

A Critical Study Of The Case Of Jamora vs. Duran

By ISIDRO T. ALMEDA

AMONG the provisions of Philippine law that have been modified by judicial interpretation is Section 38 of the Land Registration Act (Act No. 496) which in pertinent part provides: ". . . Such decree (of registration) 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 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 . . ."

Under this section a final decree of registration cannot be reopened or set aside in a proceeding commenced after the expiration of one year from the entry of the decree, but actions for transfer or conveyance of the title or for damages may be maintained after that period. (*Clemente vs. Lukban*, 53 Phil. 931). The cases decided by the Supreme Court have modified, on the broad principles of law and equity, the provisions of Section 38 of Act No. 496 by holding that the aggrieved party whose land is regis-

tered through fraud in the name of another may ask for the reconveyance of his property when special circumstances attend the registration of the land in the name of the offending party, provided that the same has not been transferred to an innocent purchaser for value. (*Ventura on Land Registration and Mortgages*, p. 207).

But in clear and unmistakable terms our Supreme Tribunal, in the case of *Jamora vs. Duran*, (G. R. No. 46454, Oct. 18, 1939; XIX Phil. Law Journal 294) granted reconveyance of the land fraudulently registered notwithstanding the absence of any of the special circumstances set for the in adjudicated cases of similar character.

Our inquiry, therefore, is whether or not the reconveyance of the fraudulently registered land in the case of *Jamora vs. Duran* is proper and justified in the light of Section 38 of Act No. 496 and the adjudicated cases construing the same. A proper approach of the subject leads us to a brief review of the decided cases where reconveyance of title to a fraudulently registered land had been granted in favor of the defrauded party after the lapse of the statutory period of one year. Classified according to the particular circumstances present, the following are the special grounds justifying reconveyance:

(1) Where a valid contract exists and is enforceable even as against the person who obtained the title fraudulently.

In the case of *Cabanos vs. Register of Deeds*, 40 Phil., 620, where the vendor a retro of a parcel of land succeeded in registering it before the expiration of the period for redemption and the said period for repurchase expired without the option having been exercised by the vendor a retro, the Supreme Court, in an action by the vendee a retro to consolidate title to the land in question, held: The contract of sale with pacto de retro entered into between the parties still subsists without any alteration nor has it been rescinded by the certificate of title subsequently obtained by the vendor over the land sold, inasmuch as the issuance in his favor of said title does not exempt him from the obligation of complying with it in accordance with Articles 1446, etc., of the Civil Code, for it would then be highly unjust that the defendant, who had already received the price for the lands sold, should still remain the owner of the lands, thereby enriching himself at the expense of the purchaser. The registration of the lands already sold by the vendor cannot be used by him as a protecting mantle to cover his bad faith to the prejudice of the innocent purchaser.

In the case of *Dizon vs. Lacap*, 50 Phil., 193, the Supreme Court enunciated the following doctrine: Where the owners of two contiguous tracts of land unite in a proceeding to register both tracts as a single piece in the name of only one of them, with the understanding that the person in whose name the land is registered will, upon obtaining the decree, convey to the other the portion of land pertaining to the latter, and the former, in breach of faith, conveys the whole to an innocent

purchaser for value immediately upon obtaining the decree, an action lies at the instance of the person defrauded to recover the value of his land with the improvements thereon. (See also *Bagayes vs. Guilao*, 37 O. G., 207).

Likewise, in the case of *Philippine Land Improvement Co. vs. Blas*, 55 Phil., 540 it was held that the person in whose name the land was registered was under obligation to convey it to the person entitled to it by virtue of an obligation to do so which arose from a contract.

(2) Where fiduciary relation exists between the aggrieved party and the party who obtained registration through fraud.

This circumstance is very well illustrated in the case of *Severino vs. Severino*, 44 Phil., 343, where the principal brought an action against his agent to recover lands which the latter had fraudulently registered in his own name. The Court held: The relations of an agent to his principal are fiduciary and in regard to the property forming the subject matter of the agency, he is estopped from acquiring or asserting title adverse to that of the principal. An action *in personam* will lie against an agent to compel him to return or retransfer to his principal, or estate, the real property, and execute the necessary documents of conveyance to effect such transfer. The plaintiff's right of action to compel a reconveyance is not extinguished through the registration of the land in favor of the agent; for although the final decree of registration cannot be reopened after the expiration of one year from the date of its entry, there is no reason why the agent should not be compelled, through

a suit in equity, to make such reparation as may lie within his power for the breach of trust committed by him, and as long as the land stands registered in his name such reparation may take the form of a conveyance or transfer of title to the cestui que trust, that is, the principal. (This doctrine was reiterated in *Uy Aloc vs. Cho Jan Ling*, 19 Phil. 202; *Camacho vs. Municipality of Baliuag*, 28 Phil. 466; *Sy Juco and Viardo vs. Sy Juco*, 40 Phil. 634).

In *Consuji vs. Tison*, 15 Phil. 81, a husband, while acting as legal administrator of the conjugal property, procured, without the consent of his wife, the issuance and registry in the old land registry of a composition title in his own name to certain lands which were included in the wife's separate property. The Supreme Court, held that so long as the land remains in the name of the husband in the registry, his wife or her assignees may compel the husband during his lifetime and his heirs after death, to execute a conveyance transferring the registered title to the land to the wife or her assigns.

In a case where a co-owner of a parcel of land applied for and obtained the adjudication and registration in his name of a lot which he knew had not been allotted to him in the partition, it was held that the registrant acted in bad faith, and that the decree issued may be reviewed within a year following such issuance, in accordance with section 38 of Act No. 496. The court further stated that even in the absence of fraud in obtaining the said decree or after the lapse of one year from the issuance thereof, the co-owner may be compelled to convey said

lot to whoever received it in the apportionment, and if a third person has not acquired it in good faith and for valuable consideration, such third person may also be compelled to reconvey the land. (*Palet vs. Tejedor*, 55 Phil. 790)

(3) When the party registering through fraud subsequently recognizes the right of his co-owner.

When a co-owner registers a piece of land in his name claiming that he is the sole owner thereof, and later on, after the expiration of the one-year period, he recognizes the right of his co-owner in the property, the latter can ask for a reconveyance of his undivided interest in the property subject to any subsisting encumbrance in the property. (*Garcia vs. Reyes*, 51 Phil., 409, 413; cited in *Ventura's Land Registration and Mortgages*, pages 209-210).

Having in mind the doctrines set forth in the above cases and the particular circumstances of each case, let us now examine the facts and the holding in the case of *Jamora vs. Duran*.

In a prior civil case (No. 3837) the defendant prosecuted an action to recover title to and possession of the same parcel of land involved in the case under study against one Salustiana Jamora. Jamora was absolved in that case and the decision of the lower court was confirmed by the Supreme Court in August, 1930. On November 4, 1930, the plaintiff Dionisia Jamora bought the land from Salustiana, her sister. On November 20, 1932, the defendant in company with others (likewise defendants in this case) filed a joint claim to the same lot in a cadastral case alleging that they were the owners of the land

by inheritance. The land was granted and the final decree of registration was filed on June 23, 1936. At about the same time (June 17, 1936), the same plaintiff herein brought a civil action against the same defendants (Civil Case No. 3857) in order to recover title and possession of the land in controversy. The Court of First Instance of Leyte decided the action in favor of the plaintiff, declaring her owner of the same and ordering the defendants to restore to the plaintiff the possession of the land and the Court also reserved to the plaintiff the right to petition in the particular cadastral case the annulment of the decree of registration, and have the land adjudicated in her favor. No appeal having been taken, this decision of the Court of First Instance of Leyte became final. Making use of this reservation, the plaintiff now brought the present action in the particular cadastral case mentioned for the purpose of reviewing the decree of registration granted to the defendants. One year having elapsed from the entry of the decree the lower court held that the plaintiff had lost the right of action to review the decree under Section 38 of Act No. 496. The petition for review of the decree was therefore denied. On appeal the Supreme Court held: In the present case we do not treat of the reopening of the registration proceedings but to oblige the defendants who obtained said decree of registration knowing that they are not the real owners of the lot in question to reconvey or transfer it to the real owner; it is not permitted in equity and justice that one should enrich at the cost of another. In the case of Government of the Philippine Islands

vs. Court of First Instance of Nueva Ecija, 49 Phil., 433, the court states: "When a person obtains a certificate of title in his name over a land belonging to another and the circumstances are such that it must be presumed that he had full knowledge of the rights of the true owner, he is guilty of fraud and may be compelled to transfer the land to the defrauded party or to pay losses or damages." (Velayo vs. Siojo, 58 Phil., 96; Bagayes vs. Guilao, 37 O. G. 207).

Tested by the provision of Section 38 of the Land Registration Act and the adjudicated cases already cited, it is submitted that the decision in the case under consideration sets forth a dangerous precedent destructive of the very purpose for which the Torrens System of land registration was established in this country.

It is unquestionable that the defendants in the case under consideration committed fraud—actual fraud—within the meaning and contemplation of section 38 of Act No. 495 when the said defendants filed an answer in the cadastral proceedings well knowing that the land applied for did not belong to them but to the plaintiff. Aside from the fraud committed by the registrant, there is, however, no other circumstance which would justify the Court in the exercise of equity to grant reconveyance to the plaintiff of the fraudulently registered land. This case is easily distinguishable from the cases discussed above in that there are no special circumstances here which can justify reconveyance. The case thus falls squarely within the provision of Section 38 of Act No. 496 which prohibits the review of the decree on the ground of fraud after the

expiration of one year from the issuance of the final decree of registration. The court, however, argued that this is not a proceeding for reopening the decree but rather an action for reconveyance. We believe that such a statement of the court utterly nullified the provision of Section 38, especially the limitation therein regarding the time for petition for review, taking into account the particular facts of this case, because, while the law prohibits review of the decree after one year from its issuance on the ground of fraud, the court, on the other hand, allowed reconveyance which is but a different form of action although the result is exactly the same—the adjudication of the land in favor of the defrauded party. Certainly what the law prohibits directly may not be done indirectly, and yet here is a decision which practically allows the law to be circumvented under the guise of equity. Under this holding of the court, the one-year period of limitation for review of the decree is rendered useless and nugatory because even if a person, defrauded by the registration of his land by another, cannot have the decree reopened after the lapse of one year after its issuance, yet by a different mode and procedure, namely, reconveyance, he may pursue his cause even after the lapse of the one-year period. Such an anomaly created by this decision which in effect allows the review of a final decree of registration on the ground of fraud even after the lapse of one year from its issuance, obviously defeats the prime object and purpose of the Torrens System of land registration, which is to guarantee the indefeasibility of titles to property. It should be observed that

in the cases cited above, reconveyances were granted not because of fraud alone but because of the attending special circumstances which inhered in the relation of the parties and which cannot be defeated even by a valid registration of the land. In the case under consideration, however, it is clear that aside from the fraud committed in the registration, there is no circumstance justifying the Supreme Court, in the exercise of its equity jurisdiction, to grant reconveyance in favor of the plaintiff.

The defrauded party is not without remedy should the statutory period of limitation expire after the issuance of the decree. Section 38 of the Registration Act expressly provides that any person aggrieved by such decree in any case may pursue his remedy by action for damages against the applicant or any other person for fraud in procuring the decree. And should the person who caused the fraud be insolvent, the defrauded party may recover from the Assurance Fund (See Section 101 and succeeding sections of Act No. 496). Thus the severity of the law in denying review of the decree after the expiration of one year from the issuance thereof is tempered by adequate remedies made available to the aggrieved party.

The Court in its decision cited the case of *Government of the Philippines vs. Court of First Instance of Nueva Ecija*, 49 Phil. 433. We submit that the decision of the Supreme Court in that case is not of binding authority for the present case. In that case a motion for the review of the decision (not decree) in a land registration case was presented to the trial court about seventeen months af-

ter the decision was rendered but before the issuance of the final decree. On due notice and hearing the decision was set aside and the land adjudicated to the party presenting the motion. On petition to the Supreme Court for a writ of certiorari, it was held that the motion for review was in effect a petition for review of the decree under Section 38 of the Land Registration Act. That completely disposed of the case, but the court further added: "Where a person takes a certificate of title in his own name to the lands belonging to another and the circumstances are such that he must be presumed to have had full knowledge of the rights of the true owner, he is guilty of fraud and may be compelled to convey the land to the defrauded party or to pay damages." This portion of the decision, relied upon in the case of *Jamora vs. Duran*, was not necessary for the disposition of that case. It was but an *obiter dictum* and without binding force.

It would not be amiss for us to state here that the action by the plaintiff in the case under discussion was but an exercise of the reserved right granted to her by the decision of the Court of First Instance of Leyte, allowing her to petition in the cadastral case the annulment of the decree of registration. The lower court in so providing must have clearly contemplated the provision of Section 38 of Act 496, and therefore the plaintiff's failure to assert that right within the requisite period of one year from the issuance of the decree of registration extinguished that right.

The Court further averred that the defendant should not be permitted in equity and justice to enrich herself at the expense of another. It seems that the Supreme Court ignored the principles underlying our Land Registration Act. As already pointed out in the foregoing discussion, the defrauded party who fails to assert his cause within one year from the issuance of the decree has yet the remedy of an action for damages against the party causing the fraud or (this failing) against the Assurance Fund. How, then, can it be said that the defendant is enriched at the expense of another when he is to be made liable for damages, which damages must not be less than the value of the land and its improvements? It is a settled principle of law that equity will not be applied when there is other adequate remedies in law are available.

Section 38 of the Land Registration Act is clear and concise; but made confusing and uncertain by judicial pronouncements. If the principles underlying the Torrens System of land registration are to be preserved and if the people's reliance on this system is to be held, then we should give all possible respect to registered titles already granted.

In the words of Mr. Justice Vickers: "If the court persists in this policy of attrition as to Torrens title, and restricts their indefeasibility to innocent purchasers for value, excluding therefrom the original registered owner, it will not only foment litigation by enabling persons to assert claims to lands long since registered, but seriously impair the value of such titles, discourage registration, and largely defeat the purpose of the law."