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G.R. No. 179987 – HEIRS OF MARIO MALABANAN, Petitioners, **v. REPUBLIC OF THE PHILIPPINES**, Respondent.

Promulgated:

SEPTEMBER 03, 2013

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CONCURRING AND DISSENTING OPINION

LEONEN, *J.*:

I concur with the denial of the Motions for Reconsideration.

I concur with the original Decision penned by Justice Dante Tinga promulgated on April 29, 2009. I also concur with the Resolution of Justice Lucas Bersamin with respect to the Motions for Reconsideration, but disagree with the statements made implying the alleged overarching legal principle called the "regalian doctrine."

Mario Malabanan filed an application for registration of a parcel of land designated as Lot 9864-A in Silang, Cavite based on a claim that he purchased the land from Eduardo Velazco. He also claimed that Eduardo Velazco and his predecessors-in-interest had been in open, notorious, and continuous adverse and peaceful possession of the land for more than thirty (30) years.[1]

The application was raffled to the Regional Trial Court of Cavite-Tagaytay City, Branch 18.[2] Malabanan's witness, Aristedes Velazco, testified that Lot 9864-A was originally part of a 22-hectare property owned by his great-grandfather.[3] His uncle, Eduardo Velazco, who was Malabanan's predecessor-in-interest, inherited the lot.[4]

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1 *Heirs of Mario Malabanan v. Republic*, G.R. No. 179987, April 29, 2009, 587 SCRA 172, 180-181; *See also* note 5 of original Decision (We noted the appellate court's observation: "More importantly, Malabanan failed to prove his ownership over Lot 9864-A. In his application for land registration, Malabanan alleged that he purchased the subject lot from Virgilio Velazco. x x x As aptly observed by the Republic, no copy of the deed of sale covering Lot 9864-A, executed either by Virgilio or Eduardo Velazco, in favor of Malabanan was marked and offered in evidence. x x x [The deed of sale marked as Exhibit "I"] was a photocopy of the deed of sale executed by Virgilio Velazco in favor of Leila Benitez and Benjamin Reyes. x x x Thus, Malabanan has not proved that Virgilio or Eduardo Velazco was his predecessor-in-interest.").

2 Id. at 181.

3 Id.

4 Id.

Malabanan also presented a document issued by the Community Environment and Natural Resources Office of the Department of Natural Resources (CENRO-DENR) on June 11, 2001. The document certified that the subject land had already been classified as alienable and disposable since March 15, 1982.[5]

The Solicitor General, through Assistant Provincial Prosecutor Jose Velazco, Jr., affirmed the truth of Aristedes Velazco's testimony.[6] Malabanan's application was not challenged.[7]

The RTC granted Malabanan's application on December 2, 2002.

The Republic appealed the Decision to the Court of Appeals. It argued that Malabanan failed to prove that the subject land had already been classified as alienable and disposable. The Republic insisted that Malabanan did not meet the required manner and length of possession for confirmation of imperfect title under the law.[8]

The Court of Appeals reversed the Decision of the RTC. The CA held that under Section 14(1) of Presidential Decree No. 1529 or the Property Registration Decree, possession before the classification of land as alienable and disposable should be excluded from the computation of the period of possession.[9] Therefore, possession before March 15, 1982 should not be considered in the computation of the period of possession. This is also in accordance with the ruling in *Republic v. Herbieto.*[10]

Malabanan's heirs (petitioners) appealed the Decision of the CA.[11] Relying on *Republic v. Naguit,*[12] petitioners argued that the period of possession required for perfecting titles may be reckoned prior to the declaration that the land was alienable and disposable.[13] Open, continuous, exclusive, and notorious possession of an alienable land of public domain for more than 30 years *ipso jure* converts it into private property.[14] Previous classification is immaterial so long as the property had already been converted to private property at the time of the application.[15]

We dismissed the Petition because there was no clear evidence to establish petitioners' or their predecessors-in-interest's possession since June

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5 Id. at 182.
6 Id.
7 Id.
8 Id. at 183.
9 Id.
10 Id. at 184; *Republic v. Herbieto,* G.R. No. 156177, May 26, 2005, 459 SCRA 183.
11 Id. at 184. (Malabanan died before the CA released its Decision.)
12 *Republic v. Naguit,* G.R. No. 144507, January 17, 2005, 448 SCRA 442.
13 Supra note 1, at 184.
14 Id. at 186.
15 Id.

12, 1945.[16] Moreover, while there was evidence that the land had already been declared alienable and disposable since 1982, there was no evidence that the subject land had been declared as no longer intended for public use or service.[17]

Both petitioners and respondent ask for the reconsideration of Our Decision on April 29, 2009.

I agree that Malabanan was not able to prove that he or his predecessors-in-interest were in open, continuous, exclusive, and notorious possession of the subject land since June 12, 1945. We already noted in the original Decision that Malabanan offered no deed of sale covering the subject lot, executed by any of the alleged predecessors-in-interest in his favor.[18] He only marked a photocopy of a deed of sale executed by Virgilio Velazco in favor of Leila Benitez and Benjamin Reyes.[19]

On that note alone, no title can be issued in favor of Malabanan or petitioners.

However, I do not agree that all lands not appearing to be clearly within private ownership are presumed to belong to the State[20] or that lands remain part of the public domain if the State does not reclassify or alienate it to a private person.[21] These presumptions are expressions of the Regalian Doctrine.

Our present Constitution does not contain the term, "regalian doctrine." What we have is Article XII, Section 2, which provides:

> Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated x x x.

There is no suggestion in this section that the presumption in absolutely all cases is that all lands are public. Clearly, the provision mentions only that "all lands of the public domain" are "owned by the state."

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16 Id. at 211.
17 Id.
18 Supra note 1.
19 Id.
20 Decision, p. 5.
21 Id.

This is not the only provision that should be considered in determining whether the presumption would be that the land is part of the "public domain" or "not of the public domain."

Article III, Section 1 of the Constitution provides:

> Section 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws.

This section protects all types of property. It does not limit its provisions to property that is already covered by a form of paper title. Verily, there could be land, considered as property, where ownership has vested as a result of either possession or prescription, but still, as yet, undocumented. The original majority's opinion in this case presents some examples.

In my view, We have properly stated the interpretation of Section 48 (b) of Commonwealth Act No. 141 or the Public Land Act as amended[22] in relation to Section 14(1) and 14(2) of Presidential Decree No. 1529 or the Property Registration Decree. Our *ratio decidendi*, therefore, should only be limited to the facts as presented in this case. We also properly implied that the titling procedures under Property Registration Decree do not vest or create title. The Property Registration Decree simply recognizes and documents ownership and provides for the consequences of issuing paper titles.

We have also recognized that "time immemorial possession of land in the concept of ownership either through themselves or through their predecessors in interest" suffices to create a presumption that such lands "have been held in the same way from before the Spanish conquest, and never to have been public land."[23] This is an interpretation in *Cariño v. Insular Government*[24] of the earlier version of Article III, Section 1 in the McKinley's Instructions.[25] The case clarified that the Spanish sovereign's

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[22] Prior to Commonwealth Act No. 141, Act 926 (1903) provided for a chapter on "Unperfected Title and Spanish Grants and Concessions." Act No. 2874 then amended and compiled the laws relative to lands of the public domain. This Act was later amended by Acts No. 3164, 3219, 3346, and 3517. Commonwealth Act No. 141 or what is now the Public Land Act was promulgated on November 7, 1936. Section 48 (b) was later on amended by Republic Act No. 1942 (1957) and then later by Pres. Dec. 1073 (1977). The effects of the later two amendments were sufficiently discussed in the original majority opinion.

[23] *Cariño v. Insular Government*, 202 U.S. 449, 460 (1909).

[24] Id. (Cariño was an inhabitant of Benguet Province in the Philippines. He applied for the registration of his land, which he and his ancestors held as owners, without having been issued any document of title by the Spanish Crown. The Court of First Instance dismissed the application on grounds of law. The decision was affirmed by the U.S. Supreme Court. The case was brought back to the U.S. Supreme Court by writ of error.)

[25] President's Policy in the Philippines: His Instructions to the Members of the Second Commission (April 7, 1900). ("Upon every division and branch of the government of the Philippines, therefore, must be imposed these inviolable rules: That no person shall be deprived of life, liberty, or property

concept of the "regalian doctrine" did not extend to the American colonial period and to the various Organic Acts extended to the Philippines.

Thus, in *Cariño*:

> It is true that Spain, in its earlier decrees, embodied the universal feudal theory that all lands were held from the Crown… It is true also that, in legal theory, sovereignty is absolute, and that, as against foreign nations, the United States may assert, as Spain asserted, absolute power. *But it does not follow that, as against the inhabitants of the Philippines, the United States asserts that Spain had such power. When theory is left on one side, sovereignty is a question of strength, and may vary in degree. How far a new sovereign shall insist upon the theoretical relation of the subjects to the head in the past, and how far it shall recognize actual facts, are matters for it to decide.*
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> *Whatever may have been the technical position of Spain, it does not follow that, in view of the United States, [plaintiff who held the land as owner] had lost all rights and was a mere trespasser when the present government seized the land. The argument to that effect seems to amount to a denial of native titles throughout an important part of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce.*
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> No one, we suppose, would deny that, so far as consistent with paramount necessities, our first object in the internal administration of the islands is to do justice to the natives, not to exploit their country for private gain. By the Organic Act of July 1, 1902, c. 1369, § 12, 32 Stat. 691, all the property and rights acquired there by the United States are to be administered "for the benefit of the inhabitants thereof."[26] (Emphasis supplied)

And with respect to time immemorial possession, *Cariño* mentions:

> The [Organic Act of July 1, 1902] made a bill of rights, embodying the safeguards of the Constitution, and, like the Constitution, extends those safeguards to all. It provides that
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> 'no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.'

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without due process of law; that private property shall not be taken for public use without just compensation x x x.")

[26] Supra note 23, at 457-459.

> § 5. In the light of the declaration that we have quoted from § 12, it is hard to believe that the United States was ready to declare in the next breath that x x x it meant by "property" only that which had become such by ceremonies of which presumably a large part of the inhabitants never had heard, and that it proposed to treat as public land what they, by native custom and by long association -- one of the profoundest factors in human thought -- regarded as their own.
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> x x x
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> It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land.[27]

Cariño is often misinterpreted to cover only lands for those considered today as part of indigenous cultural communities. However, nothing in its provisions limits it to that kind of application. We could also easily see that the progression of various provisions on completion of imperfect titles in earlier laws were efforts to assist in the recognition of these rights. In my view, these statutory attempts should never be interpreted as efforts to limit what has already been substantially recognized through constitutional interpretation.

There are also other provisions in our Constitution which protect the unique rights of indigenous peoples.[28] This is in addition to our pronouncements interpreting "property" in the due process clause through *Cariño*.

It is time that we put our invocations of the "regalian doctrine" in its proper perspective. This will later on, in the proper case, translate into practical consequences that do justice to our people and our history.

Thus, I vote to deny the Motions for Reconsideration.

MARVIC MARIO VICTOR FAMORCA LEONEN
Associate Justice

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[27] Supra note 23, at 459-460.

[28] CONSTITUTION, Art. XII, Sec. 5; Art. II, Sec. 22; Art. XIII, Sec. 6.