

## SECOND DIVISION

**[ G.R. Nos. 175806 and 175810, October 20, 2010 ]**

**MANUEL ALMAGRO JOINED BY HIS SPOUSE, ELIZABETH ALMAGRO, PETITIONERS, VS. SALVACION C. KWAN, WILLIAM C. KWAN, VICTORIA C. KWAN, ASSISTED BY HER HUSBAND, JOSE A. ARBAS, AND CECILIA C. KWAN, RESPONDENTS.**

**[G.R. No. 175849]**

**MARGARITA PACHORO, DRONICA ORLINA, PIO TUBAT, JR., ANDRES TUBAT, EDUVIGIS KISKIS, ELSA BIÑALBER, NOELA TUBAT, ELSA TUBAT, AND ROGELIO DURAN, PETITIONERS, VS. WILLIAM C. KWAN, SALVACION C. KWAN, VICTORIA C. KWAN, ASSISTED BY HER HUSBAND, JOSE A. ARBAS, AND CECILIA C. KWAN, RESPONDENTS.**

### RESOLUTION

**CARPIO, J.:**

This is a consolidation of two separate petitions for review,<sup>[1]</sup> assailing the 4 April 2006 Decision<sup>[2]</sup> and the 31 October 2006 Resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. SP Nos. 71237 and 71437.

This case involves Lot No. 6278-M, a 17,181 square meter parcel of land covered by TCT No. T-11397. Lot No. 6278-M is located at Maslog, Sibulan, Negros Oriental and is registered in the name of spouses Kwan Chin and Zosima Sarana. Respondents are the legitimate children of spouses Kwan Chin and Zosima Sarana, who both died intestate on 2 November 1986 and 23 January 1976, respectively, in Dumaguete City. Upon the death of their parents, respondents inherited Lot No. 6278-M through hereditary succession.

On 18 September 1996, respondents filed with the Municipal Trial Court (MTC) an action for recovery of possession and damages against spouses Rogelio and Lourdes Duran, spouses Romulo Vinalver and Elsa Vinalver,<sup>[4]</sup> spouses Marte<sup>[5]</sup> Bati-on and Liz E. Bati-on, spouses Pablo Deciar and Marlyn Deciar, spouses Salvador Palongpalong and Bienvenida Palongpalong, spouses Sabas Kiskis and Eduvigis Kiskis, spouses Pio Tubat, Jr. and Encarnita Tubat, spouses Andres Tubat and Leonides Tubat, spouses George Tubat and Noela Tubat, spouses Dodong Go and Alice Go, spouses Delano Bangay and Maria Bangay,<sup>[6]</sup> spouses Simeon Pachoro and Margarita Pachoro, spouses Cepriano<sup>[7]</sup> Tubat and Elsa Tubat, spouses Jovito Remolano and Editha Orlina Remolano, spouses Nelson Miravalles and Erlene Miravalles, Dronica Orlina,<sup>[8]</sup> Clarita Barot Lara, Conchita Orlina, Antonia Malahay and the Philippine National Police (PNP),<sup>[9]</sup> Agan-an, Sibulan, Negros Oriental.

Subsequently, spouses Manuel Almagro and Elizabeth Almagro intervened as successors-in-interest of spouses Delano Bangay and Maria Bangay.

During pre-trial, the parties agreed to refer the case to the Chief of the Land Management Services Division, PENRO-DENR, Dumaguete City, to conduct a verification survey of Lot No. 6278-M. When the PENRO personnel failed to conduct the verification survey, the court and the parties designated Geodetic Engineer Jorge Suasin, Sr. (Engr. Suasin) as joint commissioner to do the task. Engr. Suasin conducted the verification and relocation survey of Lot No. 6278-M on 12-13 September 2000 in the presence of the parties, some of their lawyers, and the MTC Clerk of Court. Thereafter, Engr. Suasin submitted a written report with the following findings:

#### WRITTEN REPORT

Comes now, the undersigned Geodetic Engineer Jorge S. Suasin, Sr., to this Honorable Court, most respectfully submit the following written report of the verification and relocation survey of the lot 6278-M located at Maslog, Sibulan, Negros Oriental with T.C.T. No. T-11397 owned by Salvacion G. Kwan, et al.

A. That a big portion of the lot is submerged under the sea and only a small portion remain as dry land.

B. That some of the defendants have constructed their buildings or houses inside the dry land while others have constructed outside or only a small portion of their buildings or houses are on the said dry land.

The defendants and their buildings or houses are as follows:

1. Sps. Rogelio Duran . . . . . inside
2. Sps. Romulo Vinalver. . . . . inside
3. Sps. Marto Bati-on . . . . . inside
4. Sps. Salvador Palongpalong . . . . . inside
5. Sps. Pablo Deciar . . . . . inside
6. Sps. Sabas Kiskis . . . . . inside
7. Sps. Pio Tubat, Jr. . . . . 2 houses,  
the first house a portion, and the second one - inside
8. Sps. Andres Tubat . . . . . inside
9. Sps. George Tubat . . . . . portion
10. Sps. Dodong Go . . . . . inside
11. Sps. Delano Bangay-Almagro . . . . . portion
12. Sps. Simeon Pachoro . . . . . inside
13. Sps. Cipriano Tubat . . . . . inside
14. Sps. Jovito Remolano . . . . . inside
15. Sps. Nelson Miravalles . . . . . cottage and  
house - outside
16. Monica Orlina . . . . . cottage  
inside and house - portion
17. Clarita Barot . . . . . outside

18. Conchita Orlina . . . . . outside  
19. Antonia Malahay . . . . . outside

The verification and relocation survey was executed last September 12-13, 2000 with the presence of both parties and of the Clerk of Court. The cost of the survey was FIFTEEN THOUSAND PESOS (P15,000) shouldered by the plaintiffs and the defendants equally.

Enclosed are a blue print of the sketch plan and a xerox copy of the land title of the said lot.

Respectfully submitted by:

(Sgd) JORGE SUASIN, SR.  
Geodetic Engineer<sup>[10]</sup>

After the court admitted Engr. Suasin's report and the pleadings of the parties, respondents filed a motion for judgment on the pleadings, which the MTC granted.

In its Judgment dated 11 May 2001, the MTC dismissed the complaint on the ground that the remaining dry portion of Lot No. 6278-M has become foreshore land and should be returned to the public domain. The MTC explained:

The term "foreshore" refers to that part of the land adjacent to the sea which is alternately covered and left dry by the ordinary flow of the tides. "Foreshore lands" refers to the strip of land that lies between the high and low water marks and that is alternately wet and dry according to the flow of the tide. The term "foreshore land" clearly does not include submerged lands.

From these definitions, it is safe to conclude that the remaining dry portion of Lot No. 6278-M is now "foreshore land." A big portion of the said lot is presently underwater or submerged under the sea. When the sea moves towards the estate and the tide invades it, the invaded property becomes foreshore land and passes to the realm of public domain. The subject land, being foreshore land, should therefore be returned to the public domain. Besides, Article 420 of the Civil Code provides:

"Art. 420. The following thin[g]s are property of public dominion:

- (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

Plaintiff cannot use the doctrine of indefeasibility of their Torrens title, as property in question is clearly foreshore land. At the time of its registration, property was along the shores. In fact, it is bounded by the Tañon Strait on the NW along lines 2-3-4. The property was of public

dominion and should not have been subject of registration. The survey showed that the sea had advanced and the waves permanently invaded a big portion of the property making the land part of the shore or the beach. The remaining dry land is foreshore and therefore should be returned to the public domain.<sup>[11]</sup>

Respondents appealed to the Regional Trial Court (RTC). The RTC conducted ocular inspections of Lot No. 6278-M on two separate dates: on 5 October 2001 during low tide and on 15 October 2001 when the high tide registered 1.5 meters. All the parties and their lawyers were notified before the two ocular inspections were conducted. During the ocular inspections, in which some parties and their lawyers were present, the RTC observed that the small portion referred to by Engr. Suasin as dry land in his report actually remained dry even during high tide.<sup>[12]</sup> Thus, the RTC concluded that the disputed remaining portion of Lot No. 6278-M is not foreshore land. The RTC stated:

It is the Court's considered view that the small portion of plaintiff's property which remains as dry land is not within the scope of the well-settled definition of foreshore and foreshore land as mentioned above. For one thing, the small dry portion is not adjacent to the sea as the term adjacent as defined in Webster's Dictionary means "contiguous or touching one another or lying next to." Secondly, the small dry portion is not alternately wet and dry by the ordinary flow of the tides as it is dry land. Granting, as posited by defendants, that at certain times of the year, said dry portion is reached by the waves, then that is not anymore caused by the ordinary flow of the tide as contemplated in the above definition. The Court then finds that the testimony of Engr. Suasin dovetails with the import and meaning of foreshore and foreshore land as defined above.

Anent the case of Republic vs. Court of Appeals, 281 SCRA 639, also cited in the appealed judgment, the same has a different factual milieu. Said case involves a holder of a free patent on a parcel of land situated at Pinagtalleran, Caluag, Quezon who mortgaged and leased portions thereof within the prescribed five-year period from the date of issuance of the patent. It was established in said case that the land subject of the free patent is five (5) to six (6) feet deep under water during high tide and two (2) feet deep at low tide. Such is not the situation of the "remaining small dry portion" which plaintiffs seek to recover in the case at bar.<sup>[13]</sup>

On 8 January 2002, the RTC rendered its Decision,<sup>[14]</sup> the dispositive portion of which reads:

WHEREFORE, all told and circumspectly considered, the appealed judgment is hereby reversed and set aside insofar as it states that plaintiffs are not entitled to recover possession of the property in question.