

SECOND DIVISION

[G.R. No. 168386, March 29, 2010]

**LUCITA A. CANTOJA, PETITIONER, VS. HARRY S. LIM,
RESPONDENT.**

RESOLUTION

CARPIO, J.:

The Case

This is a petition for review^[1] of the Decision^[2] dated 24 January 2005 and the Resolution dated 12 May 2005 of the Court of Appeals in CA-G.R. SP No. 76661.

The Facts

Petitioner in this case is the widow of the late Roberto Cantoja, Sr. (Cantoja), whom the DENR awarded a Foreshore Lease Agreement over the foreshore area situated in Makar, General Santos City. Under the Lease Contract^[3] executed on 23 November 1990, the foreshore lease would expire on 21 October 2015.

The facts as found by the Court of Appeals are as follows:

On 16 November 1989, the late Roberto Cantoja Sr. filed with the Office of the DENR, General Santos City, an application for a Foreshore Lease Contract over an area situated in Makar, General Santos City, per Survey Plan No. (XI-5B) 000002-D. Cantoja was awarded the Foreshore Lease Agreement (FLA) on 23 November 1990.

On 4 March 1994, herein petitioner [Harry S. Lim] filed his protest docketed as DENR Case No. 5231, questioning the grant of the FLA to Cantoja. The protest was based on petitioner's allegation that Cantoja committed fraud and misrepresentation in declaring in his application that the subject foreshore area adjoined his (Cantoja's) property. To prove this allegation, petitioner presented his Transfer Certificate of Title (TCT) No. 8423, over Lot 2-B, (LRC) Psd-210799, which adjoins the foreshore area subject of the lease.

On 23 May 1995, Regional Executive Director Augustus L. Momongan of DENR XI, Davao City, issued "Memorandum/Order assigning the above entitled case to Special Investigator Romulo Marohomsalic of the DENR Office No. XI-5D, General Santos City, for further investigation and appropriate action" Upon ocular inspection, during which petitioner failed to appear despite notice, Special Investigator Marohomsalic found that Cantoja was in actual possession of the foreshore area which was utilized

as "dock-board of the Cantoja's Fishing Business. It was further ascertained, that no portion thereof, has been occupied or possessed by any other person or persons, nor was there any adverse claimant thereof."

On 12 December 1995, Geodetic Engineer Bernardo L. Soria, in compliance with the 27 October 1995 Order of the City Environment and Natural Resources Office (CENRO) XI-5B, submitted his report stating, inter alia, that "there was no overlapping of xxx Lot 2-B, (LRC) Psd-210799; and Fli-XI-5b-000002-D xxx all shown in the prepared sketch xxx of (the) report."

On 1 February 1996, Director Momongan issued [an] Order dismissing petitioner's protest on the ground that "(i)n view of all the xxx circumstances and facts gathered during the investigative proceedings, this Office finds that the foreshore area under survey plan Fli-XI-5B-000002-

D, covered by FLA No. (XI-5B) 000002 is separate and distinct from that parcel of land, identified as Lot 2-B, Psd-210799, registered in the name of Claimant-Protestant Harry G. Lim." The petitioner, concluded the Director, "has no legal personality to question the veracity of the possession and occupation of herein Applicant-Respondent over the foreshore area in question, as the same has been legally and regularly acquired by Applicant-Respondent Roberto Cantoja, through public bidding and Applicant-Respondent's occupation and possession thereof is by virtue of a valid award granted by the Department of Environment and Natural Resources (DENR)."

On 5 May 1997, petitioner filed Motion for Reconsideration of the said Order.

Meanwhile, on 6 October 1997, the DENR through the Office of the Solicitor General instituted Civil Case No. 6438 for annulment/cancellation of Patent No. 188030 and OCT No. P-14720 both issued in the name of Jacinto Acharon, as well as petitioner's TCT No. 8423. The suit was anchored on the findings and recommendations of Special Investigator Romulo J. Marohomsalic that "the area in question is xxx partly foreshore and partly river bed of the Makar and therefore inalienable."

On 2 May 2000, then DENR Secretary Antonio H. Cerilles, rendered a Decision reconsidering the 1 February 1996 Order issued by Executive Director Momongan, and thereby cancelled the FLA previously granted to Cantoja. Secretary Cerilles ratiocinated that:

Clearly, the foreshore area leased to Cantoja is bounded on the West by Lot 2, Psu-164268, of which Lot 2-B (LRC) Psd-210799 of herein protestant is a portion. In other words, the said Lot 2-B immediately adjoins the foreshore area leased to Cantoja, contrary to Roberto Cantoja's statement and declaration in his Application for Foreshore Lease that his

properties adjoin the foreshore area leased to him. Obviously, Mr. Cantoja could not be expected to state otherwise for this will result in his outright disqualification as Cantoja could not have legal access to said foreshore area without passing thru Lot-2-B of herein protestant.

(Rollo, p. 79)

A motion for reconsideration with supplemental grounds was subsequently filed by Cantoja. Petitioner in turn filed his opposition.

On 16 August 2000, Secretary Cerilles issued Special Order No. 2000-820 for the "Creation of a Team to Conduct Investigation and Ocular Inspection of the Land Located in General Santos City subject of DENR Case No. 5231." Said order was issued "(i)n view of the request of the Office of the Solicitor General for comment on the proposal of Mr. Harry Lim for amicable settlement of the case xxx."

Without waiting, however, for the result of the investigation of said team, Secretary Cerilles, in an Order dated 17 October 2000, set aside its 2 May 2000 Order and reinstated the FLA in favor of Cantoja. The DENR Secretary also denied petitioner's motion for reconsideration.

On appeal, the Office of the President rendered the herein assailed Decision affirming the 17 October 2000 Order of the DENR Secretary. Like the DENR Secretary, the Office of the President also relied on the findings of Special Investigator Marohomsalic that the petitioner's titled land is an inalienable foreshore area which could not be subject of a valid patent or title.^[4]

Aggrieved, respondent Harry Lim (respondent) appealed to the Court of Appeals. On 24 January 2005, the Court of Appeals rendered a decision, setting aside the 27 March 2003 decision of the Office of the President and reinstating the 2 May 2000 decision of the Secretary of the Department of Environment and Natural Resources (DENR).

Hence, this petition for review.

The Ruling of the Court of Appeals

The Court of Appeals reinstated the 2 May 2000 decision of the DENR Secretary, which cancelled and rescinded the Foreshore Lease Contract covering the foreshore area under survey plan Fli-XI-5B- 000002-D in favor of Cantoja.

The Court of Appeals held that Cantoja committed misrepresentation amounting to fraud in his application for lease when he declared in his application that his lot adjoins that of the foreshore area sought to be leased.

The Issue