



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MARIFLOR T. HORTIZUELA,
represented by JOVIER TAGUFA,
Petitioner,

G.R. No. 205867

Present:

- versus -

CARPIO, J., Chairperson,
VELASCO, JR.,*
DEL CASTILLO,
MENDOZA, and
LEONEN, JJ.

GREGORIA TAGUFA,
ROBERTO TAGUFA and
ROGELIO LUMABAN,
Respondents.

Promulgated:

23 FEB 2015

[Signature]

X ----- X

DECISION

MENDOZA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the September 13, 2012 Decision¹ and the January 25, 2013 Resolution² of the Court of Appeals (CA) in CA- G.R. SP No. 122648 which reversed and set aside the July 1, 2011 Decision³ of the Regional Trial Court, Branch 22, Cabagan, Isabela (RTC), in an action for reconveyance and recovery of possession.

* Designated Acting member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 1910, dated January 12, 2015.

¹ *Rollo*, pp. 49-55. Penned by Associate Justice Danton Q. Bueser with Associate Justice Amelita G. Tolentino and Associate Justice Ramon R. Garcia, concurring.

² *Id.* at 57.

³ *Id.* at 42-47. Penned by Judge Felipe Jesus Torio II.

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The Facts:

The undisputed facts were succinctly summarized in the August 31, 2010 Decision⁴ of the 3rd Municipal Circuit Trial Court, Tumauni-Delfin Albano, Tumauni, Isabela (*MCTC*) before which a complaint⁵ for Reconveyance and Recovery of Possession with Damages was filed by petitioner Mariflor Tagufa Hortizuela (*Hortizuela*) represented by Jovier Tagufa against respondents Gregoria Tagufa, Roberto Tagufa and Rogelio Lumaban (*respondents*). As quoted by the CA, said undisputed facts are:

Gleaned from the joint testimonies of R[u]nsted Tagufa xxx and Jovier Tagufa xxx are the following facts:

The property involved in this case is a parcel of land located at District IV, Tumauni, Isabela containing an area of 539 square meters, more or less, and covered by OCT No. P-84609 of the Registry of Deeds of Isabela. By virtue of the special power of attorney xxx executed by Mariflor Tagufa Hortizuela, Jovier Tagufa instituted this case against herein defendants praying for the peaceful surrender of the above-described property unto them and further ordering defendant Gregoria Tagufa to reconvey in plaintiff's favor the same property which was titled under her name via fraud.

Before it was titled in the name of Defendant Tagufa, said property was originally owned by plaintiff's parents, Spouses Epifanio Tagufa and Godofreda Jimenez. Although untitled, the spouses mortgaged the property with the Development Bank of the Philippines (DBP, for brevity). For failure to redeem the property, DBP foreclosed the same and sold it to Atty. Romulo Marquez xxx who, in turn, sold it back to Runsted Tagufa, husband of defendant Gregoria Tagufa, on April 4, 2002 xxx using the fund sent by plaintiff Hortizuela who was in America and with the agreement that Runsted will reconvey the said property to her sister when demanded.

However, plaintiff discovered that the same unregistered property was titled in the name of Gregoria Tagufa under OCT No. P-84609 of the Registry of Deeds of Isabela xxx. Investigating further, plaintiff discovered that Gregoria Tagufa

⁴ Id. at 37-40.

⁵ Id. at 28-33.

was able to title the said property by virtue of a free patent application before the Department of Environment and Natural Resources (DENR) and the execution of a Deed of Extrajudicial Settlement of the Estate of the late Spouses Leandro Tagufa and Remedios Talosig dated May 9, 2003 xxx. Plaintiff now seeks to recover possession of the said property which is presently occupied by Gregoria Tagufa and her co-defendants and have the same be reconveyed unto them.⁶

In its Order, dated May 5, 2010, the MCTC granted the motion to declare defendants in default and allowed Hortizuela to present her evidence *ex parte*. Thereafter, on August 31, 2010, the MCTC dismissed the complaint for lack of merit ruling that “in the judicious analysis by this court, plaintiffs have resorted to a wrong cause of action.”⁷

Not in conformity, Hortizuela appealed to the RTC. In its July 1, 2011 Decision, the RTC *reversed* the MCTC ruling. The decretal portion of the RTC decision reads as follows:

WHEREFORE, premises considered, the appeal is hereby granted and the Decision dated August 31, 2010, is hereby **REVERSED** and judgment is hereby rendered as follows:

1. Ordering the defendant Gregorio Tagufa to reconvey to the plaintiff Mariflor Tagufa Hortizuela the land described in paragraph 4 of the complaint;
2. Ordering the defendants to vacate the same land and to surrender the peaceful possession thereof to the plaintiff;
3. Ordering the defendants to pay to the plaintiff the following amounts, jointly and severally:
 - a) Fifty Thousand (₱50,000.00) Pesos as Moral Damages;
 - b) Twenty Thousand (₱20,000.00) Pesos as Attorney’s Fees.

SO DECIDED.⁸

Respondents filed a motion for reconsideration, but it was denied by the RTC.

⁶ Id. at 50.

⁷ Id. at 40.

⁸ Id. at 47.

The reversal being unacceptable to them, respondents filed a petition for review before the CA questioning the RTC decision. This time, the case was disposed in their favor. According to the CA, although Hortizuela filed with the MCTC a complaint for reconveyance and recovery of possession of the subject lot, she was also questioning the validity of the Torrens title, Original Certificate of Title (*OCT*) No. P-846609.⁹ The CA pointed out that this was in contravention of Section 48 of Presidential Decree (*P.D.*) No. 1529 which provides:

Sec. 48. Certificate not subject to collateral attack.- A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law

It cited the well-settled rule that a Torrens title could not be collaterally attacked; that the issue of whether or not the title was fraudulently issued, could only be raised in an action expressly instituted for that purpose; and that an action for reconveyance and recovery of possession was not the direct action contemplated by law.¹⁰ Hence, the dispositive portion of the CA decision reads in this wise:

WHEREFORE, premises considered, the Decision dated July 1, 2011 rendered by the Regional Trial Court of Cabagan, Isabela, is hereby **REVERSED** and **SET ASIDE**. The present Complaint for reconveyance and recovery of possession with damages is **DISMISSED**.

SO ORDERED.¹¹

Hortizuela filed a motion for reconsideration, but it was denied in a Resolution,¹² dated January 25, 2013.

Hence, this petition.

ISSUE

WHETHER OR NOT AN ACTION FOR RECONVEYANCE AND RECOVERY OF POSSESSION CONSTITUTES AN INDIRECT OR COLLATERAL ATTACK ON THE VALIDITY OF THE SUBJECT CERTIFICATE OF TITLE WHICH IS PROSCRIBED BY LAW.

⁹ Id. at 52.

¹⁰ Id. at 54.

¹¹ Id. at 55.

¹² Id. at 57.

Hortizuela claims that respondent Gregoria Tagufa (*Gregoria*), being the wife of Runsted, was certainly aware that the subject land was actually sold by Atty. Romulo Marquez (*Atty. Marquez*) to her (Hortizuela). Runsted, only acted as attorney-in-fact in the sale transaction. Thus, the action for reconveyance was not a collateral attack on the said title because Hortizuela was not seeking the nullification of the title, but rather the reconveyance of the property, covered by the said title, which Gregoria was holding in trust for her benefit as the real owner. Gregoria should, therefore, reconvey the property and its title to her, being the rightful owner.

Position of Respondents

Respondents counter that although Hortizuela's complaint was denominated as one for reconveyance and recovery of possession, its main objective was to nullify the title held by Gregoria over the subject property. For said reason, the complaint would amount to a collateral attack on the title which was proscribed under the principle of indefeasibility of a Torrens title. To rule that the action for reconveyance was not a collateral one would result in the nullity of the decree of registration.

Another argument that respondents want this Court to consider in resolving the subject petition is the fact that the overriding reason why Hortizuela chose to file a complaint for reconveyance and recovery of possession was that she failed to avail of the remedy provided under Section 38¹³ of Act 496 within the prescribed period of one (1) year, counted from the issuance of the free patent by the government.

Finally, granting that the title over the property would be nullified and the property be reconveyed to Hortizuela, still the latter would be ineligible to own the same pursuant to Batas Pambansa (*B.P.*) Blg. 223 which requires, among others, that an applicant for a free patent must be a Filipino citizen. Hortizuela, by her own admission, is an American citizen who has been residing in Las Vegas, Nevada.

¹³ Sec. 38. If the court after hearing finds that the applicant or adverse claimant has title as stated in his application or adverse claim and proper for registration, a decree of confirmation and registration shall be entered. Every decree of registration shall bind the land, and quiet title thereto, subject only to the exceptions stated in the following section. It shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description "To whom it may concern." Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decrees: subject, however, to the right of any person deprived of the land or of any estate or interest therein by decree of registration obtained by fraud to file in the competent Court of First Instance a petition for review within one year after entry of the decree provided no innocent purchaser for value has acquired an interest. Upon the expiration of said term of one year, every decree or certificate of title issued in accordance with this section shall be incontrovertible. xxx (Underscoring ours)

The Court's Ruling

The Court finds the petition meritorious.

The Court is not unmindful of the principle of indefeasibility of a Torrens title and Section 48 of P.D. No. 1528 where it is provided that a certificate of title shall not be subject to collateral attack.¹⁴ A Torrens title cannot be altered, modified or cancelled except in a direct proceeding in accordance with law. When the Court says direct attack, it means that the object of an action is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment or proceeding is nevertheless made as an incident thereof.¹⁵ In its decision, the MCTC wrote:

Obviously, the bone of contention in this case are the deed of sale by and between Romulo Marquez and Runsted Tagufa, the estranged husband of defendant Gregoria Tagufa, and OCT No. P-84609 registered in the name of Gregoria Tagufa who, according to the plaintiff, fraudulently caused the titling of the same.

In their lamentations, plaintiff pointed out the following *indicia* of fraud committed by Gregoria Tagufa that would allegedly justify reconveyance:

First, Gregoria Tagufa made it appear in the extrajudicial settlement of the estate of spouses Leandro Tagufa and Remedios Talosig that she is an heir when, in truth, she is only a grand daughter-in-law,

Second, she already knew when she applied for free patent that plaintiff was already the owner of the land she was applying for;

Third, she already knew that when she applied for free patent that plaintiff's parents were not anymore the owners of the land as the same was mortgaged with the DBP; and

Fourth, defendant has never been in actual possession of the property when she applied for it.

¹⁴ *Wee v. Gonzalez*, G.R. No. 202414, June 4, 2014.

¹⁵ *Sampaco v. Lantud*, G.R. No. 163551, July 18, 2011, 654 SCRA 36, 53-54.

All in all, plaintiff argued, Gregoria Tagufa never acquired any valid right or legal title over the property.

Studying the merits of this case and removing all its superfluities, plaintiffs plainly question the title generated in the name of defendant Gregoria Tagufa having been obtained by fraud and misrepresentation. However, in the judicious analysis by this court, plaintiffs have resorted to a wrong cause of action.¹⁶

From the foregoing, it can be deduced that the MCTC was convinced that fraud was attendant in the registration of the land but was not convinced that reconveyance was an accepted remedy.

Contrary to the pronouncements of the MCTC and the CA, however, the complaint of Hortizuela was not a collateral attack on the title warranting dismissal. As a matter of fact, an action for reconveyance is a recognized remedy, an action *in personam*, available to a person whose property has been wrongfully registered under the Torrens system in another's name. In an action for reconveyance, the decree is not sought to be set aside. *It does not seek to set aside the decree but, respecting it as incontrovertible and no longer open to review, seeks to transfer or reconvey the land from the registered owner to the rightful owner.* Reconveyance is always available as long as the property has not passed to an innocent third person for value.¹⁷

There is no quibble that a certificate of title, like in the case at bench, can only be questioned through a direct proceeding. The MCTC and the CA, however, failed to take into account that in a complaint for reconveyance, the decree of registration is respected as incontrovertible and is not being questioned. What is being sought is the transfer of the property wrongfully or erroneously registered in another's name to its rightful owner or to the one with a better right. If the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee, and the real owner is entitled to file an action for reconveyance of the property.¹⁸

The fact that Gregoria was able to secure a title in her name does not operate to vest ownership upon her of the subject land. "Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. It cannot be used to protect a usurper from the true owner; nor can it be used as a shield for the commission of fraud; neither does it permit one to enrich himself at the expense of others. Its issuance in favor of a particular person

¹⁶ *Rollo*, pp. 38-39.

¹⁷ *Wee v. Gonzalez*, supra note 14.

¹⁸ *Campos v. Ortega*, G.R. No. 171286, June 2, 2014.

does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.”¹⁹

Furthermore, respondents’ argument that the overriding reason why Hortizuela chose to file a complaint for reconveyance and recovery of possession was that she failed to avail of the remedy provided under Section 38 of Act 496 within the prescribed period of one (1) year, counted from the issuance of the patent by the government, is weak. As was similarly held in *Cervantes v. CA*,²⁰ with the land obtained by respondent Gregoria through fraudulent machinations by means of which a free patent and a title were issued in her name, she was deemed to have held it in trust for the benefit of Hortizuela who was prejudiced by her actions. Article 1456 provides:

ARTICLE 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

The remedy of reconveyance, based on Section 53 of P.D. No. 1529 and Article 1456, prescribes in ten (10) years from the issuance of the Torrens title over the property.

The Court is not unaware of the rule that a fraudulently acquired free patent may only be assailed by the government in an action for reversion pursuant to Section 101 of the Public Land Act.²¹ In *Sherwill Development Corporation v. Sitio Sto. Niño Residents Association, Inc.*,²² this Court pointed out that:

x x x It is 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

¹⁹ *Lorzano v. Tabayag, Jr.*, G.R. No. 189647, February 6, 2012, 665 SCRA 38, 56.

²⁰ 524 Phil. 574 (2006).

²¹ Section 101 of the Public Land Act provides:

Section 101. All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor-General or the officer acting in his stead, in the proper courts, in the name of the [Republic] of the Philippines.

²² 500 Phil. 288 (2005).

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.²³

An action for reconveyance is proper

The foregoing rule is, however, not without exception. A recognized exception is that situation where plaintiff-claimant seeks direct reconveyance from defendant of public land unlawfully and in breach of trust titled by him, on the principle of enforcement of a constructive trust. This was the ruling in *Larzano v. Tabayag, Jr.*,²⁴ where it was written:

A private individual may bring an action for reconveyance of a parcel of land even if the title thereof was issued through a free patent since such action does not aim or purport to re-open the registration proceeding and set aside the decree of registration, but only to show that the person who secured the registration of the questioned property is not the real owner thereof.

In *Roco, et al. v. Gimeda*, we stated that if a patent had already been issued through fraud or mistake and has been registered, the remedy of a party who has been injured by the fraudulent registration is an action for reconveyance, thus:

It is to be noted that the petition does not seek for a reconsideration of the granting of the patent or of the decree issued in the registration proceeding. The purpose is not to annul the title but to have it conveyed to plaintiffs. Fraudulent statements were made in the application for the patent and no notice thereof was given to plaintiffs, nor knowledge of the petition known to the actual possessors and occupants of the property. The action is one based on fraud and under the law, it can be instituted within four years from the discovery of the fraud. (Art. 1146, Civil Code, as based on Section 3, paragraph 43 of Act No. 190.) It is to be noted that as the patent here has already been issued, the land has the character of registered property in accordance with the provisions of Section 122 of Act No. 496, as amended by Act No. 2332, and the remedy of the party who has been injured by the fraudulent registration is an action for reconveyance. (Director of Lands vs. Registered of Deeds, 92 Phil., 826; 49 Off. Gaz. [3] 935; Section 55 of Act No. 496.)

²³ *Republic v. Court of Appeals*, 262 Phil. 677, 685 (1990).

²⁴ *Larzano v. Tabayag, Jr.*, G.R. No. 189647, February 6, 2012, 665 SCRA 38.

In the same vein, in *Quiñiano, et al. v. Court of Appeals, et al.*, we stressed that:

The controlling legal norm was set forth in succinct language by Justice Tuason in a 1953 decision, *Director of Lands v. Register of Deeds of Rizal*. Thus: "The sole remedy of the land owner whose property has been wrongfully or erroneously registered in another's name is, after one year from the date of the decree, not to set aside the decree, as was done in the instant case, but, respecting the decree as incontrovertible and no longer open to review, to bring an ordinary action in the ordinary court of justice for reconveyance or, if the property has passed into the hands of an innocent purchaser for value, for damages." Such a doctrine goes back to the 1919 landmark decision of *Cabanos v. Register of Deeds of Laguna*. If it were otherwise the institution of registration would, to quote from Justice Torres, serve "as a protecting mantle to cover and shelter bad faith" In the language of the then Justice, later Chief Justice, Bengzon: "A different view would encourage fraud and permit one person unjustly to enrich himself at the expense of another." It would indeed be a signal failing of any legal system if under the circumstances disclosed, the aggrieved party is considered as having lost his right to a property to which he is entitled. It is one thing to protect an innocent third party; it is entirely a different matter, and one devoid of justification, if [deceit] would be rewarded by allowing the perpetrator to enjoy the fruits of his nefarious deed. As clearly revealed by the undeviating line of decisions coming from this Court, such an undesirable eventuality is precisely sought to be guarded against. So it has been before; so it should continue to be. (Citations omitted)

In this case, in filing the complaint for reconveyance and recovery of possession, Hortizuela was not seeking a reconsideration of the granting of the patent or the decree issued in the registration proceedings. What she was seeking was the reconveyance of the subject property on account of the fraud committed by respondent Gregoria. An action for reconveyance is a legal and equitable remedy granted to the rightful landowner, whose land was wrongfully or erroneously registered in the name of another, to compel the registered owner to transfer or reconvey the land to him.²⁵ Thus, the RTC did not err in upholding the right of Hortizuela to ask for the reconveyance of the subject property. To hold otherwise would be to make the Torrens system a shield for the commission of fraud. To reiterate,


²⁵ *Leoveras v. Valdez*, G.R. No. 169985, June 15, 2011, 652 SCRA 61, 71.

The fact that petitioner was able to secure a title in her name did not operate to vest ownership upon her of the subject land. Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. It cannot be used to protect a usurper from the true owner; nor can it be used as a shield for the commission of fraud; neither does it permit one to enrich himself at the expense of others. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.²⁶

Finally, respondents' supposition that Hortizuela was ineligible to own the subject property pursuant to B.P. Blg. 223 because she was no longer a Filipino citizen cannot be considered for having been raised only for the first time on appeal. It must be noted that points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal.²⁷ The reason therefor is due process.

WHEREFORE, the petition is **GRANTED**. The September 13, 2012 Decision and the January 25, 2013 Resolution of the Court of Appeals in CA- G.R. SP No. 122648 are hereby **REVERSED** and **SET ASIDE**. The July 1, 2011 Decision of the Regional Trial Court, Branch 22, Cabagan, Isabela, is hereby **REINSTATED**.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

²⁶ *Naval v. Court of Appeals*, 518 Phil. 271, 282-283 (2006).


²⁷ *Ayala Land, Inc. v. Castillo, et al.*, G. R. No. 178110, June 15, 2011, 652 SCRA 143, 158.

WE CONCUR:



ANTONIO T. CARPIO


Associate Justice
Chairperson



PRESBITERO J. VELASCO, JR.
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



MARVIC M.V.F. LEONEN
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.

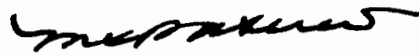


ANTONIO T. CARPIO

Associate Justice
Chairperson, Second 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

