Republic of the Philippines
COURT OF APPEALS
Manila

SIXTEENTH DIVISION

SPS. FRANCISCO H. FRANCISCO AND LUISA FRANCISCO *Plaintiffs-Appellees,* versus **NATIONAL HOUSING AUTHORITY, ET AL.,** *Defendants-Appellants.*	**CA-G.R. CV No. 87196** *Members:* MAAMBONG, R.E., *Chairman,* **LIBREA-LEAGOGO, C.C.**, *and* DIZON, A.S., *JJ.* *Promulgated:* APR 15 2008 10:11

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RESOLUTION

LIBREA-LEAGOGO, C.C., J.:

Before Us is a Motion for Suspending the Period of Filing Appellees' Brief[1] dated 21 June 2007 filed by plaintiffs-appellees. They averred, *inter alia*, that the following incidents must be resolved first before they file their appellee's brief, *viz*: the Entry of Appearance with Omnibus Motion dated 29 December 2005 filed with the trial court by certain Heirs of Eusebio Francisco represented by Hilaria Francisco Villegas; Motion for Reconsideration dated 20 January 2006 filed with the trial court by plaintiffs-appellees praying that the Order of the trial court dated 14 October 2005 be reconsidered by recalling the same and denying the Notice of Appeal filed by the

[1] *Rollo*, pp. 650-655

According to Article 476 of the Civil Code:

> "Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.
>
> An action may also be brought to prevent a cloud being cast upon title to real property or any interest therein."

It is not essential that the party who avails of this remedy is a registered owner of the property. For "title" as used in the above-quoted provision of the Civil Code "does not necessarily mean the original or transfer certificate of title; it can connote acquisitive prescription by possession in the concept of an owner thereof" hence, even a person who has an equitable right of interest in the property may likewise file an action (Mamadsul vs. Moson, 190 SCRA 61, 65 (1975)).

An action by one party asserting his own title to the property covered and asking that the other title be declared null and void is deemed to be in the nature of an action to remove cloud from title or quieting of title (Realty Sales Enterprises, Inc. vs. IAC, 154 SCRA 348 (1987)).

A claim on property based on tax declarations, realty tax payments, or on documents purporting to indicate that the claim was inherited by him may likewise constitute cloud on title which may spark an action to quiet the claimed property.

Plaintiff Francisco's claim that the property in dispute was assigned to him (Exh. "I") by his paternal aunt constitutes cloud on title that could be the basis for an action to quiet title.

"Title" is not synonymous with Torrens Certificate of Title. Rather, it is a generic word which means proof, evidence, or monument of ownership, such as tax declaration, realty tax receipts, deed of sale and Torrens Certificate of Title. But of course, the best title or best evidence of ownership is the Torrens Title because it is indefeasible, imprescriptible and binding against the whole world.

The core issue to be resolved in this case is: Which of the two contending parties is the real owner of the property in dispute?

To prove their claim of ownership over the property, the plaintiffs offered the testimony of plaintiff Francisco H. Francisco.

> FRANCISCO H. FRANCISCO testified that the property now titled in the name of NHA is owned by the plaintiffs; that the property was first owned by Juan Francisco who was in possession of the property before 1898; when Juan died, the property descended to Eusebio Francisco (grandfather of herein plaintiff Francisco H. Francisco); that Eusebio had the property surveyed in 1908 and obtained Bureau of Lands Plan Psu-2438 (Exh. "J") duly approved by the Bureau of Lands on November 20, 1908; that Eusebio Francisco also declared the land for taxation purposes under Tax Declaration No. 8144 (Exh. "W"); that plaintiff Francisco was born on June 4, 1932 at a place (Phil-Am Life subdivision in Quezon City) adjacent to the property; that as a child who grew up in the place, he saw that the disputed property was planted with fruit trees such as mango, *duhat*, guava, *santol*, *sinaguelas*, *nangka*, *mabolo* and other trees; that the area planted with fruit trees was about ten (10) hectares and about fifteen (15) hectares had been utilized in planting rice; that his parents and five siblings used to harvest the fruits and rice which they sold after setting aside what they needed for their own consumption; that his grandfather Eusebio Francisco had been paying the taxes of the property when he was still alive; that nobody questioned or disturbed their possession and ownership of the property; that in

1930, Eusebio died and the property was inherited by his daughter Hilaria Francisco Vda. de Villegas; that Hilaria allowed the plaintiffs to continue staying in the property; that their possession of the property was briefly disrupted when they temporarily left the place during the latter part of 1942 when the Japanese soldiers came looking for Remigio, one of Francisco's brothers who was a guerilla soldier; that after liberation, the plaintiffs returned to the place and resumed their possession of the property; that on March 6, 1988, Hilaria Francisco Vda. de Villegas assigned the property to her nephew Francisco H. Francisco; that the plaintiffs and their family continued to live in the property until December 1, 1997 when they were forcibly ejected from the premises by armed men; that the house of plaintiffs was burned together with some valuable personal effects and important documents related to this case; that the armed men also took the plaintiffs' fifteen chickens, destroyed the plants and decorative concrete pre-casts that the plaintiffs were selling; that at that time, the plaintiffs were growing ornamental plants and Bermuda lawn grass which they sold to landscapers; that they realized an average net monthly income of P10,000.00 from this business; that besides their house and the two houses of their children, there were three other houses belonging to Francisco's nephews and two more houses of their helpers that were also burned; and that they never returned to the place after that burning incident on December 1, 1997.

As part of their evidence, the plaintiffs presented some witnesses who testified during the hearing of the motion for preliminary injunction that they were the tenants of Eusebio Francisco; that they used to share the harvest with Eusebio; and that when Eusebio died, they continued as tenants of Hilaria Francisco Vda. de Villegas.

The plaintiffs also presented the testimony of Rosemarie Leccio, a geodetic engineer of the Land Management Bureau (LMB) who confirmed that plan Psu-2438 (Exh. "J") is existing and on file in the records of the Bureau.

The existence of plan Psu-2438 (approved survey plan in the name of Eusebio Francisco) was further confirmed by the Chief of the Record

Division of the LMB Amando Bangayan who declared in his testimony that in the Survey Records Section of the Records Management Division, there appears a survey plan Psu-2438 in the name of Eusebio Francisco covering a parcel of land situated in Bago Bantay, Caloocan, Rizal with an area of 447,244 square meters. The survey plan was approved on November 20, 1908 by the Bureau of Lands. The plan was submitted as the plaintiff's Exhibit "J".

To further bolster the plaintiffs' claim of ownership over the property, Francisco H. Francisco engaged the professional services of geodetic engineer Mariano Flotildes to make a plotting of plan Psu-2438 and OCT 735 (Exh. "H" for plaintiffs, Exh. "8" for defendant NHA).

> GEODETIC ENGR. MARIANO FLOTILDES testified that OCT 735 had missing lines from point 1 to 333 and that the property being claimed by plaintiffs squarely falls within the missing lines; that the Francisco property is situated inside the missing lines; that the property of the plaintiffs was not covered or within OCT 735; that the Tuasons, as registered titleholders of OCT 735, were not the owners of the area covered by plan Psu-2438, and that the original area of the property which was 447,244 square meters had been considerably reduced as Phil-Am Life got four (4) hectares, EDSA eight (8) hectares the Occupational Labor Hospital two (2) hectares and the Metro Rail Transit Corporation occupied sixteen (16) hectares (TSN pp. 6-7, March 19, 2001).

According to Francisco H. Francisco, the plaintiffs are not claiming the areas taken by Phil-Am Life, EDSA and the hospital and this is evident from the fact that they did not implead the DPWH and the Labor Hospital. Phil-Am Life was originally included in the complaint but during the closing stage of the trial, the plaintiffs unilaterally moved to dismiss the case as against the said defendant.

What the plaintiffs are claiming is the area of thirty (30) hectares including the sixteen (16) hectares occupied by the MRTC as this area is covered by the defective titles of NHA.

On the part of NHA, its evidence consists mainly of its transfer certificates of title derived from OCT 735. It did not present any testimonial evidence. These titles are: TCT Nos. 309574 (257,602 sq.m.), 309406 (160,480 sq.m.), 309816 (33,700 sq.m.) and 309814 (143,996 sq.m.) with a total area of 595,778 sq.m. (59.57 ha.) which is almost twice the area of 30 hectares being claimed by the plaintiffs.

According to the NHA, these four titles could be traced back to the mother title OCT 735 and since this title had been ruled valid by the Supreme Court in several cases, the consequence is that the plaintiffs could not impugn the validity of NHA's titles anymore.

Considering the diametrically opposed stand of the contending parties, the Court must make a careful examination and assessment of the evidence supporting their respective claims.

Perforce, the Court has to resolve the over-all important question of who has the better title to the property – the plaintiffs who had been in open, adverse, public and continuous possession (until December 1, 1997) of the property, or the defendant which has in its favor transfer certificates of title purportedly derived from a mother title (OCT 735) whose validity is shielded from attacks by the consistency and plenitude of jurisprudence emanating from the Supreme Court ruling that said title had become incontrovertible and beyond question.

At first blush, it would seem that the legal dispute is clearly one of "no contenders" (no contest) as the mere fact that the NHA has for its evidence certificates of title while the plaintiffs have only lengthy possession of the property as basis for their claim of ownership would give the impression that the odds are heavily stacked against the plaintiffs for possession alone could not prevail against a valid certificate of title.

The Court, however, cannot just summarily dismiss and brush aside the serious contention of the plaintiffs that NHA's transfer certificates of title are null and void insofar as they embrace and cover the property owned by them.

Plaintiffs' claim that the TCTs of NHA are null and void is predicated on the existence of a very serious flaw in the mother title OCT 735, i.e. the omission of line 1 to 333 from the title which resulted in the exclusion of the area within these missing lines from the title. It is noteworthy that the NHA did not refute this claim of the plaintiffs. Neither did it offer any explanation for the critical infirmity that beset OCT 735.

The NHA claims that its predecessor-in-interest, the People's Homesite Corporation as a direct buyer of a substantial portion of the Tuason property was a buyer in good faith and that it had the right to rely on the title and not go beyond it to inquire into the regularity and validity of OCT 735.

The Court disagrees.

The Torrens certificate of title is presumed to have been regularly issued, valid and without defects. The related presumption is that the buyer or transferee of registered land is not aware of any defect in the title of the

property he purchased or acquired. He has the right to rely upon the fact of the Torrens title and to dispense with the trouble of inquiring further, except when he has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make inquiry (Coronel vs. IAC, 155 SCRA 270 (1987)).

These related presumptions do not, however, excuse the buyer from examining the title itself for any flaws or defects that may subsequently defeat his right thereto. Thus, where the fact of the title contains defects (as in the case of OCT 735) which would prevent the seller (the registered owner) from validly transmitting his rights over a portion of the property, the presumption does not operate in the vendee's favor. This is true in the case at bar. As previously stated, OCT 735 contains a very serious flaw on its face because of the missing lines 1 to 333 which resulted in the exclusion of the area within these missing lines from the coverage of the title. Simply stated, the non-inclusion or omission of an area in the title does not make the titleholder the owner of that excluded area. Thus, the Tuasons were not the owners of the area within the missing lines. Consequently, when the People's Homesite Corporation (PHC, predecessor-in-interest of NHA) bought that portion of OCT 735 located within the missing lines, it bought nothing as the land subject of the sale was not part and parcel of OCT 735. As a result, when PHC transferred the property to the People's Homesite Housing Corporation (PHHC) which in its belief was validly acquired from the Tuasons, the PHHC acquired nothing as the Tuasons sold a property not within their title. Thereafter, when the PHHC transferred the property to NHA, the latter also acquired nothing. This is the reason why the Transfer

The defect that beset PHC's title was not cleansed by the successive transfers of the property from the PHC to PHHC to NHA. Thus, the NHA cannot claim that it is a purchaser for value and in good faith.

In the first place, in the transfer of the property from PHC to PHHC, there was no monetary consideration involved. No cash payment was made to effect the transfer of the land as well as the other assets from PHC to PHHC. In like manner, when the PHHC transferred its assets to NHA, the NHA did not pay anything to PHHC. All the transfers were done *gratis et amore*.

In the second place, the three entities, namely PHC, PHHC and NHA, all government agencies purposely created to pursue a common goal, which is to implement the socialized housing program of the government, are one and the same entity. The earlier offices (PHC and PHHC) might have been phased out but the objectives, policies and properties have all been passed on to the NHA. Thus, the property has not left government hands and may still be conveyed to the plaintiffs.

Although a petition to review and annul the decree and the certificate of registration is an action that is no longer available to the plaintiffs because of the one-year limitation period, the equitable remedy to compel the NHA to reconvey the land to the plaintiffs is still available because it has not been transferred to an innocent purchaser for value.

An action for reconveyance or damages, instituted after the expiration of one year from the date of the issuance of the decree, has not prescribed because it is not one for the reopening of a decree. The equitable action for reconveyance or damages is not barred by the lapse of one year (Sumira vs.

Vistan, 74 Phil. 138). In Palma vs. Cristobal, 77 Phil. 712, the remedy of reconveyance was made available after the lapse of more than ten years.

Even if this remedy of reconveyance is based on equity, it has the full sanction of the law for it is so provided in Section 55 of Act 496, as amended by Act No. 3322, that "in all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title.

A person who succeeds in having a piece of real estate registered in his name is without a doubt insulated by law from a number of claims and liens. There are, however, a number of instances or causes by which such insulation may be cut loose. The registered owner, for instance, is not rendered immune by the law from the claim that he is not the real owner of the land he had registered in his name, in which case the registered land may be ordered reconveyed to the rightful, but as yet, unregistered owner (Pena, Registration of Land Titles and Deeds, 1994 Rev. Ed., p. 134)

That the NHA titles were derived from a fraudulent title (PHC's) cannot be denied. The presumption is strong that the PHC as predecessor-in-interest of NHA neglected to make the necessary inquiries as to why the mother title (OCT 735) had missing lines in the technical description of the property involved.

Where a purchaser neglects to make the necessary inquiries and closes his eyes to facts which should put a reasonable man on his guard as to the possibility of the existence of a defect in his vendor's title, and relying on the belief that there was no defect in the title of the vendor, purchases the

property without making any further investigation, he cannot claim that he is a purchaser in good faith for value" (Republic vs. CA, 149 SCRA 480, 492 (1987)).

A purchaser's refusal to believe that a defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in the vendor's title, will not make him an innocent purchaser for value, if it afterwards develops that the title was in fact defective and it appears that he had such notice of the defect as would have led to its discovery had he acted with that measure of precaution which may reasonably be required of a prudent man in a like situation (Leung Lee vs. Strong Machinery Co., 37 Phil. 644; Manacop vs. Cansino, 63 O.G. 21, Aug. 2, 1965).

It must be observed that the flaw in OCT 735 was so patent and glaring as it existed on the very face of the title itself so that the People's Homesite Corporation, with the exercise of even modicum care, could not have failed to notice this infirmity. The discovery of this serious infirmity should have placed the PHC on guard and goaded it to make inquiries to unearth the reason for the title's infirmity. The failure to discover the infirmity and the inaction to question it are sufficient reasons to disqualify the PHC from claiming the benefits accorded to an innocent purchaser for value. The omission also put the PHC outside the protective legal mantle that exempts a buyer from looking beyond the title. The PHC could not claim that it relied upon what appeared on the face of the title and was not under obligation to look behind the title. Clearly, the PHC did not heed the universal warning issued to all buyers, i.e., "*caveat emptor*" or buyer beware.

to register their title and it was the Tuasons who were successful in obtaining a title, then it is the Tuasons who are the recognized legal owners of the property.

The Supreme Court further stated that the action of the claimants questioning the validity of OCT 735 had prescribed because they never took any step to nullify the title within the one-year period prescribed by law, for under the law and jurisprudence in this jurisdiction, a decree of registration and the resulting title therefrom can only be set aside within one year after entry on the ground of fraud, provided that no innocent purchaser for value has acquired the property. The Supreme Court added that the claimants' rights to bring action are barred by laches for not having taken the same seasonably after the title to the property had been issued under the Torrens System.

However, the stamp of validity given to OCT 735 by the Supreme Court does not necessarily mean that any flaw in the title should be ignored and the title treated as precise, accurate and devoid of infirmity.

Plaintiffs' position, however, is different from the parties who questioned the validity of OCT 735. They strongly argue that their property is outside the coverage of OCT 735.

This argument is buttressed by the testimony of Engr. Mariano Flotildes who declared that when he made a plotting of plan Psu-2438 (approved survey plan in the name of Eusebio Francisco) he found out that the plaintiffs' property was located within the missing lines 1 to 333 of OCT 735; and that since the area within the missing lines was never a part of OCT 735, then the plaintiffs' property was not a part of OCT 735.

From the testimony of Engr. Flotildes, which was not rebutted by NHA, this Court can conclude that when the People's Homesite Corporation bought a large portion of the property titled under OCT 735, the Tuasons could not have sold the area within the missing lines 1 to 333 as this was not a part of their property. "*Nihil dat vendit non habet.*" One cannot sell what he does not have. "*Nemo potest plus juris ad alium transferre ipse habet.*" No one can transfer a greater right to another than he himself has.

The Tuasons could not have sold what they did not own is solid fact, unrebutted, undenied and non-speculative. As the NHA's transfer certificates of title are traced back to OCT 735, the defect that existed in that title was transmitted to all the derivative titles that emanated from OCT 735.

Needless to state, all subsequent certificates of title are void because of the legal truism that "*the spring cannot rise higher than its source.*" The law must protect and prefer the lawful owner over the transferee of a vendor bereft of any transmissible rights. The efficacy of a transfer certificate of title issued at a later date and springing from the original certificate cannot be any better than its original source (Pena, Registration of Land Titles and Deeds, p. 144, 1994 Ed.)

The reality that the technical descriptions of OCT 735 are not in harmony with the technical descriptions in the NHA titles is ever present. Consequently, the question of the validity of the NHA titles continues to linger despite the fact that they now have technical descriptions (which were not in OCT 735) that include the property of the plaintiffs.

The NHA argues that the plaintiffs are guilty of laches and their action has already prescribed, as it was only on April 20, 1988 when they filed their complaint that they began asserting their right over the property.

The Court is not inclined to agree. Laches is negligence or omission to assert a right within a reasonable time warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it (Catholic Bishop of Balanga vs. Court of Appeals, 264 SCRA 18 (1996)).

It is an established rule that an action to quiet title to property in the possession of plaintiff is imprescriptible. Where the plaintiff in an action for reconveyance which is in effect an action to quiet title, is in possession of the land in question, prescription cannot be invoked (Almarza vs. Arquelles, 156 SCRA 718, 732 (1987); Caragay-Layno vs. CA, 138 SCRA 718 (1984); Coronel vs. IAC, 155 SCRA 270 (1987)).

There is settled jurisprudence that one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking step to vindicate his right to seek the aid of a court in equity to ascertain and determine the nature of the adverse claim of a party (who may have even received a Torrens title to the property) and its effect on his own title, which can be claimed only by one who is in possession (Faja vs. Court of Appeals, 75 SCRA 441, 446 (1977) citing Sapto, et. al. vs. Fabiana, 103 Phil. 683; Heirs of Segundo Uberas vs. CFI of Negros Occ., Br. II, 86 SCRA 144 (1978)).

As stated earlier, the Francisco clan had always been in possession of the property since the time of Eusebio Francisco (plaintiff's grandfather). The plaintiffs never intended to voluntarily recognize the NHA's claim of

ownership. This is shown by the fact that they steadfastly remained in the premises until they were forcibly ejected on December 1, 1997, when armed men burned their houses.

The NHA further belittles the plaintiffs' claim of ownership for being based only on possession, a tax declaration in the name of Eusebio Francisco and a survey plan Psu-2438 approved by the Bureau of Lands in 1908.

While tax declarations are not conclusive evidence of ownership, yet when they are coupled with open, adverse and continuous possession in the concept of owner, such documents constitute evidence of great weight in support of the claim of ownership. They constitute at least proof that the holder had a claim of title over the property, also at best, *indicia* of possession (Director of Lands vs. Reyes, 68 SCRA 177 (1975); Ordonez vs. Court of Appeals, 188 SCRA 109 (1990); Director of Lands vs. IAC, 195 SCRA 38 (1991)).

Moreover, the failure of plaintiffs to declare the property in their name does not militate against their acquiring title thereof. Experience has shown that common people do not generally attend to the transfer of tax declarations in their names even in cases where they acquired the property through purchase (Pechon vs. Gerolinga, 67 O.G. 17, April 26, 1971, CA).

Also the mere failure of the owner of the land to pay the realty taxes thereon does not warrant a conclusion that there was abandonment of his right to the property (Reyes vs. Sierra, 93 SCRA 472, 481 (1979)).

The Court believes that in the matter of who between the parties has a certificate of title to support his/their claim of ownership, the evidence is in equipoise. It is admitted that the plaintiffs have no certificate of title. On the

other hand, the NHA has certificates of title but these are deemed null and void and ineffective (insofar as they affect the plaintiffs' claim of ownership over the property) for having been derived from a defective title. In such a situation, the question of ownership of the disputed property shall be resolved in favor of the person, who in good faith, was first in possession and, in the absence thereof, to the person who presents the oldest title provided there is good faith (Art. 1544, Civil Code of the Philippines).

The NHA cannot claim that by the execution of a public instrument (deed of sale) by the Tuasons in favor of the People's Homesite Corporation, the symbolic delivery made was also equivalent to actual delivery because this is only true when the thing sold is subject to the control of the vendor (Addison vs. Felix and Tioco, 38 Phil. 404).

In other words, a person who does not have actual possession of the land cannot transfer constructive possession thereof by the mere execution and delivery of a public document by which the title to the land is transferred (Masallo vs. Cesar, 39 Phil. 135; Palaqui vs. Villa Blanca, G.R. No. L-21988, Nov. 10, 1975; 72 O.G. 9, March 1, 1976).

It appearing that defendant NHA had never been in possession of the disputed property previous to December 1, 1997 when it forcibly ejected the plaintiffs from the property and its titles being null and void, it follows that it could not have acquired it by acquisitive prescription.

On the other hand, it is the plaintiffs, who by their long, continuous, adverse and notorious possession in the concept of owner who have gained a rightful claim to the property by operation of law.

transcription of the decree of registration on Judicial Form No. 108 which is the certificate of title. Then it sends the title in duplicate to the register of deeds who, after signing his name and noting thereon the date and hour of issuance of the same, inserts the original in the registration book and delivers its duplicate to the registered owner." (Ventura, Land Titles and Deeds, 4th Ed , p.173).

Although there is no evidence of direct involvement of the Tuasons in the erroneous inscription of the technical description in OCT 735, it is a cause of wonder to the Court why the Tuasons, despite their vast experience in real estate matters, had allowed a very serious defect in their title to remain unrectified.

It could not be said that the omission, which caused a serious flaw or infirmity of OCT 735 was the result of an honest mistake on the part of the LRC because the error is too patent and glaring not to be noticed.

It is interesting to note that it was not only in parcel I (Diliman Estate) where there were missing lines (1 to 333) but also in parcel II (Sta. Mesa Estate) where the missing lines were 1 to 108, thereby clearly negating the possibility that the omission was the result of inadvertence or honest mistake.

On the contrary, the suspicion is strong that the omission was the result of a conscious, willful and deliberate act tantamount to an admission against interest. Nonetheless, assuming that the omission was not done for any ulterior purpose or that it was the result of an honest mistake, it should not be a convenient and valid excuse to prejudice the rights of others who may have obtained a legal title to the property like the plaintiffs.

A cursory examination of OCT 735 shows that the inscription of the technical description in the title was done by long hand and not typewritten. Copying by hand usually requires a higher level of mental concentration so that the LRC could not have committed such a grievous error as omitting lines 1 to 333 from the title.

At any rate, this was the kind of title that was registered in the Registration Book of the Register of Deeds of the province of Rizal. This original certificate of title is extant in the registry and a certified copy thereof was submitted by the plaintiffs as their Exhibit "H".

The Court wonders why the Tuasons never took the necessary legal steps to correct the defect in OCT 735. The defect was not a minor one and should have elicited the greatest concern as the omission of lines 1 to 333 from the title resulted in the exclusion of a vast area of around 1,400 hectares from the title. By ignoring the error and not taking any positive legal steps to correct it, the Tuasons as registered owners, impliedly admitted that the area of their property extended only to that portion covered by lines 334 to 395 described in the title.

Where there is an error in the technical description appearing in the certificate of title, such error may be corrected only upon proper authority from the court obtained by motion in the same registration proceeding and strictly speaking, this legal requirement applies even if the error is merely typographical (LRC Consulta No. 92, Lumain vs. Register of Deeds of Bohol, June 1, 1956).

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The plaintiffs claim that the reason why lines 1 to 333 had been omitted from the title is that it was done to exclude certain areas that were previously

titled or already covered by survey plans earlier approved by the Bureau of Lands (now Lands Management Bureau).

The reasons advanced by plaintiffs, though highly plausible, are speculative or conjectural, thus the Court is not inclined to give them the stamp of credibility.

Nevertheless, whatever the reasons are for the omission and despite the existence of the defects and deficiencies, the certificate of title (OCT 735) has to be respected because a flaw, even a very serious one which is apparent on the face of OCT 735, does not suffice to call for its invalidity but still, its perceived validity cannot be understood as conferring on the Tunsons' dominical rights over the property which is clearly outside the coverage of their title. This seriously flawed title could not be made the basis for non-existent rights of ownership to the disputed property.

The purpose of stating the technical description in the certificate of title is to fix the exact location or identity of the land as shown in the decree of registration. Thus, any question as regards the identity of the land as well as the area embraced within the title must be settled by reference to the title itself. There can be no other document that could be the source of information as to the description of the titled land for the title is the only authentic, accurate and authoritative document that could provide the necessary information.

Hence, it is regarded as conclusive with respect to all matters contained therein including the extent of the area covered by the title. The technical descriptions constitute decisive and ultimate proof of the description and identity of the land described in the title.

A certificate of title accumulates all the ultimate facts with respect to a particular piece of registered land in a single document making out a precise and correct statement of the exact status of the fee simple title, which the owner has in fact (Legarda and Prieto vs. Saleeby, 31 Phil. 590).

It could be safely concluded that when the PHC bought the Tuason property in 1939, the description stated in the deed of sale did not tally with the description in the certificate of title (OCT 735). This is evident from the fact that the certificate of title had no technical description (because of the missing lines 1 to 333) but in the deed of sale the technical boundaries were already provided. This is a gross violation of an important legal formality, i.e. that the technical description of the property sold to be stated in the document of sale must be taken from the mother title. This was not done in the transaction between the Tuasons and the PHC, as there was no technical description to speak of because the property sold was within the missing lines and therefore outside the coverage of OCT 735. Had this discrepancy been detected by the Registrar of Deeds, the deed of sale would have been refused registration.

Where the description of the titled property appearing in the deed does not tally with that appearing in the certificate of title, the deed is defective and unregistrable (Nava, et al. vs. Bris, CA-GR No. 8730-R, Nov. 25, 1953). Any attempt to deviate from the established practice of basing the validity of land transactions on the certificate of title would destroy and defeat the purpose and integrity of the Torrens System.

Subsequent certificates of title (like NHA's derivative titles) cannot be permitted to prevail over the original title (OCT 735), otherwise it would be

allowing the alteration of the mother title to make the area of the land described therein conform with that in the derivative titles.

The NHA also puts up the defense of indefeasibility of its titles. This defense is unavailing. It bears repeating that the Tuasons were not the owners of the land they sold to PHC. As PHC acquired the property not owned by the sellers, it follows that it bought nothing. Similarly, PHHC acquired nothing from PHC and NHA did not acquire anything from PHHC. Under these circumstances, NHA's titles have not attained indefeasibility and it cannot invoke this against the plaintiffs to the extent of their interest. This is because the Torrens System of Land registration, though indefeasible, should not be used as a means to perpetuate fraud and deprive the rightful owner of his property. Mere registration of sale is not enough, good faith must concur with registration (Claudel vs. Court of Appeals, 197 SCRA 113).

The registered owner is not rendered immune by the law from the claim that he is not the real owner of the land registered in his name in which case, the registered land may be ordered reconveyed to the rightful, but as yet unregistered owner (Frias vs. Esquivel, 67 SCRA 48). Thus, the NHA, as the registered owner of the disputed property, may be ordered to reconvey the property to the plaintiffs who are the rightful owners.

To further buttress its defense, the NHA capitalizes on the Resolutions of the Court of Appeals (promulgated on August 3, 1989 in CA-G.R. SP No. 16090, entitled "National Housing Authority vs. Hon. Lucas P. Bersamin and Sps. Francisco H. Francisco, et al.) and the Supreme Court (promulgated

on February 28, 1990 in G.R. No. 89368, entitled "Spouses Francisco H. Francisco and Luisa Francisco vs. Court of Appeals and NHA").

The sole issue in these cases was the legality and propriety of the issuance of a writ of preliminary injunction by the then Judge Lucas P. Bersamin (now Associate Justice of the Court of Appeals) enjoining the NHA from "threatening to demolish or demolishing the residence of the plaintiffs."

In reversing the Order of then Judge Bersamin and setting aside and annulling the writ of preliminary injunction, the appellate courts briefly and substantially stated that the plaintiffs (Franciscos) have failed to show a clear right or title to the property against that of the petitioner's (NHA) title.

NHA alleges that the basis for the Courts' Resolution was the finding that the plaintiffs were not the owners of the property. The NHA now insists that this finding of the Appellate Courts should be respected and binding on this Court.

NHA's claim is specious. The appellate courts did not conduct a full-blown trial in this case and, therefore, could not have heard the witnesses, seen the documentary exhibits for them to be able to conduct a deeper examination and evaluation of the evidence to make an impartial and accurate finding as to the ownership of the property in litigation. That portion of the Appellate Courts' decision regarding the ownership of the land is utmost only *obiter dicta*.

From their evidence, the plaintiffs have indubitably shown that they are the rightful owners of the North Triangle property. By their long years of open, actual, notorious, peaceful and adverse possession in the concept of

owner beginning from their grandfather Eusebio Francisco since 1898 and their own, which was only disrupted when they were forcibly ejected therefrom on December 1, 1997, they have acquired the property through prescription. From the standpoint of equity, the Franciscos are deemed not to have lost possession of the property as they did not abandon the property voluntarily.

Open, actual, notorious, peaceful and adverse possession in the concept of owner of alienable public land for the period prescribed by law creates the legal fiction whereby the land, upon completion of the requisite period *ipso jure* and without the need of judicial order or other sanctions, ceases to be public land and becomes private property. And the possessor is deemed to have acquired by operation of law, a right to a grant, a government grant, without the necessity of a certificate of title being issued (Director of Lands vs. Bengzon, 152 SCRA 369 (1987); Herico vs. DAR, 95 SCRA 437 (1980); Director of Lands vs. IAC, et al., 146 SCRA 509 (1980))

Acquisition of ownership of land through prescription is provided in Article 1137 of the Civil Code which provides that "ownership and other real rights over immovables also prescribed through uninterrupted adverse possession thereof for thirty (30) years without the need of title or of good faith."

Under Article 1137 of the Civil Code, such uninterrupted, adverse, open possession for thirty (30) years by the defendants regardless of their title or good faith upholds their right over the property (Parcotillo vs. Parcotillo, 12 SCRA 435, 440).

Article 1137 of the Civil Code has been complemented by the provisions of P.D. 1529. Under Sec. 14, (1), P.D. 1529 (An Act Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes), the government recognizes the vested right of possessors of alienable and disposable public lands to file an application for registration of title to the lands in their possession. The pertinent provision states:

> "Sec. 14. Who may apply – The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945 or earlier."
>
> x x x

The plaintiffs' evidence clearly shows that their possession has all the attributes necessary for them to acquire the property through prescription, namely: open, continuous, exclusive, notorious and adverse under a bona fide claim of ownership for the prescribed period.

Surprisingly, the NHA never rebutted the plaintiffs' claim of possession over the property. Neither did it claim possession for itself or by its predecessors-in-interest. In fact, the NHA did not adduce any testimonial evidence, opting to rely solely on its Transfer Certificates of Title Nos. 309574, 309406, 30916 and 309814 covering a total of 61.34 hectares to support its defense that it is the owner of the litigated property.

In the case at bar, the area within the missing lines 1 to 333 of OCT 735 was never placed under the protective mantle of the Land Registration Act. The non-inclusion in OCT 735 of the disputed area gave it the character of unregistered land and therefore susceptible to acquisition by prescription by third parties, in this instance by the plaintiffs and their forebears.

This Court has considered the arguments and evidence presented by the parties with scrupulous and thorough circumspection. For indeed any claim of ownership of such prime property whose commercial value runs into several billions of pesos deserves the most serious consideration.

To give validity to the questioned NHA certificates of title would allow the NHA to unjustly enrich itself at the expense of another and justify a wrong perpetrated on the Francisco family by the original owners who sold a piece of property that did not belong to them as confirmed by their own certificate of title.

To deprive the plaintiffs of possession and ownership of the litigated property on the basis of defendant NHA's dubious documents, which originated from a seriously flawed mother title would be arbitrary and confiscatory.

The Court cannot lend its approbation to such gross injustice. In sum, to recognize and validate the ownership of plaintiffs of the disputed property gives true meaning to the principles of fair play, equity and simple justice, which this Court is sworn to uphold.

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendant as follows:

1. Declaring that plaintiffs are the owners and entitled to the possession of thirty (30) hectares, more or less of the North Triangle property;

2. Declaring that the Transfer Certificates of Title Nos. 309574, 309406, 309816 and 309814 of the Registry of Deeds of Quezon City registered in the name of defendant NHA as null and void only insofar as they embrace and cover the thirty (30) hectares owned by the plaintiffs and that the Register of Deeds of Quezon City is hereby ordered to cancel the aforesaid TCT's under the name of defendant NHA and issue new TCT's covering the thirty (30) hectares in favor of the plaintiffs.;

3. Ordering the defendant NHA, and all persons or entities claiming under it , to restore to the plaintiffs the possession of the thirty (30) hectares belonging to them;

The defendant NHA's counterclaim is hereby dismissed for lack of merit.

SO ORDERED.

Quezon City, March 18, 2005.

JOSE G. PANEDA
Judge