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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HEIRS OF CAYETANO CASCAYAN, represented by LA PAZ MARTINEZ, Petitioners,	**G.R. No. 211947**
	Present:
	CARPIO, *J.*, *
	PERALTA,** *Acting Chairperson*,
	MENDOZA,
-versus-	LEONEN, and
	MARTIRES, *JJ.*
SPOUSES OLIVER and EVELYN GUMALLAOI, and the MUNICIPAL ENGINEER OF BANGUI, ILOCOS NORTE, Respondents.	**Promulgated:** 03 JUL 2017

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RESOLUTION

LEONEN, *J.*:

This resolves a Petition for Review on Certiorari[1] filed under Rule 45 of the Rules of Court praying that the Court of Appeals Decision[2] dated July 31, 2013 and Resolution[3] dated February 25, 2014 in CA-G.R. CV No. 96900 be reversed and set aside.

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* On official leave.

** Designated Acting Chairperson per S.O. No. 2445 dated June 16, 2017.

1 *Rollo*, pp. 7–29.

2 Id. at 31–45. The Decision was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Normandie B. Pizarro and Florito S. Macalino of the Special Seventeenth Division, Court of Appeals, Manila.

3 Id. at 78-79. The Resolution was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Normandie B. Pizarro and Florito S. Macalino of the Former Special Seventeenth Division, Court of Appeals, Manila.

On September 10, 2007, La Paz Cascayan-Martinez, Elpidio Cascayan, Evangeline Cascayan-Siapco, Flor Cascayan, Nene Cascayan-Alupay, and Virginia Cascayan-Avida (the Cascayan Heirs),[4] all heirs of Cayetano Cascayan (Cayetano), filed a complaint for Recovery of Possession, Demolition, and Damages against the spouses Oliver and Evelyn Gumallaoi (Spouses Gumallaoi) before Branch 19, Regional Trial Court, Bangui, Ilocos Norte.[5] The Cascayan Heirs alleged that by virtue of a free patent application, they were co-owners of a parcel of land covered by Original Certificate of Title (OCT) No. P-78399,[6] denominated as Lot No. 20028, described as follows:

> A parcel of cornland (Lot No. 20028, Cad. 734-D, Bangui Cadastre), bounded on the Northeast by Lot No. 20026; on the Southeast by an Alley; and on the Southwest by Lots Nos. 20029 and 20027 of Cad. 734-D, containing an aggregate area of 1,083 sq. mts., more or less, covered under Katibayan ng Orihinal na Titulo Blg. No. P-78399 with Tax Declaration No. 03-006-00652 with Market Value of Php 3,510.00.[7]

The Cascayan Heirs affirmed that the Spouses Gumallaoi bought Lot No. 20029, an adjacent lot, described as follows:

> A parcel of land (Lot No. 20029, Cad. 734-D, Bangui Cadastre), bounded on the Northeast by Lot No. 20028; on the Southeast by an Alley; and on the Southwest by Lot No. 20030; and on the Northwest by Lot No. 20027 of Cad. 734-D, containing an aggregate area of 999 sq. mts., more or less, covered under Tax Declaration No. 03-006-00673.[8]

The Spouses Gumallaoi built a residential house on Lot No. 20029 which the Cascayan Heirs alleged encroached on Lot No. 20028 after renovations and improvements.[9] The Spouses Gumallaoi ignored the notifications that they had encroached into Lot No. 20028.[10] On May 31, 2001, the Spouses Gumallaoi applied for a Building Permit. Due to renovations on their residential house, they further encroached on Lot No. 20028.[11] Thus, the Cascayan Heirs prayed that the Spouses Gumallaoi be directed to vacate Lot No. 20028 and to restore it to their possession. They likewise prayed that the municipal engineer of Bangui issue the necessary demolition permit as well as cause the demolition of the portion of the house that encroached on Lot No. 20028. Finally, they prayed to be paid damages.[12]

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4 The Cascayan Heirs are represented by La Paz Martinez.
5 *Rollo*, pp. 31–32.
6 Id. at 32.
7 CA *rollo*, p. 64, Complaint.
8 Id.
9 Id. at 65.
10 Id.
11 Id.
12 Id. at 66.

In response, and by way of counterclaim, the Spouses Gumallaoi maintained that they were the true owners of both Lot Nos. 20029 and 20028.[13] They claimed that the Cascayan Heirs secured a free patent to Lot No. 20028 through manipulation. They asserted that the supporting affidavits for the Cascayan Heirs' free patent application were obtained through fraud and deception. They attached in their Amended Answer the affidavits by the same affiants disowning the latter's previous affidavits.[14] Thus, the Spouses Gumallaoi prayed that they be declared the legal owners of Lot No. 20028, that OCT No. P-78399 be annulled, and that they be paid damages.[15]

By agreement of the parties, Engr. Gregorio Malacas was appointed to determine whether Lot No. 20028 was included in the lot claimed by the Spouses Gumallaoi. In his report, he said:

> From the datas (sic) of the verification survey that was executed over the premises of the subject, it appears that a two (2)[-]storey residential [b]uilding owned by the defendants was erected partly on Lot 20028 and partly on Lot 20029.[16]

The parties decided to submit the case for resolution with the position papers and the evidence on record as bases.[17]

On January 21, 2010, the Regional Trial Court[18] rendered a Decision declaring the Spouses Gumallaoi the legal owners of Lot No. 20028. It ruled that petitioners did not prove that they or their predecessor-in-interest had been in possession of it. Conversely, noting that the bigger portion of the Spouses Gumallaoi's residence had been constructed on this land, the Regional Trial Court found that it was more likely that the residence was intended to be constructed on Lot No. 20028.[19] The Regional Trial Court found inconsistencies between the claims of the Cascayan Heirs and the evidence they presented in support of their free patent application. It concluded that OCT No. P-78399 had been secured through fraud, without legal and proper basis, and hence, disregarded it:

> It can be gleaned from the documentary evidence of the plaintiffs that their predecessor Cayetano Cascayan was the declared owner of a parcel of sugarland with an area of 1,600 square meters under Tax Declaration No. 28278-A, series of 1926 which cancelled Tax Declaration

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13 RTC records, p. 34, Amended Answer.
14 Id.
15 Id. at 34–35.
16 *Rollo*, p. 33.
17 Id.
18 Acting Presiding Judge Philip G. Salvador.
19 RTC records, p. 208.

No. 28278. Tax Declaration No. 28278-A was later cancelled by Tax Declaration No. 28278-B which was issued in 1932, also covering the same area. Later, it was revised in 1949 under Tax Declaration No. 005179, this time covering a bigger area of 1,950 square meters. As per the plaintiffs, the same parcel of land was issued Tax Declaration No. 601683, series of 1985 although the land area is indicated only to be 1,940 square meters.

Sometime in the year 1984, a parcel of land designated as Lot No. 20028 consisting of 1,083 square meters was surveyed for Marcelino Alupay as shown in the technical description issued by the Community Environment and Natural Resources Office (CENRO), Bangui, Ilocos Norte which conducted the survey from November 2 to 25, 2002 and approved the said technical description on October 12, 1984. Almost 20 years after the said survey or on February 25, 2004, plaintiffs through La Paz Cascayan filed an Application for Free Patent over Lot No. 20028. In support of the application, said plaintiff submitted as one of the requirements an Affidavit executed by Marcelino Alupay dated March 24, 2004 stating that there was a mistake in placing his name as survey claimant over the said lot. The applicant also submitted, among others, the Affidavit of Estrelita Balbag and Jalibert Malapit who then attested that plaintiffs as heirs of Cayetano Cascayan have continuously occupied and cultivated Lot No. 20028; the Affidavit of Isauro Pinget, Elvira Pinget and Sixto Rigates stating that the lot was declared in the name of Cayetano Cascayan under Tax Declaration No. 03-006-00652, series of 2003; and a Certification from Christopher Malapit, Barangay Chairman of Brgy. Dadaor, Bangui that the notice of application for free patent was posted from February 24 to March 24, 2004. As per an Order issued on July 1, 2004, the CENRO approved the application and Katibayang ng Orighinal na Titulo Blg. P-78399 was issued on the same date.

From these evidences of the plaintiffs, there is clear and serious disconnect in their claim that the parcel of land declared earlier in the name of their predecessor is the same as Lot No. 20028. The Court notes that indeed the tax declarations issued in the name of Cayetano Cascayan in 1926, 1932, 1949 and 1985 bear the same boundaries – Florencio Molina on the north, Bernardo Acido on the East and Pedro Corpuz on the south and west. It also notes that as shown at the back of the tax declaration issued in 1985, it cancelled Tax Declaration No. 501883 and not the tax declaration issued in 1949. At any rate, granting that said tax declaration issued in 1985 refers to the same lot mentioned in the tax declarations issued in 1926, 1932 and 1949 because of the similar boundaries indicated, there is simply no basis to show that it is the same as Lot No. 20028. The Court even wonders why the 1985 tax declaration still refer[red] to a lot with an area of 1,940 square meters if it was already surveyed earlier in 1982 and was found to have an area of only 1,083 square meters. Not only that, if the plaintiffs were the owners of Lot No. 20028, it also wonders why the survey thereof was conducted for Marcelino Alupay and not for Cayetano Cascayan who, as per another technical description also issued by the CENRO, was the claimant in the survey also conducted in 1982 of Lot No. 20033 which is just adjacent to the lot in question. It further wonders in the absence of any explanation how it came about that Lot No. 20028 consisted of only 1,083 square meters which is substantially different to its area th[a]n as originally declared in the name of Cayetano Cascayan.

At this juncture, it is noteworthy that Tax Declaration No. 03-006-00652, series of 2003 in the name of the Heirs of Cayetano Cascayan who obviously secured the same for purposes [of] their application for free patent, was not also earlier declared in the name of either Marcelino Alupay or Cayetano Cascayan. A perusal of the evidences of the defendants spouses . . . show that the owner was unknown. In fact, as shown in Tax Declaration No. 97-006-00654, it preceded Tax Declaration No. 03-006-00652 which is the same tax declaration issued to the plaintiffs in 2003 before they applied for the free patent. It is thus clear that, the lot being declared then to an unknown person, plaintiffs took it upon themselves and claimed it, secured a tax declaration in their name in 2003 and applied thereafter for a free patent therefor the following year.

In other words, plaintiffs obviously applied for a free patent without any basis. It is clear from their evidence that they were never in possession of the property in suit before they applied for the free patent. While plaintiffs submitted affidavits to show that they have occupied and cultivated Lot No. 20028 and that it was declared in the name of the heirs of Cayetano Cascayan in support of their application for free patent, it appears that such evidences have been manipulated. It appears that while they were not in fact cultivating the property and that it was declared in the name of the heirs of Cayetano Cascayan only in 2003, they were able to present false information about their true status as claimants. In fact, Estrelita Balbag and Jalibert Malapit, who then in the year 2004 attested in support of plaintiffs' application for free patent that plaintiffs and their predecessor have been in continuous possession of Lot No. 20028 since 1944 or 1945, have retracted their said Affidavits. Thus, in the subsequent Affidavits they have executed on September 19, 2007 which defendants spouses submitted in support of their claim, Estrelita Balbag on her part alleged that she has no knowledge about the contents of her earlier affidavit which was not explained to her and that she is not aware of the matters concerning Lot No. 20028 while Jalibert Malapit stated that his signature on the Affidavit is not his real signature.

Likewise, Barangay Chairman Christopher Malapit also retracted the Certification he issued on March 24, 2004 in support [of] the application of the plaintiffs for free patent by stating in his subsequent Affidavit dated September 19, 2007 also submitted by the defendants spouses that there was no posting made of the notice of application for free patent and that when he was asked to sign by Elsa Martinez, daughter of La Paz Martine[z], he was not aware of the contents of the Certification and that he was made to believe that it will be used for another purpose than an application for free patent . . .

Also, Marcelino Alupay retracted the Affidavit which he executed on March 24, 2004 in favor of the plaintiffs in connection with their application for free patent, stating that there was a mistake in placing his name as survey claimant and that the lot applied for is in the actual possession and cultivation of the heirs of Cayetano Cascayan. Thus in another Affidavit he executed on September 19, 2007, he alleged that he had no knowledge of the contents of what he signed and that it was not explained to him.

In any case, contrary to the claim of plaintiffs that they were in possession of Lot No. 20028, it appears that even by the year 2004 when plaintiffs applied for a free patent, defendants spouses have already been

> in possession of Lot No. 20028 together with the adjacent Lot No. 20029. This is clear from the fact that the bigger portion of their house was constructed over the lot in dispute. By constructing their house both on the two lots, it is unthinkable that they would have done so under notice or threat that they will eventually be evicted and a substantial part of their house demolished. Under the circumstances, the Court cannot believe the claim of the plaintiffs that they have repeatedly warned the defendants spouses about the encroachment. If this were true, it is surprising that when the defendants spouses supposedly extended their house, they did not file a case to immediately stop the construction.
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> In fact, all these observations lead the Court to believe that the issuance of the free patent was not made in accordance with the procedure laid down by Commonwealth Act No. 141, otherwise known as the Public Land Act. As provided in Section 91 thereof, an investigation should be conducted for the purpose of ascertaining whether the material facts set out in the application are true. In this case, it appears more likely that there was never any investigation or any verification made by the CENRO as to the actual status of the land in suit at the time the application of plaintiffs for a free patent was processed and before the free patent was approved and issued. Otherwise, they would have known that defendants spouses have constructed the bigger part of their house on Lot No. 20028. More significantly, when Marcelino Alupay, the original survey claimant of Lot No. 20028 in 1982, executed his Affidavit supporting the application for free patent on March 24, 2004, he was immediately dropped on the same day as survey claimant as shown in [the] Order issued by the CENRO. If it is any indication, it was only on the basis of the Affidavit of Marcelino Alupay stating that his name was erroneously declared as survey claimant to the property that the dropping of his name as such was made and not by virtue of any verification or investigation.[20] (Citations omitted)

The dispositive portion of the Regional Trial Court Decision read:

> WHEREFORE, the instant complaint is DISMISSED and the defendants spouses Oliver and Evelyn Gumallaoi are declared owners of Lot No. 20028 of the Bangui Cadastre. Consequently, it having been issued fraudulently and without legal and proper basis, Katibayang [sic] ng Orighinal [sic] na Titulo Blg. P-78399 issued in the name of Heirs of Cayetano Cascayan, represented by La Paz Martinez, is hereby ordered cancelled. For want of basis, no damages are awarded.
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> SO ORDERED.[21]

The Cascayan Heirs filed a Motion for New Trial[22] dated February 19, 2010, citing mistake as a ground. They claimed that despite the agreement for the trial court to consider only the Commissioner's Report to resolve the

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[20] RTC records, pp. 205–209.
[21] Id. at 211.
[22] CA *rollo*, pp. 50–52.

case,[23] it also examined fraudulent affidavits.[24] Thus, the Cascayan Heirs prayed that the Regional Trial Court Decision be set aside and a new trial be conducted.

In an Order[25] dated March 21, 2011, the Regional Trial Court denied the Motion for New Trial:

> Mistake as a ground for new trial under Section 1, Rule 37 of the Rules of Court must be a mistake of fact, not of law, which relates to the case. Here, plaintiffs claim to have committed mistake in perceiving that the case was submitted merely on the basis of the Commissioner's Report is unavailing. The Commissioner's Report containing the findings on the relocation survey was never meant to be crucial in determining the issue in this case. As per Order of the Court issued on July 10, 2008, the relocation survey was commissioned upon agreement of the parties to determine in the first place if the plaintiffs and the defendants refer to one and the same identifiable property or if the lot being claimed by the plaintiff is one and the same as or is included in the lot being claimed by the defendants. It is therefore erroneous on the part of the plaintiffs to now claim that they thought that the case was submitted for resolution only [on] the basis of the results of the relocation survey, particularly the finding in the Commissioner's Report which is quoted as follows:
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> > "From the datas [sic] of the verification survey that was executed over the premises of the subject, it appears that a two (2)[-]storey residential building owned by the defendants was erected partly on Lot 20028 and partly on Lot 20029".
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> More significantly, it is clear on record contrary to the supposed mistaken perception of the plaintiffs that in the Order dated November 5, 2009, that parties, meaning with the concurrence of both plaintiffs and defendants, agreed to submit the case for resolution "on the basis of their position papers and the evidence already on record" . . . This plaintiffs cannot deny. Lest they have forgotten, their cause of action is reconveyance based on their claim that they owned the property upon which defendants had partly built their house. They are also too aware that if their action is for reconveyance based on their claim of ownership, it is in the same vein that defendants lay claim to the property. They are thus likewise aware that a resolution of the case cannot be made merely on the basis of the Commissioner's Report but must be on the basis of the whole evidence on record.
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> A party who moves for a new trial on the ground of "honest mistake" must show that ordinary prudence could not have guarded against it. A new trial is not a refuge for the obstinate. In this case, plaintiffs' assertion that they thought that the case was submitted for resolution only on the basis of the Commissioner's Report is but a pretentious and unfounded mistake.

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23 Id. at 50–51.
24 Id. at 51.
25 Id. at 58–59.

> Having been assisted by counsel, such mistake could not have happened had ordinary prudence been exercised.[26] (Citations omitted)

The Cascayan Heirs appealed the Regional Trial Court Decision to the Court of Appeals. They argued that the Regional Trial Court could not order the cancellation of the patent because they had already been issued a certificate of title pursuant to a public land patent.[27] Furthermore, under the Public Land Act, it is only the Solicitor General who could institute an action for reversion of Lot No. 20028.[28] Petitioners also insisted that their Motion for New Trial should have been granted because of their mistake in believing that the position paper would be the basis of the Regional Trial Court's decision and because respondents committed fraud in submitting irrelevant documents.[29]

The Court of Appeals denied the petition and affirmed the Regional Trial Court Decision. It held that the action was in the nature of an *accion reivindicatoria*, wherein the plaintiffs claim ownership over a land and seek recovery of full possession over it.[30] Thus, the main issue for resolution was who had a better claim over Lot No. 20028, based on the parties' evidence.[31] Consequently, pursuant to Article 434 of the Civil Code, the plaintiffs had to prove the identity of the land claimed and their title to it.[32] The Court of Appeals found that OCT No. P-78399 was not conclusive proof of their title to Lot No. 20028 as titles secured by fraud and misrepresentation are not indefeasible. Quoting the Regional Trial Court, the Court of Appeals found that the evidence proved that the Cascayan Heirs obtained their title through fraud and misrepresentation. Additionally, it ruled that the Spouses Gumallaoi proved their title as well as the identity of the land pursuant to Article 434 of the Civil Code. The dispositive portion of the decision read:

> WHEREFORE, the instant appeal is DENIED. The January 21, 2010 Decision of Regional Trial Court, Branch 19, Bangui, Ilocos Norte in Civil Case No. 944-19 is hereby AFFIRMED.[33]

In a Resolution[34] dated February 25, 2014, the Court of Appeals also denied the Cascayan Heirs' motion for reconsideration for lack of merit.

On April 10, 2014, the Cascayan Heirs filed a petition before this Court assailing the Court of Appeals Decision and Resolution. Petitioners argue that regardless of any application for free patent that may have been

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26 Id.
27 Id. at 35.
28 Id. at 35–36.
29 Id. at 38.
30 *Rollo*, pp. 36–37.
31 Id. at 37.
32 Id.
33 Id. at 44.
34 Id. at 78–79.

filed, Lot No. 20028 had long been owned by Cayetano since 1925.[35] This is shown by evidence submitted to the Regional Trial Court, namely, a Tax Declaration for the year 1925 and the presence of the debris of his residence, still intact on Lot No. 20028.[36] Moreover, petitioners insist that it has been proven that they have possessed Lot No. 20028 since time immemorial.[37] They also claim that none of the evidence shows that respondents own Lot No. 20028. They point out that affidavits retracting the affidavits of waiver have been submitted to the Court of Appeals,[38] explaining that the signatories of the affidavits of waiver did not understand what they signed.[39]

On September 22, 2015, respondents manifested that in lieu of filing a comment on the Petition, they are adopting the rulings of the Court of Appeals and of the Regional Trial Court.[40]

The sole issue for resolution is whether the Court of Appeals properly appreciated the evidence presented by the parties.

The petition is denied.

Petitions for review on certiorari under Rule 45 shall pertain only to questions of law.[41] In *Pascal v. Burgos:*[42]

> Review of appeals filed before this court is "not a matter of right, but of sound judicial discretion[.]" This court's action is discretionary. Petitions filed "will be granted only when there are special and important reasons[.]" This is especially applicable in this case, where the issues have been fully ventilated before the lower courts in a number of related cases.
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> The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt" when supported by substantial evidence. Factual findings of the

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35 Id. at 12.
36 Id.
37 Id. at 15.
38 Id. at 22.
39 Id. at 22–23.
40 Id. at 100.
41 RULES OF COURT, Rule 45, sec. 1 provides:
Section 1. Filing of Petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.
42 G.R. No. 171722. January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf> [Per J. Leonen, Second Division].

> appellate courts will not be reviewed nor disturbed on appeal to this court.[43] (Citations omitted)

Thus, as a general rule, the factual findings of the Court of Appeals bind this Court.

Quoting the Regional Trial Court, the Court of Appeals determined, based on the evidence presented, that petitioners obtained their title to Lot No. 20028 through fraud and misrepresentation:

> In this case, Spouses Gumallaoi presented sufficient evidence to show that the Heirs of Cascayan obtained their title through fraud and misrepresentation. We quote with approval the following observations of the RTC, viz.:
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> > At this juncture, it is noteworthy that Tax Declaration No. 03-006-00652, series of 2003 in the name of the Heirs of Cayetano Cascayan who obviously secured the same for purposes (of) their application for free patent, was not also earlier declared in the name of either Marcelino Alupay or Cayetano Cascayan. A perusal of the evidences [sic] of the defendants spouses . . . show that the owner was unknown. In fact, as shown in Tax Declaration No. 97-006-00654, it preceded Tax Declaration No. 03-006-00652 which is the same tax declaration issued to the plaintiffs in 2003 before they applied for the free patent. It is thus clear that, the lot being declared then to an unknown person, plaintiffs took it upon themselves and claimed it, secured a tax declaration in their name in 2003 and applied thereafter for a free patent therefor the following year.
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> > In other words, plaintiffs obviously applied for a free patent without any basis. It is clear from their evidence that they were never in possession of the property in suit before they applied for the free patent. While plaintiffs submitted affidavits to show that they have occupied and cultivated Lot No. 20028 and that it was declared in the name of the heirs of Cayetano Cascayan in support of their application for free patent, it appears that such evidences (sic) have been manipulated. It appears that while they were not in fact cultivating the property and that it was declared in the name of the heirs of Cayetano Cascayan only in 2003, they were able to present false information about their true status as claimants. In fact, Estrelita Balbag and Jalibert Malapit, who then in the year 2004 attested in support of plaintiffs' application for free patent that plaintiffs and their predecessor have been in continuous possession of Lot No. 20028 since 1944 or 1945, have retracted their said Affidavits. Thus, in the subsequent Affidavits they have executed on September 19, 2007 which defendants spouses submitted in support of

[43] Id. at 10–11.

> their claim, Estrelita Balbag on her part alleged that she has no knowledge about the contents of her earlier affidavit which was not explained to her and that she is not aware of the matters concerning Lot No. 20028 while Jalibert Malapit stated that his signature on the Affidavit is not his real signature.
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> Likewise, Barangay Chairman Christopher Malapit also retracted the Certification he issued on March 24, 2004 in support [of] the application of the plaintiffs for free patent by stating in his subsequent Affidavit dated September 19, 2007 also submitted by defendants spouses that there was no posting made of the notice of application for free patent and that when he was asked to sign by Elsa Martinez, daughter of La Paz Martine[z], he was not aware of the contents of the Certification and that he was made to believe that it will be used for another purpose than an application for free patent . . .
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> Also, Marcelino Alupay retracted the Affidavit which he executed on March 24, 2004 in favor of the plaintiffs in connection with their application for free patent stating that there was mistake in placing his name as survey claimant and that the lot applied for is in the actual possession and cultivation of the heirs of Cayetano Cascayan. Thus, in another Affidavit he executed on September 19, 2007, he alleged that he had no knowledge of the contents of what he signed and that it was not explained to him.[44]

However, petitioners ask that this Court reverse the Court of Appeals' determination, insisting that regardless of any impropriety in the filing of an application for a free patent, they have proven that they owned Lot No. 20028. They assert that they have established that Lot No. 20028 had long been owned by Cayetano since 1925[45] and that they have possessed it since time immemorial,[46] whereas none of the evidence shows that respondents ever owned it. Petitioners also insist that the affidavits of waiver should not have been given weight by the Court of Appeals, considering that affidavits retracting the affidavits of waiver have been submitted to it.[47]

These issues require this Court to review the Court of Appeals' appreciation of evidence. The Court of Appeals found that the evidence did not sufficiently prove petitioners' claims of possession or ownership over Lot No. 20028:

> The records are also bereft of evidence showing that the Heirs of Cascayan or their predecessor-in-interest had been in possession of Lot No. 20028. There was not even an allegation on how Cayetano took

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44 *Rollo*, pp. 38–39.
45 Id. at 12.
46 Id. at 15.
47 Id. at 22.

> possession of the land and in what way he derived his title thereto. Interestingly, the Heirs of Cascayan merely based their claim of possession on a series of tax declarations purportedly showing that Cayetano, their predecessor-in-interest, had been religiously paying the taxes thereof and even built a residential house thereon. However, and as aptly noted by the RTC, these tax declarations are full of inconsistent entries that were never explained and only cast doubt as to the identity of the land being claimed by the Heirs of Cascayan.[48]

The Court of Appeals noted that the only basis for the petitioners' claim of possession was tax declarations, which the Court of Appeals scrutinized:

> A careful perusal of the tax declarations bearing the name of Cayetano and having similar boundaries reveal that TD No. 601683 (series of 1985) covered 1,940 sq. m. It cancelled TD No. 501883, not TD No. 005179. On the other hand, TD No. 005179 (series of 1949), stating an area of 1,950 sq. m., cancelled TD No. 28278-B (series of 1932) that has an area of 1,600 sq. m. TD No. 28278-B cancelled TD No. 28278-A (series of 1926) which bore the same dimension and had cancelled TD No. 28278. We emphasize that TD No. 03-006-00652 (series of 2003) in the name of the Heirs of Cascayan covers an area of 1,083 sq. m. and was not earlier declared in the name of either Cayetano or even Marcelino who allegedly applied, though erroneously, a patent for Lot No. 20028. Obviously, its area is substantially different from that originally declared in the name of Cayetano . . .
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> However, TD No. 97-006-00654 was declared to an unknown owner in 1997 and it cancelled TD No. 94-006-00651 which was likewise declared to an unknown owner in 1994, and both covered an area of 1,803 sq. m. The Heirs of Cascayan never bothered to explain why Lot No. 20028 was declared to an unknown owner despite their claim that they had been in possession of the same since 1942. It is also intriguing that despite the resurvey of the land in 1982, which was used by the Heirs of Cascayan in their free patent application, showing an area of 1,083 sq. m., the land was allegedly declared in the name of Cayetano in 1985 but still bearing an area of 1,940 sq. m. The 1985 tax declaration in the name of Cayetano was likewise silent as to the lot number of the land being declared for tax purposes and it appears therefrom that said lot was bounded on the south and west by the land owned by Pedro and on the east by the land owned by Bernardo Acido. In contrast thereto, the survey conducted in 1982 showed that Lot No. 20028 is bounded on the east by an alley and not by any private land. It is quite plain from the foregoing observations, and as correctly pointed out by the court a quo, that "there is clear and serious disconnect in their claim that the parcel of land declared earlier in the name of Cayetano, is the same as Lot No. 20028".[49]

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48 Id. at 40.

49 Id. at 40–41.

The Court of Appeals thoroughly examined the evidence submitted by petitioners and found it lacking in probative value to prove petitioners' ownership over Lot No. 20028. Rather than prove their ownership, it cast doubt on the title over Lot No. 20028.

Petitioners attempt to address the foregoing inconsistencies:

> As to the discrepancy of the area, and which also bothered the Honorable Court of Appeals, it must be noted that indeed the survey was conducted in the year 1982 (November 2-25, 1982), but it was only approved in October 12, 1984. There was as yet no ROAD then, as it could be seen in the boundaries of the earlier issued Tax Declarations, but it is still within the allowable area of relevance and proximity. The present area could be properly explained with the existence of a road therein as shown in the Survey Plan submitted by the Commissioner of the case, but the debris of the improvements – "House and Kitchen" having been put up by Cayetano Cascayan in his lifetime, could not be denied, which serves as a monument of ownership in fee simple.[50]

The assertions that a road may explain the inconsistencies are mere factual allegations, not well-substantiated or adequately discussed fact. They are insufficient to compel this Court to review the Court of Appeals' appreciation of the evidence as to the identity of the property covered by the tax declarations in relation to Lot No. 20028.

The Court of Appeals also considered the waivers submitted in evidence by the parties:

> The Court cannot also close its eyes to the Waiver of Rights executed by some of the Heirs of Cascayan, particularly Virginia Abida, Irineo Tolentino, Nena Valiente Alupay, Orlino Valinete and Eden Jacinto, recognizing Jose and Spouses Gumallaoi's ownership over Lot No. 20028 and admitting that it was erroneous on their part to apply for a free patent over the said lot. Also worthy of note is the statement by the Heirs of Cascayan in their application alleging that the land was public and that no person was claiming or occupying the same notwithstanding that Spouses Gumallaoi's house was already visibly erected therein even before the application was filed in 2003. With these striking misrepresentations, We uphold the court a quo's findings that the application for free patent by the Heirs of Cascayan was not supported by any valid basis warranting the cancellation of their title over the subject property.[51]

Petitioners insist that the Court of Appeals should have considered the new affidavits submitted by petitioners, retracting the affidavits of waiver it

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[50] Id. at 21.
[51] Id. at 42.

previously appreciated.[52] Again, this is a matter of appreciation of evidence, not a question of law, and not a proper subject of review.

The Court of Appeals found that respondents, on the other hand, sufficiently identified Lot No. 20028 and proved their title thereto:

> In contrast, the right to possession of Spouses Gumallaoi of the subject property is hinged on the "*Recibo Ti Pinaglako Ti Daga*" (Receipt for the Sale of Land) dated January 3, 2002. The boundaries stated in the said receipt are more in accord with TD Nos. 97-006-00654 and 94-006-00651 as well as with the resurvey of the lot as it appears in the description stated in OCT No. P-78399. Also bolstering Spouses Gumallaoi's claim of ownership over the subject property pursuant to the said sale are the waiver of rights and the acknowledgment of Spouses Gumallaoi's ownership by the grandchildren of Cayetano earlier mentioned, and the Affidavit of Barangay Chairman Christopher stating that Spouses Gumallaoi's predecessor-in-interest, Raymundo, was the actual possessor and occupant of Lot No. 20028 since 1940 up to the time that Jose questioned the legality of his possession. The Heirs of Cascayan did not bother to rebut these allegations and during the March 8, 2008 hearing, their lawyer brought to the attention of the RTC Raymundo's possession of the subject lot, thus:
>
> | | |
> |---|---|
> | The Court: | That's why the Court is asking the plaintiffs to submit the complete records of the application for registration and for the defendants to show documents of ownership of their predecessors-in-interest, meaning Jose Corpuz and Pedro Corpuz. |
> | Atty. Guillermo: (Counsel for the Heirs of Cascayan) | Yes[,] your honor. And this controversy arisen (sic) when Mr. Raymundo Garcia left for Hawaii and the son-in-law came in and possessed the property in 1997 and a residential . . . |
> | The Court: | Raymundo Garcia? |
> | Atty. Guillermo: | Yes[,] your Honor, Raymundo Garcia. |
> | The Court: | The father of Evelyn Garcia? |
> | Atty. Guillermo: | Yes[,] your Honor, and it was only in 2002 that they got married with said Gumallaoi and that was the starting point of this controversy . . . |
> | Atty. Garvida: | We would like to manifest[,] your |

[52] Id. at 22–24.

Honor[,] that Raymundo Garcia is the tenant of Jose Corpuz[.]

The Court: Tenant?

Atty. Garvida: Yes[,] your Honor. And he is already tilling a portion of said lot, the subject of this case since Jose Corpuz . . . It's been a long time[,] your [H]onor[,] that he has been tilling the said parcel of land. So he knows very well that it belongs to Jose Corpuz.

. . . .

Hence, considering the foregoing, it behooves Us to concur with the declaration of the court *a quo* that Spouses Gumallaoi are the lawful owners of the subject property.[53] (Citations omitted)

The Court of Appeals' appreciation of the evidence on the possession of Lot No. 20028 and the weight to be given to the parties' Tax Declarations and affidavits, which is consistent with the Regional Trial Court findings, is binding on this Court and there is no cogent reason to review it.

Although not raised as an issue before this Court, it nonetheless bears emphasizing that when a complaint for recovery of possession is filed against a person in possession of a parcel of land under claim of ownership, he or she may validly raise nullity of title as a defense and, by way of counterclaim, seek its cancellation. In *Heirs of Santiago v. Heirs of Santiago*:[54]

A certificate of title issued under an administrative proceeding pursuant to a homestead patent covering a disposable public land within the contemplation of the Public Land Law or Commonwealth Act No. 141 is as indefeasible as a certificate of title issued under a judicial registration proceeding. Under the Land Registration Act, title to the property covered by a Torrens certificate becomes indefeasible after the expiration of one year from the entry of the decree of registration. Such decree of registration is incontrovertible and becomes binding on all persons whether or not they were notified of, or participated in, the *in rem* registration process. There is no specific provision in the Public Land Law or the Land Registration Act (Act 496), now Presidential Decree 1529, fixing a similar one-year period within which a public land patent can be considered open to review on the ground of actual fraud (such as that provided for in Section 38 of the Land Registration Act, and now Section 32 of Presidential Decree 1529), and clothing a public land patent certificate of title with indefeasibility. Nevertheless, this Court has repeatedly applied Section 32 of Presidential Decree 1529 to a patent

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53 Id. at 42–44.

54 452 Phil. 238 (2003) [Per J. Ynares-Santiago, First Division].

issued by the Director of Lands, approved by the Secretary of Natural Resources, under the signature of the President of the Philippines. The date of the issuance of the patent corresponds to the date of the issuance of the decree in ordinary cases. Just as the decree finally awards the land applied for registration to the party entitled to it, the patent issued by the Director of Lands equally and finally grants and conveys the land applied for to the applicant.

The one-year prescriptive period, however, does not apply when the person seeking annulment of title or reconveyance is in possession of the lot. This is because the action partakes of a suit to quiet title which is imprescriptible. In *David v. Malay*, we held that a person in actual possession of a piece of land under claim of ownership may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, and his undisturbed possession gives him the continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his title.

. . . .

In the case at bar, inasmuch as respondents are in possession of the disputed portions of Lot 2344, their action to annul Original Certificate of Title No. P-10878, being in the nature of an action to quiet title, is therefore not barred by prescription.

Section 48 of P.D. 1529, the Property Registration Decree, provides that a certificate of title shall not be subject to collateral attack and [cannot] be altered, modified, or canceled except in a direct proceeding. An action is an attack on a title when the object of the action is to nullify the title, and thus challenge the judgment or proceeding pursuant to which the title was decreed. The attack is direct when 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.

In this case, while the original complaint filed by the petitioners was for recovery of possession, or *accion publiciana,* and the nullity of the title was raised merely as respondents' defense, we can rule on the validity of the free patent and OCT No. P-10878 because of the counterclaim filed by respondents. A counterclaim can be considered a direct attack on the title. In *Development Bank of the Philippines v. Court of Appeals,* we ruled on the validity of a certificate of title despite the fact that the nullity thereof was raised only as a counterclaim. It was held that a counterclaim is considered a complaint, only this time, it is the original defendant who becomes the plaintiff. It stands on the same footing and is to be tested by the same rules as if it were an independent action. Moreover, since all the facts necessary in the determination of the title's validity are now before the Court, it would be in the best interest of justice to settle this issue which has already dragged on for 19 years.[55] (Emphasis in the original, citations omitted)

[55] Id. at 251–253.

In *Firaza, Sr. v. Spouses Ugay*,[56] this Court explained:

> In *Arangote v. Maglunob*, the Court, after distinguishing between direct and collateral attack, classified a counterclaim under former, *viz.*:
>
> > The attack is considered direct when the object of an action is to annul or set aside such proceeding, or enjoin its enforcement. Conversely, an attack is indirect or collateral when, in an action to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof. **Such action to attack a certificate of title may be an original action or a counterclaim, in which a certificate of title is assailed as void**.
>
> In the recent case of *Sampaco v. Lantud,* the Court applied the foregoing distinction and *held* that a counterclaim, specifically one for annulment of title and reconveyance based on fraud, is a direct attack on the Torrens title upon which the complaint for quieting of title is premised. Earlier in, *Development Bank of the Philippines v. CA,* the Court ruled similarly and explained thus:
>
> > Nor is there any obstacle to the determination of the validity of TCT No. 10101. It is true that the indefeasibility of torrens title cannot be collaterally attacked. In the instant case, the original complaint is for recovery of possession filed by petitioner against private respondent, not an original action filed by the latter to question the validity of TCT No. 10101 on which petitioner bases its right. To rule on the issue of validity in a case for recovery of possession is tantamount to a collateral attack. However, it should not [b]e overlooked that private respondent filed a counterclaim against petitioner, claiming ownership over the land and seeking damages. Hence, we could rule on the question of the validity of TCT No. 10101 for the counterclaim can be considered a direct attack on the same[.]
>
> The above pronouncements were based on the well-settled principle that a counterclaim is essentially a *complaint* filed by the defendant against the plaintiff and stands on the same footing as an independent action.[57] (Emphasis in the original and supplied, citations omitted)

Thus, this Court reiterated *Heirs of Santiago*[58] in the case of *Sampaco v. Hadji Serad Mingca Lantud*:[59]

> Further, petitioner contends that the Court of Appeals erred in ruling that petitioner's counterclaim is time-barred, since the one-year prescriptive period does not apply when the person seeking annulment of

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56 708 Phil. 24 (2013) [Per J. Reyes, First Division].
57 Id. at 29–30.
58 452 Phil. 238 (2003) [Per J. Ynares-Santiago, First Division].
59 669 Phil. 304 (2011) [Per J. Peralta, Third Division].

title or reconveyance is in possession of the lot, citing ***Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago***. Petitioner also contends that the Court of Appeals erred in ruling that the counterclaim in this case is a collateral attack on respondent's title, citing ***Cimafranca v. Intermediate Appellate Court***. Petitioner cites the case of ***Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago***, which held that a counterclaim can be considered a direct attack on the title.

The Court notes that the case of ***Cimafranca v. Intermediate Appellate Court***, cited by the Court of Appeals to support its ruling that the prayer for the cancellation of respondent's title through a counterclaim included in petitioner's Answer is a collateral attack on the said title, is inapplicable to this case. In ***Cimafranca***, petitioners therein filed a complaint for Partition and Damages, and respondents therein indirectly attacked the validity of the title involved in their counterclaim. Hence, the Court ruled that a Torrens title cannot be attacked collaterally, and the issue on its validity can be raised only in an action expressly instituted for that purpose.

Here, the case cited by petitioner, ***Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago***, declared that the one-year prescriptive period does not apply when the party seeking annulment of title or reconveyance is in possession of the lot, as well as distinguished a collateral attack under Section 48 of PD No. 1529 from a direct attack, and held that a counterclaim may be considered as a complaint or an independent action and can be considered a direct attack on the title, thus:

> **The one-year prescriptive period, however, does not apply when the person seeking annulment of title or reconveyance is in possession of the lot**. This is because the action partakes of a suit to quiet title which is imprescriptible. In *David v. Malay*, we held that a person in actual possession of a piece of land under claim of ownership may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, and his undisturbed possession gives him the continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his title.
>
> . . . .
>
> Section 48 of P.D. 1529, the Property Registration Decree, provides that a certificate of title shall not be subject to collateral attack and cannot be altered, modified, or canceled **except in a direct proceeding. An action is an attack on a title when the object of the action is to nullify the title, and thus challenge the judgment or proceeding pursuant to which the title was decreed. The attack is direct when 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.

> **A counterclaim can be considered a direct attack on the title.** In *Development Bank of the Philippines v. Court Appeals*, we ruled on the validity of a certificate of title despite the fact that the nullity thereof was raised only as a counterclaim. **It was held that a counterclaim is considered a complaint, only this time, it is the original defendant who becomes the plaintiff. It stands on the same footing and is to be tested by the same rules as if it were an independent action**[.]
>
> The above ruling of the court on the definition of collateral attack under Section 48 of P.D. No. 1529 was reiterated in ***Leyson v. Bontuyan***, ***Heirs of Enrigrre Diaz v. Virata***, ***Arangote v. Maglunob***, and ***Catores v. Afidchao***.[60] (Emphasis in the original, citations omitted)

Thus, the Court of Appeals did not commit an error of law in sustaining the cancellation of OCT No. P-78399, pursuant to respondents' counterclaim, and in its determination that petitioners obtained it fraudulently.

The presence of fraud is a factual question. It must be established through clear and convincing evidence, though the circumstances showing fraud may be varied:[61]

> We begin our resolution of this issue with the well-settled rule that the party alleging fraud or mistake in a transaction bears the burden of proof. The circumstances evidencing fraud are as varied as the people who perpetrate it in each case. It may assume different shapes and forms; it may be committed in as many different ways. Thus, the law requires that it be established by clear and convincing evidence.[62]

In *Republic v. Heirs of Alejaga, Sr.*,[63] this Court considered several circumstances as evidence that a free patent had been obtained through fraud. It noted the discrepancy between the date the application was filed and the date the investigation and verification were done. Also, the verification and investigation report supposedly conducted by the Land Inspector was not signed. Finally, a special investigator testified that the Land Inspector admitted to not actually conducting an investigation or an ocular inspection of the land, and this testimony remained unrebutted.[64]

Here, the Court of Appeals' and the Regional Trial Court's conclusion that petitioners obtained the free patent fraudulently was based on several findings. They determined that petitioners were never in possession of Lot No. 20028. Even the documents submitted to support their application were

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60 Id. at 320–322.
61 *Republic v. Heirs of Alejaga Sr.*, 441 Phil. 656 (2002) [Per J. Panganiban, Third Division].
62 Id. at 668.
63 441 Phil. 656 (2002) [Per J. Panganiban, Third Division].
64 Id. at 668–673.

flawed: the tax declarations were inconsistent and the affidavits and Certifications were subsequently retracted. Considering that the Regional Trial Court and the Court of Appeals uniformly determined that fraud existed in the free patent application based on the evidence presented, there is no reason for this Court to delve into this issue.

Thus, the Court of Appeals did not commit any error of law in affirming the Regional Trial Court Decision, which declared respondents as the legal owners of Lot No. 20028, and in cancelling petitioners' title to it.

WHEREFORE, the petition for review on certiorari dated April 10, 2014 is **DENIED** and the Court of Appeals Decision dated July 31, 2013 and Resolution dated February 25, 2014 in CA-G.R. No. 96900 are **AFFIRMED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

On official leave
ANTONIO T. CARPIO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson

JOSE CATRAL MENDOZA
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
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 Resolution 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