Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JESUS VIRTUCIO, represented by ABDON VIRTUCIO,
Petitioner,

- versus -

JOSE ALEGARBES,
Respondent.

G.R. No. 187451

Present:

PERALTA, *J., Acting Chairperson*,*
ABAD,
VILLARAMA, JR.,**
PEREZ,*** and
MENDOZA, *JJ.*

Promulgated:
29 August 2012

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DECISION

MENDOZA, *J.*:

This petition for review on certiorari under Rule 45 seeks to reverse and set aside the February 25, 2009 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. CV No. 72613, reversing and setting aside the February 19, 2001 Decision[2] of the Regional Trial Court, Branch 1, Isabela, Basilan *(RTC)*, in Civil Case No. 685-627, an action for "Recovery of Possession and Ownership with Preliminary Injunction."

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* Per Special Order No. 1290 dated August 28, 2012.
** Designated acting member, in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1291 dated August 28, 2012.
*** Designated additional member, per Special Order No. 1299 dated August 28, 2012.
1 Penned by Associate Justice Romulo V. Borja, with Associate Justice Mario V. Lopez and Associate Justice Elihu A. Ybañez, concurring, *rollo*, pp. 22-34 and 93-105.
2 Penned by Judge Felisberto C. Gonzales, CA *rollo*, pp. 258-271

The Facts

Respondent Jose Alegarbes *(Alegarbes)* filed Homestead Application No. V-33203 (E-V-49150) for a 24-hectare tract of unsurveyed land situated in Bañas, Lantawan, Basilan in 1949. His application was approved on January 23, 1952.[3] In 1955, however, the land was subdivided into three (3) lots – Lot Nos. 138,139 and 140, Pls-19 - as a consequence of a public land subdivision. Lot 139 was allocated to Ulpiano Custodio *(Custodio)*, who filed Homestead Application No. 18-4493 (E-18-2958). Lot 140 was allocated to petitioner Jesus Virtucio *(Virtucio)*, who filed Homestead Application No. 18-4421 (E-18-2924).[4]

Alegarbes opposed the homestead applications filed by Custodio and Virtucio, claiming that his approved application covered the whole area, including Lot Nos. 139 and 140.[5]

On October 30, 1961, the Director of Lands rendered a decision denying Alegarbes' protest and amending the latter's application to exclude Lots 139 and 140. Only Lot 138 was given due course. The applications of Custodio and Virtucio for Lots 139 and 140, respectively, were likewise given due course.[6]

Alegarbes then appealed to the Secretary of Agriculture and Natural Resources, who dismissed his appeal on July 28, 1967. He then sought relief from the Office of the President *(OP)*, which, however, affirmed the dismissal order of the Secretary of Agriculture and Natural Resources in a decision, dated October 25, 1974. Alegarbes moved for a reconsideration, but the motion was subsequently denied.[7]

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[3] Records, pp. 9 and 262.
[4] Id. at 9.
[5] *Rollo*, pp. 11-12.
[6] Id. at 12.
[7] Id.

On May 11, 1989, an order of execution[8] was issued by the Lands Management Bureau of the Department of Environment and Natural Resources to enforce the decision of the OP. It ordered Alegarbes and all those acting in his behalf to vacate the subject lot, but he refused.

On September 26, 1997, Virtucio then filed a complaint[9] for "Recovery of Possession and Ownership with Preliminary Injunction" before the RTC.

In his Answer,[10] Alegarbes claimed that the decision of the Bureau of Lands was void *ab initio* considering that the Acting Director of Lands acted without jurisdiction and in violation of the provisions of the Public Land Act. Alegarbes argued that the said decision conferred no rights and imposed no duties and left the parties in the same position as they were before its issuance. He further alleged that the patent issued in favor of Virtucio was procured through fraud and deceit, thus, void *ab initio*.

Alegarbes further argued, by way of special and/or affirmative defenses, that the approval of his homestead application on January 23, 1952 by the Bureau of Lands had already attained finality and could not be reversed, modified or set aside. His possession of Lot Nos. 138, 139 and 140 had been open, continuous, peaceful and uninterrupted in the concept of an owner for more than 30 years and had acquired such lots by acquisitive prescription.

In his Amended and Supplemental Answer,[11] Alegarbes also averred that his now deceased brother, Alejandro Alegarbes, and the latter's family helped him develop Lot 140 in 1955. Alejandro and his family, as well as Alegarbes' wife and children, had been permanently occupying the said lot and, introducing permanent improvements thereon since 1960.

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[8] Records, pp. 16-17.
[9] Id. at 1-15.
[10] Id. at 42-52.
[11] Id. at 67-69.

The RTC Ruling

The RTC rendered its decision on February 19, 2001, favoring Virtucio. The decretal portion of which reads:

> WHEREFORE, upon the merit of this case, this court finds for the plaintiff and against the defendant by:
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> 1. Ordering the defendant and all those acting in his behalf to vacate Lot No. 140, Pls-19, located at Lower Bañas, Lantawan, Basilan and surrender the possession and ownership thereof to plaintiff;
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> 2. Ordering the defendant to pay the plaintiff the amount of Fifteen Thousand Pesos (₱15,000.00) as attorney's fees and another Ten Thousand Pesos (₱10,000.00) as expenses for litigation; and
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> 3. To pay the cost of the suit in the amount of Five Hundred Pesos (₱500.00).
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> SO ORDERED.[12]

Not in conformity, Alegarbes appealed his case before the CA.

The CA Ruling

On February 25, 2009, the CA promulgated its decision declaring Alegarbes as the owner of Lot No. 140, Pls-19, thereby reversing and setting aside the decision of the RTC. The CA ruled that Alegarbes became *ipso jure* owner of Lot 140 and, therefore, entitled to retain possession of it. Consequently, the awards of attorney's fees, litigation expenses and costs of suit were deleted.

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[12] CA *rollo*, pp. 270-271.

In so ruling, the CA explained that even if the decision to approve Virtucio's homestead application over Lot 140 had become final, Alegarbes could still acquire the said lot by acquisitive prescription. The decisions on the issues of the approval of Virtucio's homestead application and its validity were impertinent as Alegarbes had earlier put in issue the matter of ownership of Lot 140 which he claimed by virtue of adverse possession.

The CA also found reversible error on the part of the RTC in disregarding the evidence before it and relying entirely upon the decisions of the administrative bodies, none of which touched upon the issue of Alegarbes' open, continuous and exclusive possession of over thirty (30) years of an alienable land. The CA held that the Director of Lands, the Secretary of Agriculture and Natural Resources and the OP did not determine whether Alegarbes' possession of the subject property had *ipso jure* segregated Lot 140 from the mass of public land and, thus, was beyond their jurisdiction.

Aggrieved, Virtucio filed this petition.

ISSUES

Virtucio assigned the following errors in seeking the reversal of the assailed decision of the CA, to wit:

1. **The Court of Appeals erred in setting aside the judgment of the trial court, which awarded the lot in question to the respondent by virtue of acquisitive prescription and ordered herein petitioner to surrender the ownership and possession of the same to them.**[13]

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[13] *Rollo*, p. 14.

2. **The Court of Appeals gravely erred in disregarding the decision in CA-G.R. CV-26286 for Recovery of Possession and Ownership, Custodio vs. Alegarbes which contains same factual circumstances as in this case and ruled against JOSE ALEGARBES**.[14]

3. **The Court of Appeals erred in deleting the award of attorney's fees to the petitioner.**[15]

The lone issue in this case is whether or not Alegarbes acquired ownership over the subject property by acquisitive prescription.

Ruling of the Court

The petition must fail.

Indeed, it is fundamental that questions of fact are not reviewable in petitions for review on *certiorari* under Rule 45 of the Rules of Court. Only questions of law distinctly set forth shall be raised in the petition.[16]

Here, the main issue is the alleged acquisition of ownership by Alegarbes through acquisitive prescription and the character and length of possession of a party over a parcel of land subject of controversy is a factual issue.[17] The Court, however, is not precluded from reviewing facts when the case falls within the recognized exceptions, to wit:

> (*a*) When the findings are grounded entirely on speculation, surmises, or conjectures;
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> (*b*) When the inference made is manifestly mistaken, absurd, or impossible;
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> (*c*) When there is grave abuse of discretion;

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[14] Id. at 16.
[15] Id. at 17.
[16] Sec. 1, Rule 45 of the Rules of Court.
[17] *Heirs of Bienvenido and Araceli Tanyag v. Gabriel,* G.R. No. 175763, April 11, 2012.

> (*d*) When the judgment is based on a misapprehension of facts;
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> (*e*) When the findings of facts are conflicting;
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> (*f*) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
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> (*g*) ***When the CA's findings are contrary to those by the trial court***;
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> (*h*) When the findings are conclusions without citation of specific evidence on which they are based;
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> (*i*) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;
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> (*j*) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or
>
> (*k*) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[18] [Emphasis supplied]

In the case at bench, the findings and conclusions of the CA are apparently contrary to those of the RTC, hence, the need to review the facts in order to arrive at the proper conclusion.

On Acquisitive Prescription

Virtucio insists that the period of acquisitive prescription was interrupted on October 30, 1961 (or in 1954 when Alegarbes filed the protest) when the Director of Lands rendered a decision giving due course to his homestead application and that of Ulpiano Custodio. Virtucio further claims that since 1954, several extrajudicial demands were also made upon Alegarbes demanding that he vacate said lot. Those demands constitute the "extrajudicial demand" contemplated in Article 1155, thus, tolling the period of acquisitive prescription.[19]

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[18] *Abalos and Sps. Salazar v. Heirs of Vicente Torio*, G.R. No. 175444, December 14, 2011, 662 SCRA 450, 456-457, citing *Spouses Andrada v. Pilhino Sales Corporation*, G.R. No. 156448, February 23, 2011, 644 SCRA 1, 10.

[19] *Rollo*, p. 152.

Article 1106 of the New Civil Code, in relation to its Article 712, provides that prescription is a mode of acquiring ownership through the lapse of time in the manner and under the conditions laid down by law. Under the same law, it states that acquisitive prescription may either be ordinary or extraordinary.[20] Ordinary acquisitive prescription requires possession of things in good faith and with just title for a period of ten years,[21] while extraordinary acquisitive prescription requires uninterrupted adverse possession of thirty years, without need of title or of good faith.[22]

There are two kinds of prescription provided in the Civil Code. One is **acquisitive**, that is, the acquisition of a right by the lapse of time as expounded in par. 1, Article 1106. Other names for acquisitive prescription are adverse possession and *usucapcion*. The other kind is **extinctive** prescription whereby rights and actions are lost by the lapse of time as defined in Article 1106 and par. 2, Article 1139. Another name for extinctive prescription is litigation of action.[23] These two kinds of prescription should not be interchanged.

Article 1155 of the New Civil Code refers to the **interruption** of prescription of *actions*. Interruption of *acquisitive* prescription, on the other hand, is found in Articles 1120-1125 of the same Code. Thus, Virtucio's reliance on Article 1155 for purposes of tolling the period of acquisitive prescription is misplaced. The only kinds of interruption that effectively toll the period of acquisitive prescription are natural and civil interruption.[24]

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[20] Art. 1117, New Civil Code.
[21] Id., in relation to Art. 1134 of the New Civil Code.
[22] Art. 1137, New Civil Code.
[23] *De Morales v. CFI*, 186 Phil. 596, 598 (1980).
[24] Art. 1120, New Civil Code.

Civil interruption takes place with the service of judicial summons to the possessor.[25] When no action is filed, then there is no occasion to issue a judicial summons against the respondents. The period of acquisitive prescription continues to run.

In this case, Virtucio claims that the protest filed by Alegarbes against his homestead application interrupted the thirty (30)-year period of acquisitive prescription. The law, as well as jurisprudence, however, dictates that only a judicial summons can effectively toll the said period.

In the case of *Heirs of Marcelina Azardon-Crisologo v. Rañon,*[26] the Court ruled that a mere Notice of Adverse Claim did not constitute an effective interruption of possession. In the case of *Heirs of Bienvenido and Araceli Tanyag v. Gabriel,*[27] which also cited the *Rañon Case*, the Court stated that the acts of declaring again the property for tax purposes and obtaining a Torrens certificate of title in one's name cannot defeat another's right of ownership acquired through acquisitive prescription.[28]

In the same vein, a protest filed before an administrative agency and even the decision resulting from it cannot effectively toll the running of the period of acquisitive prescription. In such an instance, no civil interruption can take place. Only in cases filed before the courts may judicial summons be issued and, thus, interrupt possession. Records show that it was only in 1997 when Virtucio filed a case before the RTC. The CA was, therefore, correct in ruling that Alegarbes became *ipso jure* owner of Lot 140 entitling him to retain possession of it because he was in open, continuous and exclusive possession for over thirty (30) years of alienable public land.

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[25] *Heirs of Bienvenido and Araceli Tanyag v. Gabriel*, supra note 17, citing *Heirs of Marcelina Azardon-Crisologo v. Rañon*, G.R. No. 171068, September 5, 2007, 532 SCRA 391, 406-407.
[26] G.R. No. 171068, September 5, 2007, 532 SCRA 391.
[27] Supra note 17, citing *Heirs of Marcelina Azardon-Crisologo v. Rañon*, G.R. No. 171068, September 5, 2007, 532 SCRA 391, 406-407.
[28] Id.

Virtucio emphasizes that the CA erred in disregarding the decisions of the administrative agencies which amended Alegarbes' homestead application excluding Lot 140 and gave due course to his own application for the said lot, which decisions were affirmed by the RTC.

Well-settled is the rule that factual findings of the lower courts are entitled to great weight and respect on appeal and, in fact, are accorded finality when supported by substantial evidence on the record.[29] It appears, however, that the conclusion made by the RTC was not substantially supported. Even the RTC itself noted in its decision:

> The approval of a Homestead Application merely authorizes the applicant to take possession of the land so that he could comply with the requirements prescribed by law before a final patent could be issued in his favor – what divests the government of title to the land is the issuance of a patent and its subsequent registration with the Register of Deeds.[30]

A perusal of the records would reveal that there was no issuance of any patent in favor of either parties. This simply means that the land subject of the controversy remains to be in the name of the State. Hence, neither Virtucio nor Alegarbes can claim ownership. There was, therefore, no substantial and legal basis for the RTC to declare that Virtucio was entitled to possession and ownership of Lot 140.

It can be argued that the lower court had the decisions of the administrative agencies, which ultimately attained finality, as legal bases in ruling that Virtucio had the right of possession and ownership. In fact, the Department of Environment and Natural Resources *(DENR)* even issued the Order of Execution[31] on May 11, 1989 ordering Alegarbes to vacate Lot 140 and

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[29] *Spouses Patricio and Myrna Bernales v. Heirs of Julian Sambaan*, G.R. No. 163271, January 15, 2010, 610 SCRA 90, 104-105, citing *Xentrex Motors, Inc. v. Court of Appeals,* 353 Phil. 258, 262 (1998).
[30] CA *rollo*, p. 268.
[31] Records, pp. 16-17.

place Virtucio in peaceful possession of it. The CA, however, was correct in finding that:

> But appellant had earlier put in issue the matter of ownership of Lot 140 which he claims by virtue of adverse possession. On this issue, the cited decisions are impertinent. Even if the decision to approve appellee's homestead application over Lot 140 had become final, appellant could still acquire the said lot by acquisitive prescription.[32]

In the case of *Heirs of Gamos v. Heirs of Frando,*[33] the Court ruled that the mere application for a patent, coupled with the fact of exclusive, open, continuous and notorious possession for the required period, is sufficient to vest in the applicant the grant applied for.[34] It likewise cited the cases of *Susi v. Razon*[35] and *Pineda v. CA,*[36] where the Court ruled that the possession of a parcel of agricultural land of the public domain for the prescribed period of 30 years *ipso jure* converts the lot into private property.[37]

In this case, Alegarbes had applied for homestead patent as early as 1949. He had been in exclusive, open, continuous and notorious possession of Lot 140 for at least 30 years. By the time the DENR issued its order of execution in 1989, Alegarbes had Lot 140 in his possession for more than 30 years. Even more so when Virtucio filed the complaint before the RTC in 1997, Alegarbes was already in possession of the subject property for forty-eight (48) years.

The CA correctly observed that the RTC erred in disregarding the evidence before it and relying entirely upon the decisions of the Director of Lands, the Secretary of Agriculture and Natural Resources and the OP, which

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[32] *Rollo*, p. 29.
[33] 488 Phil. 140 (2004).
[34] Id. at 153.
[35] 48 Phil. 424 (1925).
[36] 262 Phil. 658, 665 (1990).
[37] *Heirs of Gamos v. Heirs of Frando*, Supra note 33 at 152.

never touched the issue of whether Alegarbes' open, continuous and exclusive possession of over thirty (30) years of alienable land had *ipso jure* segregated Lot 140 from the mass of public land and beyond the jurisdiction of these agencies.[38]

When the CA ruled that the RTC was correct in relying on the abovementioned decisions, it merely recognized the primary jurisdiction of these administrative agencies. It was of the view that the RTC was not correct in the other aspects of the case. Thus, it declared Alegarbes as owner *ipso jure* of Lot 140 and entitled to retain possession of it. There is no reason for the Court to disturb these findings of the CA as they were supported by substantial evidence, hence, are conclusive and binding upon this Court.[39]

On the CA Decision involving a similar case

Virtucio insists that the CA gravely erred in disregarding its decision in *Custodio v. Alegarbes,* CA-G.R. CV 26286, for Recovery of Possession and Ownership, which involved the same factual circumstances and ruled against Alegarbes.

It must be noted that the subject property in the said case was Lot 139 allocated to Custodio and that Virtucio was not a party to that case. The latter cannot enjoy whatever benefits said favorable judgment may have had just because it involved similar factual circumstances. The Court also found from the records that the period of acquisitive prescription in that case was effectively interrupted by Custodio's filing of a complaint, which is wanting in this case.

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[38] *Rollo*, p. 33.
[39] *Lynvil Fishing Enterprises, Inc. v. Ariola*, G.R. No. 181974, February 1, 2012, 664 SCRA 679.

Moreover, it is settled that a decision of the CA does not establish judicial precedent.[40] "The principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by **this Court** in its final decisions. It is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument."[41]

The Court agrees with the position of Alegarbes that by Virtucio's insistence that it was erroneous for the CA to disregard its earlier decision in CA-G.R. CV 26286, he, in effect, calls upon this Court to adhere to that decision by invoking the *stare decisis* principle, which is not legally possible because only final decisions of this Court are considered precedents.[42]

In view of the foregoing, the Court need not dwell on the complaint of Virtucio with regard to the deletion of the award of attorney's fees in his favor. It is ludicrous for the CA to order Alegarbes to pay attorney's fees, as a measure of damages, and costs, after finding him to have acquired ownership over the property by acquisitive prescription.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[40] *Nepomuceno v. City of Surigao*, G.R. No. 146091, July 28, 2008, 560 SCRA 41, 47.
[41] *Land Bank v. Hon. Pagayatan*, G.R. No. 177196, February 23, 2011, 644 SCRA 133, 142-143, citing *Ting v. Velez-Ting*, G.R. No. 166562, March 31, 2009, 582 SCRA 694, 704.
[42] *Rollo*, p. 132.

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice