CAGAYAN DE ORO CITY

SPECIAL TWENTY-SECOND DIVISION

[CA-G.R. CV NO. 02697-MIN, July 14, 2014]

SPOUSES REGINO J. CALUB, JR. AND CORAZON N. GAERLAN-CALUB, PLAINTIFFS-APPELLEES, VS. EDWINIO HILAYLAY AND VICTORIO BALDAHON, DEFENDANTS BILLY TORRES, ALEJO TORRES AND MARIO TORRES, DEFENDANTS-APPELLANTS.

D E C I S I O N

INTING, J.:

This an APPEAL[1] filed under Rule 41 of the Rules of Civil Procedure assailing the Judgment[2] dated May 31, 2011 of the Regional Trial Court, Branch 11, Manolo Fortich, Bukidnon in Civil Case No. 02-455 for *"Accion Publiciana, Injunction and Other Relief with Preliminary Injunction"*.

The facts of the case are as follows:

The property subject of this controversy pertains to a parcel of land registered in the name of plaintiffs-appellees under Transfer Certificate of Title (TCT) No. 10164[3], situated in Dahilayan, Manolo Fortich, Bukidnon and is particularly described as follows:

"Lot 403, Pls-71"

> xxx containing an area of TWO HUNDRED SEVEN THOUSAND NINE HUNDRED AND NINETY ONE (207,991) SQUARE METERS... Bounded on the W., along lines 1-2-3-4 by Road; on the N., along lines 4-6-7 by Lot 405, Pls-71; on the E., along lines 7-8-9 by Road; and on the S., along lines 9-10-11-1 by Lot 399, Pls-71..."

Plaintiffs-appellees, as registered owners of the land, alleged that they acquired the property from a certain Celsa Merlas through a Deed of Sale with Assumption of Mortgage[4] executed on November 4, 1975. Celsa was the representative of the Heirs of the late Maurecio Merlas, the grantee of Homestead Patent No. 128020. Pursuant to the patent, Original Certificate of Title (OCT) No. P-4579[5] in the name of Maurecio Merlas was issued on September 15, 1970.

On April 5, 1976, TCT No. T-10164 was issued to plaintiff-appellee Corazon (Corazon). It was also declared for tax purposes in her name. From the time they bought the subject property from Celsa, plaintiffs-appellees never took possession of the land. Corazon claimed that she had visited it once in 1984; another time in 1999; and on June 11, 2002, a few days before the filing of the complaint. Plaintiffs-appellees justified the very few times they went to the area by saying that it was

due to their work assignments in Manila other parts of the Philippines and abroad. Plaintiff-appellee Regino worked with the Philippine Army and later on served as the Philippines defense attache in Washington D.C. On the other hand, Corazon was employed with Office of then Prime Minister Virata in Manila and subsequently as special assistant of the Philippine Ambassador in Washington D.C. Although the spouses were away, plaintiffs-appellees alleged that they sent one Nicolas Abonitalla to pay the taxes on the land.

At the time Corazon bought the subject property, only one house stood therein which belonged to Rudy Merlas, the son of Celsa. For humanitarian reasons, Corazon allowed Rudy to stay and cultivate the land as well as to claim its produce until such time that plaintiffs-appellees would need the land. When Corazon again visited the land in 1999, she saw a small house erected thereon and a patch of tomatoes, belonging to one Berto delos Santos. Corazon informed Berto that she was the owner and that she would allow the latter to stay and plow the land until she would need it. Berto told Corazon that he was paying rent to herein defendants-appellants Torres. In 2000, the Couples of Christ (CFC), of which plaintiffs-appellees were members, were looking for a space for their program in Social Ministries. Plaintiffs-appellees offered to provide the area as camp site but were unable to pursue their plans because there was already a house and fence on the property constructed by defendants-appellants.

Defendants-appellants Billy, Alejo and Mario Torres, on the other hand, claimed to have possessed the land since 1964 through their father, Francis Torres. The land was alleged to have been declared for tax purposes in the name of Francis Torres since 1967. The Torreses have introduced improvements to the land and the land was even used as a collateral for a loan before a rural bank in Manolo Fortich. The Torreses also declared the subject land as their agricultural landholding before the Department of Agrarian Reform (DAR). Francisco Torres applied as claimant of the subject land in 1966 but the land was never patented in his name. Subsequently, the late Mauricio Merlas filed an application over the same parcel of land. It was granted and he was issued OCT No. P-4579.

For their part, defendants-appellants Edwino Hilayhay and Victorio Baldahon claimed that the portion of the subject land is their ancestral land and that they have been in open, adverse and continuous possession thereof through their predecessor-in-interest since time immemorial. Datu Mabalaw or Pedro Anlagan, Tribal Chieftain of the Talaandig Tribe of which defendants-appellants are members, filed a petition for ancestral domain before the NCIP but the petition was not yet approved.

Consequently, on June 6, 2002, plaintiffs-appellees filed a Complaint[6] for accion publiciana, injunction and other relief with preliminary injunction before the Regional Trial Court. On May 31, 2011, the RTC rendered a Judgment in favor of herein plaintiffs-appellees, the dispositive portion of which provides:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs declaring them entitled to the possession of the property embraced by TCT No. T-10164 of the Registry of Deeds of Bukidnon, located at Dahilayan, Manolo Fortich, Bukidnon. Accordingly, the defendants, their representatives or agents, and all other individuals claiming any right, title, or instructions and directions under them, are

hereby ordered to VACATE the property peacefully and turn-over the possession thereof to the plaintiffs.

The prayer for various kinds of damages are ordered DISMISSED for lack of evidence.

SO ORDERED.

Hence, the instant appeal.

Defendants-appellants now come before Us raising the following assignment of errors[7]:

I.

THE COURT A QUO ERRED (WITH ALL DUE RESPECT) IN DECLARING PLAINTIFFS/APPELLEES AS ENTITLED TO THE POSSESSION OF THE SUBJECT PROPERTY.

II.

THE COURT A QUO ERRED (WITH ALL DUE RESPECT) IN NOT DECLARING PLAINTIFFS/APPELLEES AS TRUSTEE TO THE SUBJECT PROPERTY IN FAVOR OF DEFENDANTS/APPELLANTS.

III.

THE COURT A QUO ERRED (WITH ALL DUE RESPECT) IN NOT DECLARING PLAINTIFFS/APPELLEES GUILTY OF LACHES AND THEIR COMPLAINT HAVE ALREADY PRESCRIBED.

Our Ruling

The appeal is devoid of merit.

First, defendants-appellants contend that the subject land is located in Dahilayan, Manolo Fortich while plaintiffs-appellees', predecessor-in-interest of Mauricio Merlas, are residents of Jasaan, Misamis Oriental. As such, it was impossible how the latter could have occupied or cultivated the subject land when they are residing from a very far place. This is only an indication that Mauricio falsified or misrepresented his application for homestead patent to put some plausibility that he has complied all the requirements of the law relative to occupation and cultivation. Defendants-appellants argue that OCT No. P-4579 is therefore null and void *ab initi*o as Mauricio failed to comply with the requirements. As such, the titles issued to Mauricio and subsequently to plaintiffs-appellees are held in trust in their favor.

The contention is unmeritorious.

Prefatorily, it is only at this late stage that defendants-appellants are raising this point. It was not raised before the court *a quo*. Well-settled is the rule that issues not raised timely in the proceedings before the trial court cannot be considered on review or appeal as to do so would be to trample on the basic rules of fair play,

justice, and due process.[8] Questions raised on appeal must be within the issues framed by the parties; consequently, issues not raised before the trial court cannot be raised for the first time on appeal.[9]

Even granting for the sake of argument that We entertain the issue, the contention is still bereft of merit.

First, defendants-appellants' allegation that Merlas could not have occupied or cultivated the subject land as he was residing in a place far from where the subject land is located, is entirely without basis and purely self-serving and speculative.

Moreover, once a patent is registered and the corresponding certificate of title is issued, the land covered thereby ceases to be part of public domain and becomes private property, and the Torrens Title issued pursuant to the patent becomes indefeasible upon the expiration of one year from the date of such issuance.[10] However, a title emanating from a free patent which was secured through fraud does not become indefeasible, precisely because the patent from whence the title sprung is itself void and of no effect whatsoever.[11]

Nonetheless, a free patent that was fraudulently acquired, and the certificate of title issued pursuant to the same, may only be assailed by the government in an action for reversion pursuant to Section 101 of the Public Land Act.[12] In *Sherwill Development Corporation v. Sitio Sto. Niño Residents Association, Inc.*[13], the Supreme Court pointed out that:

> It is also to the public interest that one who succeeds in fraudulently acquiring title to a public land should not be allowed to benefit therefrom, and the State should, therefore, have an even existing authority, thru its duly-authorized officers, to inquire into the circumstances surrounding the issuance of any such title, to the end that the Republic, thru the Solicitor General or any other officer who may be authorized by law, may file the corresponding action for the reversion of the land involved to the public domain, subject thereafter to disposal to other qualified persons in accordance with law. In other words, the indefeasibility of a title over land previously public is not a bar to an investigation by the Director of Lands as to how such title has been acquired, if the purpose of such investigation is to determine whether or not fraud had been committed in securing such title in order that the appropriate action for reversion may be filed by the Government.

Since it is the Director of Lands who processes and approves the applications of homestead patent and who orders the issuance of the corresponding free patents in his capacity as administrator of the disposable lands of the public domain, an action for annulment should be initiated by him, or at least with his prior authority and consent.[14] Moreover, in *Cawis v. Cerilles*[15] citing *Urquiaga v. CA*[16], the Supreme Court held that there is no need to pass upon any allegation of actual fraud in the acquisition of a title based on a sales patent. Private persons have no right or interest over land considered public at the time the sales application was filed. They have no personality to question the validity of the title. It was further