Not only that, if the plaintiffs were the owners of Lot No. 20028, it also wonders why the survey thereof was conducted for Marcelino Alupay and not for Cayetano Cascayan who, as per another

technical description also issued by the CENRO, was the claimant in the survey also conducted in 1982 of Lot No. 20033 which is just adjacent to the lot in question. It further wonders in the absence of any explanation how it came about that Lot No. 20028 consisted of only 1,083 square meters which is substantially different to its area th[a]n as originally declared in the name of Cayetano Cascayan.

At this juncture, it is noteworthy that Tax Declaration No. 03-006-00652, series of 2003 in the name of the Heirs of Cayetano Cascayan who obviously secured the same for purposes [of] their application for free patent, was not also earlier declared in the name of either Marcelino Alupay or Cayetano Cascayan. A perusal of the evidences of the defendants spouses . . . show that the owner was unknown. In fact, as shown in Tax Declaration No. 97-006-00654, it preceded Tax Declaration No. 03-006-00652 which is the same tax declaration issued to the plaintiffs in 2003 before they applied for the free patent. It is thus clear that, the lot being declared then to an unknown person, plaintiffs took it upon themselves and claimed it, secured a tax declaration in their name in 2003 and applied thereafter for a free patent therefor the following year.

In other words, plaintiffs obviously applied for a free patent without any basis. It is clear from their evidence that they were never in possession of the property in suit before they applied for the free patent. While plaintiffs submitted affidavits to show that they have occupied and cultivated Lot No. 20028 and that it was declared in the name of the heirs of Cayetano Cascayan in support of their application for free patent, it appears that such evidences have been manipulated. It appears that while they were not in fact cultivating the property and that it was declared in the name of the heirs of Cayetano Cascayan only in 2003, they were able to present false information about their true status as claimants. In fact, Estrelita Balbag and Jalibert Malapit, who then in the year 2004 attested in support of plaintiffs' application for free patent that plaintiffs and their predecessor have been in continuous possession of Lot No. 20028 since 1944 or 1945, have retracted their said Affidavits. Thus, in the subsequent Affidavits they have executed on September 19, 2007 which defendants spouses submitted in support of their claim, Estrelita Balbag on her part alleged that she has no knowledge about the contents of her earlier affidavit which was not explained to her and that she is not aware of the matters concerning Lot No. 20028 while Jalibert Malapit stated that his signature on the Affidavit is not his real signature.

Likewise, Barangay Chairman Christopher Malapit also retracted the Certification he issued on March 24, 2004 in support [of] the application of the plaintiffs for free patent by stating in his subsequent Affidavit dated September 19, 2007 also submitted by the defendants spouses that there was no posting made of the notice of application for free patent and that when he was asked to sign by Elsa Martinez, daughter of La Paz Martine[z], he was not aware of the contents of the Certification and that he was made to believe that it will be used for another purpose than an application for free patent. . .

Also, Marcelino Alupay retracted the Affidavit which he executed on March 24, 2004 in favor of the plaintiffs in connection with their application for free patent, stating that there was a mistake in placing his name as survey claimant and that the lot applied for is in the actual possession and cultivation of the heirs of Cayetano Cascayan. Thus in another Affidavit he executed on September 19, 2007, he alleged that he had no knowledge of the contents of what he signed and that it was not explained to him.

In any case, contrary to the claim of plaintiffs that they were in possession of Lot No. 20028, it appears that even by the year 2004 when plaintiffs applied for a free patent, defendants spouses have already been in possession of Lot No. 20028 together with the adjacent Lot No. 20029. This is clear from the fact that the bigger portion of their house was constructed over the lot in dispute. By constructing their house both on the two lots, it is unthinkable that they would have done so under notice or threat that they will eventually be evicted and a substantial part of their house demolished. Under the circumstances, the Court cannot believe the claim of the plaintiffs that they have repeatedly warned the defendants spouses about the encroachment. If this were true, it is surprising that when the defendants spouses supposedly extended their house, they did not file a case to immediately stop the construction.

. . . .

In fact, all these observations lead the Court to believe that the issuance of the free patent was not made in accordance with the procedure laid down by Commonwealth Act No. 141, otherwise known as the Public Land Act. As provided in Section 91 thereof, an investigation should be conducted for the purpose of ascertaining whether the material facts set out in the application are true. In this case, it appears more likely that there was never any investigation or any verification made by the CENRO as to the actual status of the land in suit at the time the application of plaintiffs for a free patent was processed and before the free patent was approved and issued. Otherwise, they would have known that defendants spouses have constructed the bigger part of their house on Lot No. 20028. More significantly, when Marcelino Alupay, the original survey claimant of Lot No. 20028 in 1982, executed his Affidavit supporting the application for free patent on March 24, 2004, he was immediately dropped on the same day as survey claimant as shown in [the] Order issued by the CENRO. If it is any indication, it was only on the basis of the Affidavit of Marcelino Alupay stating that his name was erroneously declared as survey claimant to the property that the dropping of his name as such was made and not by virtue of any verification or investigation.<sup>[20]</sup> (Citations omitted)

The dispositive portion of the Regional Trial Court Decision read: