

TWENTIETH DIVISION

[CA-G.R. CEB-CV NO. 04401, September 04, 2014]

SPOUSES JOSE R. ONG & MARCELINA ONG, SPOUSES JUAN MANUEL LIM & CLARISSA LIM, SPOUSES CECIL YAP AND JULIA VICTORIA YAP, AND SPOUSES CLIFTON YAP AND ANGELITA YAP, PLAINTIFFS-APPELLANTS, VS. HEIRS OF LUCRESIA LOPEÑA LOPOS, NAMELY, EUTQUIO LOPOS, DOMINGA LOPOS BILIRAN AND JULIA LOPOS, THE DENR REGION VII REGIONAL EXECUTIVE DIRECTOR LEONARDO R. SIBBALUCA, CENRO TAGBILARAN CITY, THE MUNICIPAL ASSESSOR OF DAUIS BOHOL, AND THE PROVINCIAL ASSESSOR OF BOHOL, DEFENDANTS-APPELLEES.

DECISION

HERNANDO, J.:

Before Us is an appeal from the Order^[1] dated April 3, 2012 of the Regional Trial Court (RTC), Branch 49 of Tagbilaran City in Civil Case No. 7517, an action for Quieting of Title and Damages with Prayer for a Temporary Restraining Order and Writ of Preliminary Injunction. The said assailed April 3, 2012 Order reconsidered its prior January 17, 2012 Order^[2] denying the motion to dismiss filed by defendants-appellees. The reconsidered April 3, 2012 Order disposed as follows:

WHEREFORE, prescinding from the foregoing, the court has no recourse but to reconsider its Order dated January 17, 2012, denying the Motion to Dismiss and/or Affirmative Defenses.

In lieu thereof, a new Order is issued dismissing the instant case on grounds aforestated.

Consequently, the hearing set on May 8, 2012 is cancelled.

SO ORDERED.

Plaintiffs-appellants' motion for reconsideration relative to the April 3, 2012 Order was likewise denied by the RTC in another assailed May 9, 2012 Order^[3].

The present appeal was declared submitted for Decision by this Court per Minute Resolution^[4] dated June 24, 2014. Not long after, a Motion for Leave to Admit Appellees' Brief^[5] with attached Appellees' Brief^[6] was filed by private defendants-appellees on July 14, 2014. In said motion, they aver that on July 3, 2014, they

filed a motion for reconsideration on this Court's Minute Resolution dated June 24, 2014. Said motion for reconsideration^[7] was actually received by this Court only on August 7, 2014. At any rate, in order to afford each parties the opportunity to present their respective arguments and considering that failure to file a brief on time is not a jurisdictional matter, We hereby resolve to NOTE and ADMIT private defendants-appellees' Brief in the interest of substantial justice.

The Antecedents:

Culled from the records are the following material facts:

Subject of the controversy are two parcels of land known as Lot Nos. 6740 and 6741, Gss-07-02-000039, containing an area of Nine Thousand Seven Hundred Sixty (9,760) and Nine Thousand Eight Hundred Fifty-Two (9,852) square meters, respectively, both located in Totolan, Dausi, Bohol.

These lots in controversy were earlier subject of free patent applications filed by herein private defendants Dominga L. Biliran for Lot No. 6740^[8] and Julia Lopus for Lot No. 6741^[9] before the Department of Environment and Natural Resources (DENR) Region VII. Private defendants Biliran and Lopus claimed that the lots in controversy (which was then whole) were originally owned by the late Serafino Lopena, as early as 1916, who died a widower and without issue. During his lifetime, Serafino Lopena actually possessed and cultivated these lots. After his death, the same were adjudicated by his siblings, namely, Pacificio, Valeria and Lucrecia by virtue of oral partition in favor of Serafino's sister, Lucrecia Lopena Lopus. Thereafter, Lucrecia Lopena Lopus continued to actually possess and cultivate said lots and planted them with corn and ube.

After the death of Lucrecia Lopena Lopus sometime in the year 1982, said parcels of land were then inherited by her children, namely: Magdalena Lopus Niñeza (deceased), Eutiquio Lopena Lopus, Dominga Lopus Biliran and Julia Lopena Lopus, who then took actual possession and cultivation of said land. The subject land was then subdivided into two lots designated as Lot No. 6740 and Lot No. 6741.

On January 10, 2006, a formal protest on said applications was filed by herein plaintiff Jose R. Ong. The latter claimed that Serafino and Serapio are one and the same person. According to him, he was one of the vendees who bought the subject lots from the heirs of Maria Lopena, as evidenced by an Extra-judicial Settlement of Estate with Simultaneous Sale dated July 6, 2006. Maria Lopena, in turn, inherited the same, being the only child of the late Spouses Serapio Lopena and Macaria Guimbarda. These lots in controversy were allegedly offered to plaintiff Ong by the heirs of the late Serapio Lopena, apparently after learning that he and the other vendees bought the adjacent lot denominated as Lot No. 6718. At the time of the execution of sale, the lots in question were then covered by Tax Declaration Nos. 2003-19-012-00705 and 2003-19-012-00703, respectively.

In a Decision^[10] dated April 10, 2008, the DENR Regional Executive Director dismissed the protest and ordered that the free patent applications be further given due course, if there are no other legal impediments. In so ruling, the DENR Regional

Executive Director opined:

From the preceding queries and discussions, this Office is persuaded that Serafino Lopena and Serapio Lopena are separate and distinct individuals. As a consequence thereof, the Extra-judicial Settlement and Estate with Simultaneous Sale dated 06 July 2006 executed by the Heirs of Serapio Lopena involving the lots in controversy belonging to Serafino Lopena, in favor of claimant-protestant, Jose R. Ong is ineffectual and void ab initio. It is essential for a seller to transfer ownership (*Articles 1458 and 1459 of the Civil Code of the Philippines*) and therefore, the seller must be owner of the subject sold. This stems from the principle that nobody can dispose of that which does not belong to him. - "*nemo dat quod non habet*". (Citations omitted)

Further, it can also be deduced from the Final Investigation Report dated 18 October 2007 that after the actual Ocular Inspection was conducted on the lots in controversy last 13 March 2007, it was ascertained that it was the applicants-respondents who introduced considerable improvements therein by planting g-melina and mahogany trees, bananas and other seasonal crops. In fact, a house made out of light materials can also be found within Lot No. 6741, which was being used as shelter while tending to their planted crops. This is indicative that applicants-respondents are in possession of the lots in controversy. Besides, Narciso Lomonsod, who claimed to be one of the Heirs of Serapio Lopena, who was present at that time, seems to be unfamiliar with the boundaries between Lot Nos. 6740 and 6741. Furthermore, the installation of a perimeter fence, presumably ordered by the claimant-protestant was objected to by the herein applicants-respondents, which to the mind of this Office is a natural reaction of someone whose rights over a certain property has been violated. In fact, this incident was even blotted in the Police Station of Dausi, Bohol.

Finally, applicants-respondents were able to produce a certification that the corresponding Realty Taxes of the lots in controversy from the year 1977 up to 2005 were paid by applicant, Ms. Julia Lopos, per Certification dated 11 July 2006 of Letecia A. Honculada, Municipal Treasurer of the Municipality of Dausi, Bohol. In addition thereto, Tax Declaration Nos. 2003-19-012-01243 and 2003-19-012-01244, of the land in controversy, all for the year 2007, and still in the name of Serafino Lopena were also submitted, and the corresponding Realty Taxes for the year 2008 was paid per Official Receipt No. 0567035 dated 04 January 2008.

Also, in said Decision, it was categorically stated that the case did not undergo the rigors of a full-blown investigation considering that the contending parties opted to submit the case for resolution based on their Memoranda together with their documentary evidence to substantiate their respective claims and defenses.

A motion for reconsideration relative to said Decision was, thereafter, filed by plaintiff Jose R. Ong but which was subsequently denied by the DENR Regional

Executive Director in an Order^[11] dated October 15, 2008.

Meanwhile, on November 24, 2008, the instant Complaint^[12] for Quieting of Title and Damages with Prayer for a Temporary Restraining Order and Writ of Preliminary Injunction was filed by plaintiffs spouses Jose R. Ong and Marcelina Ong, spouses Juan Manuel Lim and Clarissa Lim, spouses Cecil Yap and Julia Victoria Yap, and spouses Clifton Yap and Angelita Yap before the Regional Trial Court of Tagbilaran, Bohol against private defendants Heirs of Lucrecia Lopena Lapos, namely, Eutiquio Lapos, Dominga Lapos Biliran and Julia Lapos as well as public defendants, namely, DENR Region VII Regional Executive Director Leonardo R. Sibbaluca, CENRO Tagbilaran City, the Municipal Assessor of Dauis, Bohol and the Provincial Assessor of Bohol.

In their Complaint, plaintiffs reiterated, among others, that they acquired by purchase the subject parcels of land from the heirs of the original owner, Serapio Lopena, namely, Pelagio Lomonsod, Teodoro Lomonsod, Narciso Lomonsod and Trefina Lomonsod, who executed an Extrajudicial Settlement of Estate with Simultaneous Sale in their favor. At the time of the sale, Lot Nos. 6740 and 6741 were covered by Tax Declaration Nos. 2003-19-012- 00705 and 2003-19-012-00703, respectively. They asserted that said heirs, in turn, acquired by inheritance the subject lots, being the children of the late Maria Lopena, the only child and sole heir of Serapio Lopena.

Plaintiffs also asserted that the late Serapio Lopena and Serafino Lopena are one and the same person. He is the grandfather of the vendors and the uncle of private defendants. According to them, sometime in October 2006, private defendants caused the issuance of Tax Declaration No. 2003-19-012-01244 for Lot No. 6740 and Tax Declaration No. 2003-19-012-01243 for Lot No. 6741 pursuant to a mere self-serving letter dated October 2, 2006, alleging that Serapio Lopena and Serafino Lopena are two distinct and separate persons and that the name Serapio Lopena, as owner of the subject lots, was erroneous. Consequently, through the unfounded and malicious claims of private defendants, new tax declarations were issued in the name of Serafino Lopena. Hence, plaintiffs argued that these tax declarations, including the subsequent revisions thereto, should be declared null and void. On the other hand, Tax Declaration Nos. 2003-19-012-00705 and 2003-19-12-00703, both in the name of Serapio Lopena, should be reverted back.

Plaintiffs further contended that the protest filed by plaintiff Ong against the free patent applications of defendants Dominga Biliran and Julia Lapos was hastily denied by the DENR Region VII without undergoing the rigors of a full-blown trial. Thereafter, a motion for reconsideration was filed seeking for the reversal or setting aside of the order of dismissal and dropping of the protest from the records and that a full-blown trial be conducted, or, in the alternative, to hold the Free Patent Applications in abeyance in order to give plaintiffs the opportunity to file appropriate action in a court of competent jurisdiction to settle once and for all the issues: (1) whether or not Serapio Lopena and Serafino Lopena is one and the same; and (2) as to who is the true owner/s of the subject parcels of land, all in the interest of substantial justice, but said motion was likewise denied outright without hearing.

Accordingly, plaintiffs maintained that consistent with their manifestation to submit the issue of ownership and other pertinent issues in a court of competent

jurisdiction which was likewise the basis of their prayer to hold in abeyance the proceedings in the DENR, they filed the instant case.

Subsequently, private defendants filed their Answer with Counterclaim^[13] (With Motion to Dismiss on Affirmative Defenses and Opposition to Prayer for Temporary Restraining Order and Writ of Preliminary Injunction). On the other hand, public appellees also filed their Answer^[14].

Private defendants moved for the dismissal of the complaint on grounds of lack of jurisdiction and non-exhaustion of the proper administrative remedies. They averred similar allegations to the DENR case that Serafino Lopena and Serapio Lopena are two different persons and that the entry in the tax declarations in the name Serapio Lopena were erroneously made which were nonetheless later corrected and reverted back to Serafino Lopena. They also asserted that the filing of the instant case was but a futile attempt to make up for plaintiffs' failure to appeal the DENR Regional Executive Director's Order to the DENR Secretary. They maintained that plaintiffs have no valid ground for reversion as it was clear that in Tax Declarations Nos. 4946, 7946, 3528, 6002 on the subject lots when they were still a whole land, the same had been declared in the name of Serafino Lopena since 1916.

On January 17, 2012, the trial court denied defendants' motion to dismiss for lack of merit. On motion for reconsideration filed by private and public defendants, the trial court reconsidered its prior denial and thereafter issued an Order dated April 3, 2012 dismissing plaintiffs' Complaint on the grounds of *res judicata*, forum-shopping and lack of jurisdiction. The trial court opined that while the caption in the present case was for quieting of title and damages, the ultimate issue to be resolved nonetheless boiled down to the question of ownership and possession which was already exhaustively passed upon and resolved on the merits by the DENR Regional Executive Director, which decision has already become final and executory. Hence, *res judicata* had set in. As a consequence, the instant suit likewise violated the rule on forum-shopping. The trial court further declared that plaintiffs' act of filing a protest on defendants' applications for free patent with the DENR, evinced an implied admission that the subject parcels of land are still within the public domain and that they have submitted to the jurisdiction of the DENR.

After the denial of their motion for reconsideration, plaintiffs-appellants filed the instant appeal anchored on the following assignment of errors.

The Assigned Errors^[15]:

I.

(IN RULING THAT THIS INSTANT CASE IS ALREADY BARRED BY PRIOR JUDGMENT OR RES JUDICATA ON ACCOUNT OF A PRIOR JUDGMENT IN THE DENR IN RED CLAIM NO. 240 AND THAT THERE IS FORUM SHOPPING ON ACCOUNT OF THE PROTEST FILED BY APPELLANTS IN FREE PATENT APPLICATION NOS. 071219-619-B AND 071219-1970 IN THE DENR CENRO, TAGBILARAN CITY;

II.