

**G.R. No. 192393 – FIL-ESTATE MANAGEMENT, INC., MEGATOP REALTY DEVELOPMENT, INC., PEAKSUN ENTERPRISES AND EXPORT CORPORATION, ARTURO E. DY, and ELENA DY JAO, Petitioners, v. REPUBLIC OF THE PHILIPPINES, and SPOUSES SANTIAGO T. GO and NORMA C. GO, represented by their son and attorney-in-fact KENDRICK C. GO, Respondents.**

Promulgated:

**27 MAR 2019**

*H. M. Cabalag, Jr. / J. P. Go*

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### CONCURRING OPINION

I concur. May I add the following observations.

It must be pointed out that the land registration court is required to determine all conflicting claims of ownership and interest in the land subject of the application for registration, and render judgment confirming the title of the applicant, or the oppositor, to the land or portions thereof.<sup>1</sup>

In this case, while the Regional Trial Court of Las Piñas City, Branch 253 (RTC) erroneously confirmed respondents Spouses Santiago T. Go and Norma C. Go's (Sps. Go) title to the lands applied for registration<sup>2</sup> – considering the latter's failure: (a) to establish that the lands or properties form part of the disposable and alienable lands of the public domain at the time of the filing of the application for registration; and (b) to present convincing evidence that their alleged possession and occupation were of the nature and duration required by law<sup>3</sup> – it nonetheless found petitioners Fil-Estate Management, Inc., *et al.* (petitioners) to have failed to establish their claim of overlapping.<sup>4</sup>

Although in overlapping of titles disputes, it has always been the practice for the trial court to appoint a surveyor from the government land agencies, such as the Land Registration Authority or the Department of Environment and Natural Resources to act as commissioner, this is not a mandatory procedure. Thus, the trial court may rely on the parties' respective evidence to resolve the case.<sup>5</sup>

<sup>1</sup> See Section 29 of Presidential Decree No. (PD) 1529, entitled "AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES," otherwise known as the "PROPERTY REGISTRATION DECREE" (June 11, 1978).

<sup>2</sup> See RTC Decision dated September 22, 2004 in Land Registration Case No. LP-00-0111 penned by Acting Presiding Judge Elizabeth Yu-Guray, *rollo* (Vol. I), pp. 619-623.

<sup>3</sup> See Section 14 of PD 1529.

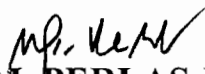
<sup>4</sup> See *rollo* (Vol. I), pp. 621-622.

<sup>5</sup> See *Pen Development Corporation v. Martinez Leyba, Inc.*, G.R. No. 211845, August 9, 2017.

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Here, petitioners presented the results of a survey<sup>6</sup> conducted on their lands to support their claim that the parcels of land subject of the application for registration of Sps. Go overlapped the properties covered by their Torrens titles.<sup>7</sup> On the other hand, neither the Republic nor Sps. Go presented contrary proof, like the results of a survey conducted upon their initiative to contradict petitioners' evidence. Nonetheless, the RTC found petitioners to have failed to distinctly establish their claim of overlapping.<sup>8</sup> The Court of Appeals' (CA) failure to rule<sup>9</sup> directly on the matter was a consequence of its tacit affirmance<sup>10</sup> of the factual finding that there was no overlapping. This is made more apparent by its denial of petitioners' partial motion for reconsideration<sup>11</sup> raising said issue in its assailed Resolution<sup>12</sup> dated May 24, 2010.

It bears to stress that the issue of whether there was indubitable evidence to prove petitioners' claim of overlapping is a question of fact which this Court cannot review in a Rule 45 petition.<sup>13</sup> Moreover, absent any categorical declaration that there was overlapping, it cannot be said that a cloud of doubt hangs over the Torrens titles of petitioners<sup>14</sup> nor is there a collateral attack against such titles<sup>15</sup> as claimed by the petitioners. Accordingly, the *ponencia* correctly denied the instant petition.

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

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<sup>6</sup> See Plan prepared by Geodetic Engineer Rolando B. Cortez for petitioner Fil-Estate Management; *rollo* (Vol. I), p. 574.

<sup>7</sup> See *id.* at 621.

<sup>8</sup> See *id.* at 622.

<sup>9</sup> See CA Decision dated July 15, 2008 in CA-G.R. CV No. 84090 penned by Associate Justice Romeo F. Barza with Associate Justices Mariano C. Del Castillo (now a Member of this Court) and Arcangelita M. Romilla-Lontok, concurring; *id.* at 64-74.

<sup>10</sup> See *id.* at 69.

<sup>11</sup> Dated August 6, 2008. See *id.* at 78-95.

<sup>12</sup> See *id.* at 76-77. Penned by Associate Justice Romeo F. Barza with Associate Justices Hakim S. Abdulwahid and Rodil V. Zalameda, concurring

<sup>13</sup> See *Tsuneishi Heavy Industries (Cebu), Inc. v. Mis Maritime Corporation*, G.R. No. 193572, April 4, 2018.

<sup>14</sup> See *rollo* (Vol. I), p. 31.

<sup>15</sup> See *id.* at 47.