

## THIRD DIVISION

[ G.R. No. 174626, October 23, 2013 ]

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. LUIS MIGUEL O. ABOITIZ, RESPONDENT.**

### DECISION

**MENDOZA, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Republic of the Philippines (*Republic*), represented by the Office of the Solicitor General (*OSG*), seeking to set aside the December 14, 2005 Amended Decision<sup>[1]</sup> of the Court of Appeals (*CA*), in CA-G.R. CV No. 75032, and its September 12, 2006 Resolution<sup>[2]</sup> affirming the February 21, 2002 Decision<sup>[3]</sup> of the Regional Trial Court, Cebu City, Branch 11 (*RTC*), which granted the application for registration of respondent Luis Miguel O. Aboitiz (*Aboitiz*) in Land Registration Case (*LRC*) No. 1474-N.

#### **The Facts**

On September 11, 1998, respondent Aboitiz filed his Application for Registration of Land Title of a parcel of land with an area of 1,254 square meters, located in Talamban, Cebu City, and identified as Lot 11193 of the Cebu Cadastre 12 Extension, before the RTC.

After establishing the jurisdiction of the RTC to act on the application for registration of land title, hearing thereon ensued.

In support of his application, Aboitiz attached the original Tracing Cloth Plan with a blueprint copy, the technical description of the land, the certificate of the geodetic engineer surveying the land, and the documents evidencing possession and ownership of the land.

To prove his claim, Aboitiz presented his witness, Sarah Benemerito (*Sarah*), his secretary, who testified that he entrusted to her the subject property and appointed her as its caretaker; that he purchased the subject property from Irene Kapuno (*Irenea*) on September 5, 1994; that he had been in actual, open, continuous, and exclusive possession of the subject property in the concept of an owner; that as per record of the Department of Environment and Natural Resources (*DENR*), Region VII, the subject property had been classified as alienable and disposable since 1957; that per certification of the Community Environment and Natural Resources Office (*CENRO*), Cebu City, the subject property was not covered by any subsisting public land application; and that the subject property had been covered by tax declarations from 1963 to 1994 in Irene's name, and from 1994 to present, in his name.

Another witness for Aboitiz, Luz Kapuno (*Luz*), daughter of Irene, the original

owner of the subject property, testified that she was one of the instrumental witnesses in the deed of sale of the subject property and that saw her mother affix her signature on the said document. She added that her mother was in open, continuous, peaceful, and exclusive possession of the said property.

Subsequently, the Republic, through Assistant City Prosecutor Edito Y. Enemecio, manifested that it would not adduce any evidence to oppose the application for registration of Aboitiz.

On February 21, 2002, the RTC granted Aboitiz's application for registration of the subject property. The dispositive portion of the decision states:

WHEREFORE, in view of all the foregoing premises, the Court hereby renders judgment in this case granting the application filed by the applicant. The Court hereby accordingly adjudicates the land described on plan RS-07-000856 located in Talamban, Cebu City, together with all the improvements thereon, as belonging to the applicant, and confirms his title thereto. The Land Registration Authority is hereby ordered to issue the corresponding Decree of Registration to confirm the applicant's title to the said land and to subject the said land under the operation of the Torrens System of Registration.

Upon this decision becoming final, let a decree of confirmation and registration be entered and, thereafter, upon payment of the fees required by law, let the corresponding original certificate of title be issued in the name of the applicant.

Furnish copies of this decision to the Administrator of the LRA, the Director of Lands and the Director of the Bureau of Forestry, the Office of the Solicitor General and the Cebu City Prosecutor.

SO ORDERED.<sup>[4]</sup>

Not in conformity, the Republic appealed the RTC ruling before the CA.

In its June 7, 2005 Decision,<sup>[5]</sup> the CA *reversed* the ruling of the RTC and denied Aboitiz's application for registration of land title, the decretal portion of which reads:

**WHEREFORE**, the Decision of the trial court dated February 21, 2002 is hereby REVERSED and the application for registration of title is accordingly **DISMISSED**.

SO ORDERED.<sup>[6]</sup>

The CA ruled that it was only from the date of declaration of such lands as alienable and disposable that the period for counting the statutory requirement of possession since June 12, 1945 or earlier would commence. Possession prior to the date of declaration of the lands alienability was not included. The CA observed that the

subject property was declared as alienable and disposable only in 1957, and so the application clearly did not meet the requirements of possession needed under the first requisite of Section 14 (1)<sup>[7]</sup> of Presidential Decree (*P.D.*) No. 1529 which must be since June 12, 1945, or earlier.

Thereafter, Aboitiz moved for reconsideration of the June 7, 2005 Decision of the CA which dismissed his application for registration of title. Aboitiz asserted, among others, that although the subject land was classified as alienable and disposable only in 1957, the tax declarations, from 1963 to 1994, for a period of thirty one (31) years, converted the land, by way of acquisitive prescription, to private property. He asserted that the evidence he presented substantially met the requisite nature and character of possession under P.D. No. 1529.

In its December 14, 2005 Amended Decision, the CA *reversed itself* and granted the application for registration of land title of Aboitiz. The pertinent portion of the said decision reads:

WHEREFORE, in view of the foregoing, the June 7, 2005 Decision of this Court is hereby REVERSED and the Decision dated February 21, 2002 of the Regional Trial Court, Branch 11, Cebu City with respect to L.R.C. No. 1474-N is hereby AFFIRMED in toto.

SO ORDERED.<sup>[8]</sup>

In granting the application for registration of land title, the CA relied on Section 14(2) of P.D. No. 1529.<sup>[9]</sup> It stated that although the application for registration of Aboitiz could not be granted pursuant to Section 14(1) of P.D. No. 1529 because the possession of his predecessor-in-interest commenced in 1963 (beyond June 12, 1945), it could prosper by virtue of acquisitive prescription under Section 14(2) of P.D. No. 1529 upon the lapse of thirty (30) years. The CA explained that the original owner's (Irenea's) possession of the subject property beginning from 1963 up to 1994, the year Aboitiz purchased the subject property from Irenea, spanning thirty one (31) years, converted the said property into private land and, thus, susceptible to registration. The CA also declared that although tax declarations and real property tax payments were not by themselves conclusive evidence of ownership of land, they were nevertheless good indicia of possession in the concept of an owner.

The Republic moved for reconsideration but was denied by the CA on September 12, 2006.

Hence, this petition.

### **ASSIGNMENT OF ERROR**

**THE CA ERRED ON A QUESTION OF LAW IN GRANTING THE APPLICATION FOR REGISTRATION OF LOT 11193 UNDER PLAN RS-07-000856 BASED ON THE EVIDENCE IT RELIED UPON EARLIER DISMISSING THE SAID APPLICATION.**<sup>[10]</sup>

In his Memorandum,<sup>[11]</sup> Aboitiz contends that the Republic is raising questions of fact which is beyond the appellate jurisdiction of this Court. Consequently, the findings of fact by the RTC and affirmed by the CA are final, binding and conclusive upon the Court. Aboitiz claims that sufficient evidence was presented to establish the nature and character of his possession of the subject property as required by P.D. No. 1529.

In its Memorandum,<sup>[12]</sup> the Republic, citing *Republic v. T.A.N. Properties, Inc.*,<sup>[13]</sup> argues that Aboitiz failed to validly establish the alienability of the subject property because he only adduced a CENRO certification to that effect, without presenting a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. Further, a declaration that the property is alienable and disposable is not sufficient to make it susceptible to acquisitive prescription. An express government manifestation that the property is already patrimonial or no longer intended for public use, for public service or for the development for the national wealth pursuant to Article 422<sup>[14]</sup> of the New Civil Code must also be shown. The Republic asserts that it is only when the property has become patrimonial that the period of acquisitive prescription can commence to run against the State.

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

The petition is meritorious.

The vital issue to be resolved by the Court is whether Aboitiz is entitled to the registration of land title under Section 14(1) of P.D. No. 1529, or, in the alternative, pursuant to Section 14(2) of P.D. No. 1529.

### **Section 14(1) of P.D. No. 1529**

Section 14(1) of P.D. No. 1529 in relation to Section 48(b) of Commonwealth Act No. 141,<sup>[15]</sup> as amended by Section 4 of P.D. No. 1073,<sup>[16]</sup> provides:

SECTION 14. Who may apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

- (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since **June 12, 1945, or earlier.**

x x x x

Section 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance [now Regional Trial Court] of the

province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

x x x x

(b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, since **June 12, 1945, or earlier**, immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.  
[Emphases supplied]

Based on the above-quoted provisions, applicants for registration of land title must establish and prove: (1) that the subject land forms part of the disposable and alienable lands of the public domain; (2) that the applicant and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the same; and (3) that it is under a *bona fide* claim of ownership since June 12, 1945, or earlier.

The foregoing requisites are indispensable for an application for registration of land title, under Section 14(1) of P.D. No. 1529, to validly prosper. The absence of any one requisite renders the application for registration substantially defective.

Anent the first requisite, to authoritatively establish the subject land's alienable and disposable character, it is incumbent upon the applicant to present a CENRO or Provincial Environment and Natural Resources Office (*PENRO*) Certification; and a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.<sup>[17]</sup>

Strangely, the Court cannot find any evidence to show the subject land's alienable and disposable character, except for a CENRO certification submitted by Aboitiz. Clearly, his attempt to comply with the first requisite of Section 14(1) of P.D. No. 1529 fell short due to his own omission. In *Republic v. Hanover Worldwide Trading Corporation*,<sup>[18]</sup> the Court declared that the CENRO is not the official repository or legal custodian of the issuances of the DENR Secretary declaring the alienability and disposability of public lands. Thus, the CENRO Certification should be accompanied by an official publication of the DENR Secretary's issuance declaring the land alienable and disposable. For this reason, the application for registration of Aboitiz should be denied.

With regard to the third requisite, it must be shown that the possession and occupation of a parcel of land by the applicant, by himself or through his predecessors-in-interest, started on June 12, 1945 or earlier.<sup>[19]</sup> A mere showing of possession and occupation for 30 years or more, by itself, is not sufficient.<sup>[20]</sup>