

## SECOND DIVISION

**[ G.R. NO. 146050, September 27, 2006 ]**

**ILDEFONSO CERVANTES, PETITIONER, VS. FORMER NINTH  
DIVISION OF THE HONORABLE COURT OF APPEALS AND MOISES  
MADARCOS, RESPONDENTS.**

### DECISION

**AZCUNA, J.:**

This is a petition for certiorari<sup>[1]</sup> with prayer for a writ of preliminary injunction, seeking the nullification of the Decision rendered by the Court of Appeals on March 10, 1999, and its subsequent Resolutions, respectively dated July 6, 1999, March 17, 2000, and August 15, 2000, in CA-G.R. CV No. 37646 entitled "Ildefonso Cervantes v. Moises Madarcos."

The controversy is an offshoot of a civil case involving the cancellation of the Original Certificate of Title (O.C.T.) that had been issued to private respondent on the basis of a free patent granted by the Bureau of Lands. The validity of the certificate of title is being attacked on the ground of fraud.

The facts of the case are as follows:

Petitioner Ildefonso Cervantes began possessing and cultivating Lot No. 51, GSS-402, covering a total land area of 6.4730 hectares, in Barangay San Jose, Puerto Princesa City, Palawan in 1944.

On November 19, 1958, petitioner filed Free Patent Application No. 598 over the lot with the District Office of the Bureau of Lands of Puerto Princesa.

In 1975, petitioner's nephew, private respondent Moises Madarcos, started staying in his house. Sometime in 1976, private respondent informed petitioner that he knew somebody at the Bureau of Lands who can help him title his land. Thus, on September 2, 1976, petitioner, together with respondent, went to the District Office of the Bureau of Lands of Puerto Princesa. There, petitioner was introduced to Administrative Assistant Gerardo Jacinto, and he requested for an amendment of his free patent application with regard to the total land area covered by the application which should be 6.473 hectares instead of 5.670 hectares. Jacinto agreed to survey the lot and make the necessary corrections in the application. He likewise prepared an affidavit of posting which petitioner signed.

On September 3, 1976, petitioner executed an Affidavit of Quitclaim relinquishing all his rights and interests over a portion of the land, estimated to be around 1.5 hectares, in favor of private respondent, purportedly for the amount of P1,000.<sup>[2]</sup>

On the basis of the quitclaim, private respondent applied for a free patent over the

aforesaid area on November 23, 1976. On April 5, 1977, a free patent covering an area of 14,860 square meters was granted to private respondent. On April 6, 1977, the corresponding O.C.T. No. G-286 was issued by the Registry of Deeds of Puerto Princesa City in the name of private respondent.

Meanwhile, on June 29, 1977, the Bureau of Lands granted petitioner's application for a free patent for which, on September 5, 1977, O.C.T. No. G-298 was issued by the Registry of Deeds of Puerto Princesa City in favor of petitioner. The title, however, covered the entire land area of 6.4730 hectares under Free Patent Application No. 598, which necessarily included the portion that was previously awarded to private respondent.

Sometime in 1979, petitioner went to the Bureau of Lands and there, he allegedly discovered that O.C.T. No. G-286, covering an area of 14,860 square meters, had been issued in favor of private respondent.

Petitioner demanded from private respondent an explanation regarding the issuance of the free patent in his favor. On May 12, 1981, however, private respondent filed an ejectment case<sup>[3]</sup> against petitioner. According to petitioner, it was only thereafter or on July 10, 1981, that he realized that the document which private respondent made him sign hastily in the afternoon of September 3, 1976 at his house was an affidavit of quitclaim.

On May 18, 1987, petitioner filed with the Regional Trial Court of Palawan an action for the annulment or cancellation of O.C.T. No. G-286 on the ground of fraud. He claimed that private respondent and Gerardo Jacinto of the Bureau of Lands connived to dispossess him of his land. He added that he was intoxicated at that time, and because of the trust and confidence that he reposed in his nephew, he did not bother to read the contents of the document which later turned out to be an affidavit of quitclaim. He was made to believe that the document that he signed was for the purpose of expediting his free patent application.

Petitioner advanced the foregoing badges of fraud: a) private respondent took advantage of him because although he could sign his name, he had been largely unschooled as he only reached third grade in elementary; b) the affidavit of quitclaim was signed on the same date as the affidavit of posting; c) the affidavit of posting contained the original land area that he applied for; d) his application had been pending for nineteen (19) years before title was issued in his name covering the entire area of 6.4730 hectares, while private respondent received his title over a portion of the lot in question after merely five (5) months from the time that he applied for a free patent thereon; and, e) the total land area of 6.4730 which he applied for was not reduced as reflected in the free patent and the certificate of title issued to him despite the earlier issuance of title over a portion thereof in favor of private respondent.

Petitioner likewise averred that while ordinarily the certificate of title under the Torrens system may not be cancelled, it can still be subject to reconveyance if the land has not been transferred to a buyer in good faith.

Private respondent contended, on the other hand, that at the Bureau of Lands, Jacinto prepared the affidavit of quitclaim indicating petitioner's intention to transfer his rights over the portion of the lot in favor of private respondent for the amount of

P1,000. After the contents of the affidavit were explained to them, petitioner signed the same in the presence of private respondent, Jacinto, Nestor Zumarraga who affixed his signature as witness thereto, and petitioner's older brother, Francisco Cervantes.

In addition, private respondent stated that the personnel from the Bureau of Lands conducted the investigation with regard to his free patent application, and finding no irregularity or fraud, an order of approval was issued in his favor. He further stated that petitioner filed the case as a last recourse to avoid the execution of the decision in the aforementioned ejectment case wherein the Supreme Court upheld his right of possession over the disputed lot. Hence, private respondent insists that petitioner's title, insofar as it includes the lot already awarded to him by virtue of O.C.T. No. G-286, is null and void.

On September 23, 1991, the Regional Trial Court rendered a Decision, the dispositive portion of which reads:

WHEREFORE, and in view of the foregoing considerations, judgment is hereby rendered in favor of the plaintiff and against defendant and further orders/declares:

1. that OCT No. [G-]286 of the Registry of Deeds of the City of Puerto Princesa in the name of Moises Madarcos is hereby declared null and void and no force and effect; hereby ordering the Register of Deeds of Puerto Princesa City to cancel the aforesaid certificate of title in the name of Moises Madarcos;
2. that the defendant pay the plaintiff the amount of Thirty Thousand (P 30,000.00) Pesos as and for moral damages;
3. that the defendant pay the plaintiff the sum of Five Thousand (P5,000.00) Pesos as litigation expenses; and,
4. the defendant pay the costs.

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

Private respondent went to the Court of Appeals challenging the ruling of the trial court. On March 10, 1999, the Court of Appeals reversed the decision, thus:

WHEREFORE, in the light of the foregoing disquisition, the judgment appealed from is hereby REVERSED and SET ASIDE and a new one is rendered in favor of defendant-appellant upholding the validity of his Torrens Title. If O.C.T. No. [G-]286 had been cancelled, the Register of Deeds of Puerto Prin[c] esa City is hereby ordered to reinstate the same in the name of defendant-appellant. O.C.T. No. [G-] 298 in so far as it includes a portion of land covered by O.C.T. No. [G-]286 is declared void and of no effect.

SO ORDERED.<sup>[5]</sup>

Petitioner, through his new counsel, Atty. Paz Soledad Rodriguez-Cayetano, moved for a reconsideration of the above decision but the same was denied by the Court of

Appeals in its resolution, dated July 6, 1999.

On February 2, 2000, petitioner filed a Motion to Set Aside Entry of Judgment with Prayer for a Temporary Restraining Order and Preliminary Injunction. He claimed that he did not receive notice of the Court of Appeals' resolution denying his motion for reconsideration because it was sent to his former counsel, Atty. Agustin Rocamora.

The Court of Appeals, in its resolution dated March 17, 2000, denied said motion on the ground that its decision, promulgated on March 10, 1999, had already become final and executory, thus:

The Decision of this Court already became final. Despite receipt by appellee's counsel of record, Atty. Rocamora, of a copy of the Decision and a copy of the denial of its Motion for Reconsideration, counsel failed to take an appeal from said Decision and Order of denial of its motion for reconsideration. Unfortunately, this rendered the questioned Decision final and executory. If he claims to have joined the government service, he should have withdrawn from the case and must have manifested in Court of this move [sic] purposely to give due notice.<sup>[6]</sup>

Petitioner filed a motion for reconsideration but it was denied by the Court of Appeals in its resolution, dated August 15, 2000.

Hence, this petition raising the following issues:<sup>[7]</sup>

## I

WHETHER OR NOT THE HONORABLE RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DENIED THE MOTION TO SET ASIDE ENTRY OF JUDGMENT ON THE TECHNICAL GROUND THAT THE PETITIONER'S COUNSEL OF RECORD RECEIVED A COPY OF THE DENIAL OF THE MOTION FOR RECONSIDERATION BUT FAILED TO TAKE AN APPEAL THEREFROM.

## II

WHETHER OR NOT THE HONORABLE RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION:

A. WHEN IT REFUSED TO CONSIDER THE PREPONDERANCE OF EVIDENCE OF FRAUD IN PROCURING THE AFFIDAVIT OF QUITCLAIM; AND,

B. WHEN IT HELD THAT THE PRESENT ACTION HAS PRESCRIBED.

A notice and copy of the Court of Appeals' resolution denying petitioner's motion for reconsideration of the court's decision were mailed to Atty. Agustin Rocamora's address on record, months after his unilateral withdrawal as petitioner's counsel and without formally informing the court. The rule is that when a party is represented by counsel, notice should be made upon the counsel of record at his given address