

THIRD DIVISION

[G.R. NO. 147340, December 13, 2007]

**CYNTHIA CRUZ KHEMANI AND SHANKER N. KHEMANI,
PETITIONERS, VS. THE HEIRS OF ANASTACIO TRINIDAD,
REPRESENTED BY NAPOLEON AND ROLANDO TRINIDAD,
RESPONDENTS.**

DECISION

YNARES-SANTIAGO, J.:

This petition for review on certiorari^[1] assails the July 31, 2000 Decision^[2] of the Court of Appeals in CA-G.R. SP No. 55581, which affirmed the May 24, 1999 Order^[3] of the Regional Trial Court, Branch 24, Koronadal, South Cotabato in Civil Case No. 1122, entitled "*Heirs of Anastacio and Francisca Trinidad, et al. v. Heirs of Jose Peña, et al.*" Also assailed is the January 8, 2001 Resolution^[4] denying the motion for reconsideration.

The factual antecedents are as follows:

Petitioner Cynthia Cruz Khemani is the registered owner of Lot No. 107, Ts-1032 (Lot No. 107), which is covered by Transfer Certificate of Title (TCT) No. 58976 issued on March 10, 1994.^[5] Khemani purchased the lot from the heirs of Jose B. Peña (the Peña Heirs) on February 17, 1994. Shanker N. Khemani is her brother-in-law and duly authorized representative.

Subject of the instant case is a 340 square meter portion (the Disputed Property) of Lot No. 107 over which respondents Heirs of Anastacio Trinidad, represented by Napoleon and Rolando Trinidad, are claiming ownership. Respondents allege that they and their predecessors-in-interest, Spouses Anastacio and Francisca Trinidad, have openly, peacefully, publicly and adversely possessed the Disputed Property in the concept of owner since 1950.

Lot No. 107 and Lot Nos. 108 and 109, constitute Lot No. 355 which was part of the public domain. On July 10, 1950, Lot No. 355 with an original area of 1,500 square meters was awarded to Jesus M. Larrabaster by the National Land Settlement Administration (NLSA) who subsequently sold his rights and interests over the said property to Jose B. Peña (Peña) on June 29, 1956.

Thereafter, the original area of Lot No. 355 which was 1,500 square meters increased to 3,616.93 square meters due to accretion. Peña then requested the Bureau of Lands (BOL) to adjust the area of the lot awarded to him but the BOL denied the request on the ground that the accretion belonged to the government.

Aggrieved, Peña appealed to the Office of the President. The BOL recommended that Lot No. 355 be subdivided into three parts, to wit, Lot Nos. 107, 108 and 109, and

that Lot No. 108 with an area of 1,500 square meters, be awarded to Peña, instead of the whole of Lot No. 355. Meanwhile, Lot Nos. 107 and 109 would be allocated to Basilio Mendoza (Mendoza) and Arturo Roxas, respectively.

The Office of the President initially adopted the recommendation of the BOL. Upon reconsideration, however, it modified its decision and held that the entire area of Lot No. 355, including the accretion, belonged to Peña and not to the government. Thus, Lot Nos. 107, 108, and 109 were awarded to him.

On January 27, 1970, Mendoza filed a special civil action for *certiorari* against the Assistant Executive Secretary for Legal Affairs of the Office of the President, the BOL, the Director of Lands, and Peña before Branch 24 of the Court of First Instance of South Cotabato, which was docketed as Civil Case No. 98. Claiming that he was denied due process, Mendoza assailed the decision of the Office of the President awarding the entire area of Lot No. 355 to Peña. He asserted ownership over Lot No. 107 on the strength of a Miscellaneous Sales Application he allegedly filed with the BOL on November 6, 1962.

On May 10, 1985, the trial court rendered a decision dismissing Mendoza's petition for *certiorari* but the same was reversed by the Court of Appeals on appeal. Hence, Mendoza filed a petition for review on *certiorari* before the Supreme Court.

In the case of *Assistant Executive Secretary for Legal Affairs of the Office of the President v. Court of Appeals*^[6] which was decided on January 9, 1989, the Supreme Court rejected Mendoza's claim over Lot No. 107 and found the Miscellaneous Sales Application without legal force and effect since the object thereof was no longer public land. Thus, Peña's right of ownership over the entire area of Lot No. 355, which consists of Lot Nos. 107, 108 and 109, was affirmed.

On September 20, 1993, the Peña Heirs were awarded a patent by the Department of Environment and Natural Resources (DENR), and on September 21, 1993, Original Certificate of Title No. P-33658^[7] covering Lot No. 107 was issued in their name.

On January 27, 1994, respondents filed with the Regional Trial Court, Branch 24, Koronadal, South Cotabato a verified complaint^[8] against the Peña Heirs,^[9] the DENR Region IX Office, and the BOL for "Review of Decree of Registration and/or Reconveyance with Prayer for Issuance of Writ of Preliminary Prohibitory Injunction and Temporary Restraining Order," which was docketed as Civil Case No. 1122. Respondents filed the complaint on the strength of their own and their predecessors' open, peaceful, public and adverse possession of the Disputed Property in the concept of owner since 1950.

Respondents also claimed that on July 16, 1976, their predecessor-in-interest, Anastacio, applied for a Miscellaneous Sales Application over the Disputed Property which was designated as a portion of Lot No. 107, Ts-1032.^[10] On March 2, 1979, the BOL allegedly issued Certification No. 3445 certifying that the Disputed Property was awarded to Anastacio and that the transfer had been duly investigated and approved per Board Resolution No. 133, Series of 1979.

Instead of an answer, the Peña Heirs filed a Motion to Dismiss^[11] alleging that the

Regional Trial Court lacks jurisdiction over the nature of the action or the suit; that respondents have no legal capacity to sue as only the government may seek nullification of the land grant in their favor; and that the cause of action is barred by prior judgment or the statute of limitations. They asserted that the issue of ownership over the Disputed Property has long been settled in the *Assistant Executive Secretary* case. Further, they argued that respondents' predecessor-in-interest, Anastacio, was a mere squatter who had been allowed by Mendoza to occupy a portion of Lot No. 107 sometime in 1960.

In respondents' Comment/Opposition,^[12] they claimed that the Disputed Property had long ceased to be public land by virtue of their open, public, continuous, adverse and exclusive possession in the concept of owner for more than 40 years, and that they were never parties in the *Assistant Executive Secretary* case involving Mendoza.

On September 3, 1997, Judge Rodolfo C. Soledad (Judge Soledad) granted petitioner's motion to dismiss and held that respondents are bound by the ruling of this Court in the *Assistant Executive Secretary* case.^[13]

Respondents filed a motion for reconsideration^[14] alleging that *res judicata* does not apply and that their action is not barred by the *Assistant Executive Secretary* case. They argued that neither they, nor Anastacio, were parties in the said case and that there is no identity of causes of action.

In 1998, Judge Soledad died without resolving the motion for reconsideration filed by respondents. Judge Francisco S. Ampig (Judge Ampig) was designated Acting Judge. On May 24, 1999, Judge Ampig granted the motion for reconsideration, reinstated Civil Case No. 1122, and directed the Peña Heirs to file an answer.

The Peña Heirs, together with herein petitioner as the new owner of Lot No. 107, filed a petition for *certiorari*^[15] before the Court of Appeals which was docketed as CA-G.R. SP No. 55581.

On July 31, 2000, the Court of Appeals rendered the assailed decision dismissing the petition. It ruled that a petition for *certiorari* is not the proper remedy against an order denying a motion to dismiss. Further, it held that there is no *res judicata*. Thus:

Moreover, petitioners have plain, speedy and adequate remedy in the ordinary course of law. The remedy against an adverse interlocutory order, such as the assailed orders, is not *certiorari* but to continue with the case in due course and, when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law. x x x

With the denial of the motion to dismiss and reinstatement of the case, petitioners will still answer the complaint. Upon joinder of issues, the parties will enter into trial, after which, the lower court will render a verdict. And if adverse to them, petitioners may appeal the decision together with the assailed orders. The case at bench does not fall under any of the exceptional circumstances where the extraordinary writ of *certiorari* may be resorted to despite availability of appeal.