

SECOND DIVISION

[G.R. NO. 162927, March 06, 2007]

MARCELINO B. AGOY, AS THE ADMINISTRATOR OF THE THEN DON SANTIAGO G. MANONGDO, THE ATTORNEY-IN-FACT OF FRANCISCO M. SARABIA AND GENEROSO T. PEREZ, SPS. RODOLFO S. FORONDA AND MILAGROS D. FORONDA; JAIME PEREZ, ALL IN THEIR OWN BEHALF, LIKEWISE, IN BEHALF/REPRESENTATION OF OTHER BONA FIDE RESIDENTS/ SIMILARLY SITUATED, TAXPAYERS, TAKEN UNDER "CLASS SUIT", THEIR NAMES ARE SO NUMEROUS AND SHALL BE SUBMITTED IN DUE TIME FOR JUDICIAL COGNIZANCE, PETITIONERS, VS. COURT OF APPEALS AND PHILIPPINE NATIONAL BANK, IN ITS OWN BEHALF AND IN BEHALF OF PNB MANAGEMENT AND DEVELOPMENT CORPORATION, ITS SUPPOSED VENDEE, THE MEGA PRIME REALTY & HOLDINGS, INC., IN JOINT VENTURE WITH SAKURA REALTY AND DEVELOPMENT CORPORATION, RESPONDENTS.

DECISION

QUISUMBING, J.:

Assailed in this petition for review are the Decision^[1] dated September 12, 2003 and the Resolution^[2] dated March 16, 2004 of the Court of Appeals in CA-G.R. SP No. 63923.

This petition appears to be one of the numerous attempts by petitioners to title several parcels of land in Quezon City by virtue of *Titulo de Propiedad* No. 4136, which has been declared by this Court as null and void. The antecedent facts of the case are as follows:

Sometime in 1911, the Tuason family filed a registration case covering 1,600 hectares of land in Sta. Mesa and Diliman, Quezon City. This was docketed as LRC No. 7681. Petitioners opposed the registration, claiming ownership by virtue of an alleged Composition Title in the name of the late Don Santiago G. Manongdo. They averred that said title was registered on January 12, 1893 at the Property Registry in Bulacan. On December 29, 1913, the Court of Land Registration ruled in favor of the Tuasons.^[3] On July 8, 1914, the Tuasons registered the land with the Register of Deeds of Rizal and was issued Original Certificate of Title No. 735.^[4]

In 1991, petitioners filed with the Court of Appeals an original action for annulment of judgment in LRC No. 7681, docketed as CA-G.R. SP. Case No. 25853. The appellate court dismissed the action for lack of merit and denied reconsideration. Petitioners elevated the case to this Court. It was docketed as G.R. No. 117177. However, this Court denied due course to the petition for late filing.

Through a series of legal transfers, Marcris Realty Corporation (MRC) acquired title to five portions of the property and was issued Transfer Certificates of Title (TCT) Nos. RT-81172 to 75 and 160470.^[5] On February 12, 1980, MRC assigned to the National Investment and Development Corporation (NIDC), a subsidiary of Philippine National Bank (PNB), all of its shares of stock and a 1,793.10 square meter parcel of land. By virtue of the assignment, NIDC acquired all the assets of MRC.^[6]

The five parcels of land were transferred from one subsidiary of PNB to another until these were finally assigned to the Management and Development Corporation (MADECOR). In view of the assignment, the Register of Deeds of Quezon City cancelled TCT Nos. RT-81172 to 75 and issued TCT Nos. 87881 to 84 in the name of MADECOR.^[7]

On September 27, 1996, PNB sold all its stockholdings in MADECOR, including the land covered by TCT Nos. 87881 to 84 and 160470, to Mega Prime Realty and Holdings, Inc.^[8]

On August 17, 1999, petitioners filed a complaint (for annulment of title) against PNB, MADECOR, Mega Prime, and the Register of Deeds of Quezon City, with the Regional Trial Court (RTC) of Quezon City, Branch 93. The case was docketed as Civil Case No. Q-99-38491. Petitioners averred that the period within which PNB can legally hold the five parcels of land ended on February 12, 1985, since it foreclosed the properties of MRC on February 12, 1980. They alleged that the transfer of the properties from PNB to MADECOR on May 18, 1988 circumvented the maximum holding period prescribed by Republic Act No. 337.^[9]

The Land Registration Authority manifested that it did not issue the decree from which the questioned certificates of title were derived, but it was the defunct General Land Registration Office that did. It further stated that the basis of petitioners' claim was *Titulo de Propiedad* No. 4136 which was already declared by this Court as null and void. For its part, PNB moved for the dismissal of the case for failure to state a cause of action and/or on the ground that the cause of action was barred by prior judgment.

On May 22, 2000, the RTC granted PNB's motion and dismissed the case.^[10] Subsequently, it denied petitioners' separate motions for reconsideration and to terminate the legal services of PNB's private counsel as it should be represented by the Office of the Government Corporate Counsel (OGCC).^[11] On December 1, 2000, the trial court denied petitioners' second motion for reconsideration.^[12] On January 9, 2001, the RTC clarified that its December 1, 2000 decision resolved the second motion for reconsideration and held that the motion to resolve the second motion for reconsideration was already moot.^[13]

Petitioners then filed a petition for certiorari with the Court of Appeals. However, the appellate court denied the petition for failure to show grave abuse of discretion on the part of the RTC. The Court of Appeals, likewise, denied reconsideration.

Petitioners now come before us raising the following issues:

1. WHETHER OR NOT THE RESPONDENT PHILIPPINE NATIONAL BANK AS AN INSTRUMENTALITY OF THE GOVERNMENT HAS ACTED [WITH] GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DIVERTING PUBLIC FUND, EQUIVALENT [TO] UTILIZING THE SUBJECT PARCEL OF LAND IN QUESTION IN THE CASE AT BAR THAT WAS FORECLOSED ON FEBRUARY 12, 1980 AS AN EQUITY IN THE REGISTRATION OF ITS SO-CALLED SUBSIDIARY CORPORATION, THE PNB MANAGEMENT AND DEVELOPMENT CORPORATION, UNDER THE CORPORATION CODE (B.P. 68) ON FEBRUARY 6, 1989 WITHOUT NECESSARILY VIOLATING THE PROVISIONS PRESCRIBED UNDER SEC. 25 (d) OF THE GENERAL BANKING ACT (R.A. 337), AS AMENDED;
2. WHETHER OR NOT THE REGISTRATION ON FEBRUARY 6, 1989 OF THE PNB MANAGEMENT AND DEVELOPMENT CORPORATION BY THE PHILIPPINE NATIONAL BANK WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER S.E.C. REG. NO. 159753 AS ITS SO-CALLED SUBSIDIARY CORPORATION COULD BE CONSIDERED ILLEGAL PER SE, MARKED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION;
3. WHETHER OR NOT THE PHILIPPINE NATIONAL BANK HAS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR [EXCESS] OF JURISDICTION [IN] ITS PRIVATIZATION ON MAY 27, 1998 WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER S.E.C. REG. NO. AS096-005555 BASED ON EXECUTIVE ORDER NO. 80, ISSUED ON DECEMBER 3, 1986, AMOUNTING TO NULLITY, AND ON THE OTHER HAND, COULD BE REPRESENTED BY THE OFFICE OF THE GOVERNMENT COUNSEL (OGCC) AS ITS PRINCIPAL COUNSEL IN THE CASE AT BAR.^[14]

We note that these are not the same issues passed upon by the Court of Appeals. Before the Court of Appeals, petitioners raised only the issues of (a) whether the trial court properly disposed of the case, and (b) whether PNB could be legally represented by its legal department instead of the OGCC. A party cannot raise new issues or change his theory on appeal.^[15] Thus, we shall address only two proper issues: (1) Did the trial court properly dismiss the complaint? and (2) Does PNB have to be represented by the OGCC?

Petitioners reiterate their assertion that the registration by PNB, through its subsidiary MADECOR, of the five parcels of land should be annulled because PNB's right to hold the properties prescribed on February 12, 1985. They claim that, instead of resolving the controversy, the trial court merely denied the complaint without resolving their motion to strike out the entire copy of the motion to dismiss. They maintain that the motion to dismiss was without any force and effect since it was filed, not by the OGCC, but by PNB's own legal department.

PNB counters that petitioners failed to establish that the trial court gravely abused its discretion when it dismissed the complaint. It maintains that an order of dismissal is a final order, which is subject to appeal and not a proper subject of certiorari. PNB adds that the present petition raises questions of fact which are not proper in a petition for review.