



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

JOSELITO C. BORROMELO,
Petitioner,

G.R. No. 193747

- versus -

Present:
BRION, J., Acting Chairperson,*
DEL CASTILLO,
PEREZ,
PERLAS-BERNABE, and
LEONEN,** JJ.

JUAN T. MINA,
Respondent.

Promulgated:

JUN 05 2013

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the April 30, 2010 Decision² and September 13, 2010 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 101185, dismissing petitioner Joselito C. Borromeo's petitions which identically prayed for the exemption of his landholding from the coverage of the government's Operation Land Transfer (OLT) program as well as the cancellation of respondent Juan T. Mina's title over the property subject of the said landholding.

The Facts

Subject of this case is a 1.1057 hectare parcel of agricultural land, situated in Barangay Magsaysay, Naguilian, Isabela, denominated as Lot No.

* Designated Acting Chairperson in lieu of Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

** Designated Acting Member per Special Order No. 1461 dated May 29, 2013.

¹ *Rollo*, pp. 4-20.

² Id. at 69-82. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Romeo F. Barza and Amy C. Lazaro-Javier, concurring.

³ Id. at 28-30.

5378 and covered by Transfer Certificate of Title (TCT) No. EP-43526,⁴ registered in the name of respondent (subject property). It appears from the foregoing TCT that respondent's title over the said property is based on Emancipation Patent No. 393178 issued by the Department of Agrarian Reform (DAR) on May 2, 1990.⁵

Petitioner filed a Petition dated June 9, 2003⁶ before the Provincial Agrarian Reform Office (PARO) of Isabela, seeking that: (a) his landholding over the subject property (subject landholding) be exempted from the coverage of the government's OLT program under Presidential Decree No. 27 dated October 21, 1972⁷ (PD 27); and (b) respondent's emancipation patent over the subject property be consequently revoked and cancelled.⁸ To this end, petitioner alleged that he purchased the aforesaid property from its previous owner, one Serafin M. Garcia (Garcia), as evidenced by a deed of sale notarized on February 19, 1982 (1982 deed of sale). For various reasons, however, he was not able to effect the transfer of title in his name. Subsequently, to his surprise, he learned that an emancipation patent was issued in respondent's favor without any notice to him. He equally maintained that his total agricultural landholdings was only 3.3635 hectares and thus, within the landowner's retention limits under both PD 27 and Republic Act No. 6647, otherwise known as the "Comprehensive Agrarian Reform Law of 1988." In this regard, he claimed that the subject landholding should have been excluded from the coverage of the government's OLT program.⁹

Petitioner filed a subsequent Petition dated September 1, 2003¹⁰ also with the PARO which contained identical allegations as those stated in his June 9, 2003 Petition (PARO petitions) and similarly prayed for the cancellation of respondent's emancipation patent.

After due investigation, the Municipal Agrarian Reform Officer (MARO) Joey Rolando M. Unblas issued a Report dated September 29, 2003,¹¹ finding that the subject property was erroneously identified by the same office as the property of petitioner's father, the late Cipriano Borromeo. In all actuality, however, the subject property was never owned by Cipriano Borromeo as its true owner was Garcia – notably, a perennial PD 27 landowner¹² – who later sold the same to petitioner.

⁴ CA *rollo*, pp. 45-46.

⁵ *Rollo*, p. 70.

⁶ CA *rollo*, p. 42.

⁷ "DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR."

⁸ Docketed as Adm. Case No. A-0204-0113-03.

⁹ *Supra* note 6.

¹⁰ CA *rollo*, p. 43.

¹¹ *Rollo*, pp. 31-32.

¹² *Id.* at 31.

Based on these findings, the MARO recommended that: (a) the subject landholding be exempted from the coverage of the OLT; and (b) petitioner be allowed to withdraw any amortizations deposited by respondent with the Land Bank of the Philippines (LBP) to serve as rental payments for the latter's use of the subject property.¹³

The Ruling of the PARO

In an undated Resolution, the PARO adopted the recommendation of the MARO and accordingly (a) cancelled respondent's emancipation patent; (b) directed petitioner to allow respondent to continue in the peaceful possession and cultivation of the subject property and to execute a leasehold contract over the same pursuant to the provisions of Republic Act No. 3844 (RA 3844), otherwise known as the "Agricultural Land Reform Code"; and (c) authorized petitioner to withdraw from the LBP all amortizations deposited by respondent as rental payments for the latter's use of the said property.¹⁴

Aggrieved, respondent filed an administrative appeal to the DAR Regional Director.

The Ruling of the DAR Regional Director

On November 30, 2004, DAR Regional Director Renato R. Navata issued an Order,¹⁵ finding that petitioner, being the true owner of the subject property, had the right to impugn its coverage from the government's OLT program. Further, considering that the subject property was erroneously identified as owned by Cipriano Borromeo, coupled with the fact that petitioner's total agricultural landholdings was way below the retention limits prescribed under existing agrarian laws, he declared the subject landholding to be exempt from OLT coverage.

While affirming the PARO's Decision, the DAR Regional Director did not, however, order the cancellation of respondent's emancipation patent. He merely directed petitioner to institute the proper proceedings for such purpose before the DAR Adjudication Board (DARAB).

¹³ Id. at 31-32.

¹⁴ See Order dated November 30, 2004. *CA rollo*, pp. 48-49.

¹⁵ Id. at 47-51.

Consequently, respondent moved for reconsideration,¹⁶ challenging petitioner's ownership of the subject property for lack of sufficient basis to show that his averred predecessor-in-interest, Garcia, was its actual owner. In addition, respondent pointed out that petitioner never filed a protest against the issuance of an emancipation patent in his favor. Hence, petitioner should be deemed to have slept on his rights on account of his inaction for 21 years.

The aforesaid motion was, however, denied in the Resolution dated February 10, 2006,¹⁷ prompting respondent to elevate the matter to the DAR Secretary.

The Ruling of the DAR Secretary

On September 12, 2007, then DAR Secretary Nasser C. Pagandaman issued DARCO Order No. EXC-0709-333, series of 2007,¹⁸ affirming *in toto* the DAR Regional Director's ruling. It upheld the latter's findings that the subject landholding was improperly placed under the coverage of the government's OLT program on account of the erroneous identification of the landowner,¹⁹ considering as well the fact that petitioner's total agricultural landholdings, *i.e.*, 3.3635 hectares, was way below the retention limits under existing agrarian laws.²⁰

Undaunted, respondent filed a petition for review with the CA.

The Ruling of the CA

In a Decision dated April 30, 2010,²¹ the CA reversed and set aside the DAR Secretary's ruling. It doubted petitioner's claim of ownership based on the 1982 deed of sale due to the inconsistent allegations regarding the dates of its notarization divergently stated in the two (2) PARO Petitions, this alongside the fact that a copy of the same was not even attached to the records of the case for its examination. In any case, the CA found the said sale to be null and void for being a prohibited transaction under PD 27 which forbids the transfers or alienation of covered agricultural lands after October 21, 1972 except to the tenant-beneficiaries thereof, of which petitioner was not.²² It also held²³ that petitioner cannot mount any collateral attack against respondent's title to the subject property as the same is

¹⁶ Id. at 52-55.

¹⁷ Id. at 67-69. Penned by DAR OIC-Regional Director Araceli A. Follante, CESO IV.

¹⁸ Id. at 77-80.

¹⁹ Id. at 78.

²⁰ Id. at 79.

²¹ *Rollo*, pp. 69-82.

²² Id. at 78-80.

²³ *Rollo*, p. 80.

prohibited under Section 48 of the Presidential Decree No. 1529 (PD 1529), otherwise known as the “Property Registration Decree.”

Petitioner moved for reconsideration which was, however, denied in a Resolution dated September 13, 2010.²⁴

Hence, this petition.

The Petition

Petitioner contends that the CA erred in declaring the sale between him and Garcia as null and void. In this connection, he avers that there was actually an oral sale entered into by him and Garcia (through his son Lorenzo Garcia) in 1976. The said oral sale was consummated on the same year as petitioner had already occupied and tilled the subject property and started paying real estate taxes thereon. He further alleges that he allowed respondent to cultivate and possess the subject property in 1976 only out of mercy and compassion since the latter begged him for work. The existing sale agreement had been merely formalized by virtue of the 1982 deed of sale which in fact, expressly provided that the subject property was not tenanted and that the provisions of law on pre-emption had been complied with.²⁵ In this regard, petitioner claims that respondent cannot be considered as a tenant and as such, the issuance of an emancipation patent in his favor was erroneous. Likewise, petitioner claims that his right to due process was violated by the issuance of the aforesaid emancipation patent without any notice on his part.

In his Comment,²⁶ respondent counters that petitioner cannot change his theory regarding the date of sale between him and Garcia nor even raise the same factual issue on appeal before the Court.²⁷ Moreover, he asserts that the 1982 deed of sale was not registered and therefore, does not bind him. In any event, he posits that the sale between petitioner and Garcia was null and void.²⁸ Finally, he argues that petitioner’s PARO petitions constitute collateral attacks to his title to the subject property which are disallowed under PD 1529.²⁹

The Court's Ruling

The petition lacks merit.

²⁴ Supra note 3.

²⁵ *Rollo*, pp. 9-10.

²⁶ Id. at 97-117.

²⁷ Id. at 100-103.

²⁸ Id. at 106-109.

²⁹ Id. at 113-115.

A. *Petitioner's change of theory on appeal*

The Court first resolves the procedural matter.

Settled is the rule that a party who adopts a certain theory upon which the case is tried and decided by the lower courts or tribunals will not be permitted to change his theory on appeal,³⁰ not because of the strict application of procedural rules, but as a matter of fairness.³¹ Basic considerations of due process dictate that theories, issues and arguments not brought to the attention of the trial court would not ordinarily be considered by a reviewing court,³² *except* when their factual bases would not require presentation of any further evidence by the adverse party in order to enable him to properly meet the issue raised,³³ such as when the factual bases of such novel theory, issue or argument is (a) subject of judicial notice; or (b) had already been judicially admitted,³⁴ which do not obtain in this case.

Records show that petitioner changed his theory on appeal with respect to two (2) matters:

³⁰ *Kings Properties Corporation v. Galido*, G.R. No. 170023, November 27, 2009, 606 SCRA 137, 154, citing *Philippine Ports Authority v. City of Iloilo*, 453 Phil. 927, 934 (2003).

³¹ *Duty Free Philippines Services, Inc. v. Tria*, G.R. No. 174809, June 27, 2012, 675 SCRA 222, 231.

³² *Jarcia, Jr. v. People*, G.R. No. 187926, February 15, 2012, 666 SCRA 336, 359.

³³ *Bote v. Veloso*, G.R. No. 194270, December 3, 2012.

³⁴ Rule 129 of the Rules of Court enumerates what matters need not be proved, to wit:

RULE 129
What Need Not Be Proved

SECTION 1. *Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

SEC. 2. *Judicial notice, when discretionary.* — A court may take judicial notice of matters which are of public knowledge, or are capable to unquestionable demonstration, or ought to be known to judges because of their judicial functions.

SEC. 3. *Judicial notice, when hearing necessary.* — During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.

SEC. 4. *Judicial admissions.* — An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

First, the actual basis of his ownership rights over the subject property, wherein he now claims that his ownership was actually based on a certain oral sale in 1976 which was merely formalized by the 1982 deed of sale;³⁵ and

Second, the status of respondent as tenant of the subject property, which he never questioned during the earlier stages of the proceedings before the DAR but presently disputes before the Court.

Clearly, the factual bases of the foregoing theories require the presentation of proof as neither of them had been judicially admitted by respondent nor subject of judicial notice. Therefore, the Court cannot entertain petitioner's novel arguments raised in the instant petition. Accordingly, he must rely on his previous positions that ***(a) his basis of ownership over the subject property rests on the 1982 deed of sale; and (b) that respondent's status as the tenant of the subject property remains undisputed.***

Having settled the foregoing procedural issue, the Court now proceeds to resolve the substantive issue in this case.

B. Validity of the sale of the subject property to petitioner

PD 27 prohibits the transfer of ownership over tenanted rice and/or corn lands after October 21, 1972 ***except only in favor of the actual tenant-tillers thereon.*** As held in the case of *Sta. Monica Industrial and Development Corporation v. DAR Regional Director for Region III*,³⁶ citing *Heirs of Batongbacal v. CA*:³⁷

x x x P.D. No. 27, as amended, forbids the transfer or alienation of covered agricultural lands after October 21, 1972 except to the tenant-beneficiary. x x x.

In *Heirs of Batongbacal v. Court of Appeals*, involving the similar issue of sale of a covered agricultural land under P.D. No. 27, this Court held:

³⁵ *Rollo*, pp. 9, 122-123.

³⁶ G.R. No. 164846, June 18, 2008, 555 SCRA 97, 105.

³⁷ 438 Phil. 283, 295 (2002).

Clearly, therefore, Philbanking committed breach of obligation as an agricultural lessor. As the records show, private respondent was not informed about the sale between Philbanking and petitioner, and neither was he privy to the transfer of ownership from Juana Luciano to Philbanking. As an agricultural lessee, the law gives him the right to be informed about matters affecting the land he tills, without need for him to inquire about it.

X X X X

In other words, **transfer of ownership over tenanted rice and/or corn lands after October 21, 1972 is allowed only in favor of the actual tenant-tillers thereon.** Hence, the sale executed by Philbanking on January 11, 1985 in favor of petitioner was in violation of the aforementioned provision of P.D. 27 and its implementing guidelines, and must thus be declared null and void. (Emphasis and underscoring supplied)

Records reveal that the subject landholding fell under the coverage of PD 27 on October 21, 1972³⁸ and as such, could have been subsequently sold only to the tenant thereof, *i.e.*, the respondent. Notably, the status of respondent as tenant is now beyond dispute considering petitioner's admission of such fact.³⁹ Likewise, as earlier discussed, petitioner is tied down to his initial theory that his claim of ownership over the subject property was based on the 1982 deed of sale. Therefore, as Garcia sold the property in 1982 to the petitioner who is evidently not the tenant-beneficiary of the same, the said transaction is null and void for being contrary to law.⁴⁰

In consequence, petitioner cannot assert any right over the subject landholding, such as his present claim for landholding exemption, because his title springs from a null and void source. A void contract is equivalent to nothing; it produces no civil effect; and it does not create, modify or extinguish a juridical relation.⁴¹ Hence, notwithstanding the erroneous identification of the subject landholding by the MARO as owned by Cipriano Borromeo, the fact remains that petitioner had no right to file a petition for landholding exemption since the sale of the said property to him by Garcia in 1982 is null and void. Proceeding from this, the finding that petitioner's total agricultural landholdings is way below the retention limits set forth by law thus, becomes irrelevant to his claim for landholding

³⁸ To note, based on the MARO's findings, Garcia is a "perennial P.D. No. 27 landowner." See *rollo*, p. 31.

³⁹ *Id.* at 78.

⁴⁰ Article 1409 of the Civil Code provides as follows:

Art. 1409. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;

X X X X

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

⁴¹ *Menchavez v. Teves, Jr.*, 490 Phil. 268, 280 (2005).

exemption precisely because he has no right over the aforementioned landholding.

In view of the foregoing disquisition, the Court sees no reason to delve on the issue regarding the cancellation of respondent's emancipation patent, without prejudice to petitioner's right to raise his other claims and objections thereto through the appropriate action filed before the proper forum.⁴²

WHEREFORE, the petition is **DENIED**. The assailed April 30, 2010 Decision and September 13, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 101185 are hereby **AFFIRMED**.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
 Associate Justice

WE CONCUR:


ARTURO D. BRION
 Associate Justice
 Acting Chairperson


MARIANO C. DEL CASTILLO
 Associate Justice


JOSE PORTUGAL PEREZ
 Associate Justice


MARVIC MARIO VICTOR F. LEONEN
 Associate Justice

⁴² To note, Section 9 of Republic Act No. 9700 (which took effect in 2009), amending Section 24 of Republic Act No. 6657, partly reads as follows:

Section 9. Section 24 of Republic Act No. 6657, as amended, is hereby further amended to read as follows:

"SEC. 24. *Award to Beneficiaries.* - The rights and responsibilities of the beneficiaries shall commence from their receipt of a duly registered emancipation patent or certificate of land ownership award and their actual physical possession of the awarded land.

x x x x

"All cases involving the **cancellation of registered emancipation patents**, certificates of land ownership award, and other titles issued under any agrarian reform program are **within the exclusive and original jurisdiction of the Secretary of the DAR.**"(Emphasis supplied)

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.

**ARTURO D. BRION**

Associate Justice

Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting 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