



CERTIFIED TRUE COPY  
*Wilfredo V. Lapitan*  
**WILFREDO V. LAPITAN**  
 Division Clerk of Court  
 Third Division

Republic of the Philippines  
 Supreme Court  
 Manila

AUG 08 2017

**THIRD DIVISION**

**MA. HAZELINA A. TUJAN-  
 MILITANTE,**

Petitioner,

**G.R. No. 209518**

Present:

- versus -

VELASCO, JR., J.,  
*Chairperson,*  
 BERSAMIN,  
 REYES,  
 JARDELEZA, and  
 TIJAM, JJ.

**ANA KARI CARMENCITA  
 NUSTAD, as represented by ATTY.  
 MARGUERITE THERESE L.  
 LUCILA,**

Respondent.

Promulgated:

June 19, 2017

*Wilfredo V. Lapitan*

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**DECISION**

**TIJAM, J.:**

Petitioner Ma. Hazelina A. Tujan-Militante seeks to set aside and reverse the: (1) Decision<sup>1</sup> dated February 27, 2013, which dismissed petitioner's Petition for Certiorari under Rule 65; and (2) Resolution<sup>2</sup> dated October 2, 2013, which denied petitioner's Motion for Reconsideration of the Court of Appeals<sup>3</sup> (CA) in CA-G.R. SP No. 124811.

**The Facts**

On June 2, 2011, Respondent Ana Kari Carmencita Nustad (Nustad), as represented by Atty. Marguerite Therese Lucila (Atty. Lucila), filed a petition before the Regional Trial Court, Branch 55, Lucena City (RTC) and prayed that Ma. Hazelina A. Tujan-Militante (Tujan-Militante) be ordered to surrender to the Register of Deeds of Lucena City the owner's duplicate

<sup>1</sup> *Rollo*, pp. 43-49.

<sup>2</sup> *Id.* at 47-48.

<sup>3</sup> Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon.

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copy of the Transfer Certificate of Title Nos. T-435798, T-436799, T-387158 and T-387159, which were all issued in Nustad's name. She averred that Tujan-Militante has been withholding the said titles.

In its Order dated July 26, 2011, the RTC set the petition for a hearing<sup>4</sup>.

Instead of filing an Answer, Tujan-Militante filed an Omnibus Motion to Dismiss and Annul Proceedings<sup>5</sup> dated September 2, 2011. She averred that the RTC did not acquire jurisdiction over her person as she was not able to receive summons. Moreover, she argued that the Order appeared to be a decision on the merits, as it already ruled with certainty that she is in possession of the subject titles.

### **The Ruling of the RTC**

In an Order dated November 23, 2011, the RTC<sup>6</sup> denied Tujan-Militante's Motion and ruled that it has jurisdiction over the case. Further the RTC stated that it has not yet decided on the merits of the case when it ordered Tujan-Militante to surrender TCT Nos. T-435798, T-436799, T-387158 and T-387159 because it merely set the petition for a hearing.

Tujan-Militante filed a Motion for Reconsideration<sup>7</sup> and alleged that the Power of Attorney executed by Nustad in favor of Atty. Lucila is void and non-existent. Tujan-Militante likewise averred that Atty. Lucila is representing a Norwegian, who is not allowed to own lands in the Philippines. Aside from the dismissal of the case, petitioner prayed that the Office of the Solicitor General and the Land Registration Authority be impleaded. Moreover, Tujan-Militante prayed for moral and exemplary damages, attorney's fees, and costs of suit.

In an Order<sup>8</sup> dated February 27, 2012, the court *a quo* denied Tujan-Militante's Motion for Reconsideration.

Aggrieved, Tujan-Militante filed a Petition for Certiorari before the CA.

### **The Ruling of the CA**

In a Decision<sup>9</sup> dated February 27, 2013, the CA recognized the jurisdictional defect over the person of Tujan-Militante, but nevertheless ruled that the flaw was cured by Tujan-Militante's filing of her Motion for

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<sup>4</sup> *Rollo*, pp. 50-51.

<sup>5</sup> *Id.* at 52-60.

<sup>6</sup> Promulgated by Judge Bienvenido A. Mapaye.

<sup>7</sup> *Id.* at 63-77.

<sup>8</sup> *Id.* at 112-114.

<sup>9</sup> *Supra* note 1.

Reconsideration. Such Motion sought for affirmative reliefs, which is considered as voluntary submission to the jurisdiction of the court.

Tujan-Militante filed a Motion for Reconsideration, which was denied by the CA in a Resolution<sup>10</sup> dated October 2, 2013.

Hence, this appeal.

### **The Court's Ruling**

The appeal is bereft of merit.

A trial court acquires jurisdiction over the person of the defendant by service of summons. However, it is equally significant that even without valid service of summons, a court may still acquire jurisdiction over the person of the defendant, if the latter voluntarily appears before it.<sup>11</sup> Section 20, Rule 14 of the Rules of Court provides:

Section 20. *Voluntary Appearance.* – The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds of relief aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

By seeking affirmative reliefs from the trial court, the individual [petitioner is] deemed to have voluntarily submitted to the jurisdiction of the court. A party cannot invoke the jurisdiction of the court to secure the affirmative relief against his opponent and after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction.<sup>12</sup>

In this case, while Tujan-Militante's motion to dismiss challenged the jurisdiction of the court *a quo* on the ground of improper service of summons, the subsequent filing of a Motion for Reconsideration which sought for affirmative reliefs is tantamount to voluntary appearance and submission to the authority of such court. Such affirmative relief is inconsistent with the position that no voluntary appearance had been made, and to ask for such relief, without the proper objection, necessitates submission to the [court]'s jurisdiction.<sup>13</sup>

As to the claim of Tujan-Militante that the requirements laid down in Sec. 24, Rule 132<sup>14</sup> of the Rules of Court apply with respect to the power of

<sup>10</sup> *Rollo*, pp. 41-42.

<sup>11</sup> *Wong v. Factor-Koyama*, G.R. No. 183802, September 17, 2009.

<sup>12</sup> *Nation Petroleum Gas, Inc. v. Rizal Commercial Banking Corp.*, G.R. No. 183370, August 17, 2015.

<sup>13</sup> *Reicon Realty Corp. v. Diamond Dragon Realty and Management, Inc.*, G.R. No. 204796, February 4, 2015.

<sup>14</sup> Section 24. Proof of official records.-- The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied,

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attorney notarized abroad, she cited the ruling in *Lopez v. Court of Appeals*.<sup>15</sup> In said case, this Court held that the power of attorney must comply with the requirements set forth under Sec. 25 (*now* Sec. 24), Rule 132 of the Rules of Court in order to be considered as valid.

Section 24 of Rule 132 provides that:

Section 24. *Proof of official record.*- **The record of public documents referred to in paragraph (a) of Section 19**, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. (emphasis supplied)

Section 19 of Rule 132 states that:

Section 19. *Classes of documents.* - For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

- (a) **The written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines or of a foreign country;**
- (b) Documents acknowledged before a notary public except last wills and testaments; and
- (c) Public records kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private. (emphasis supplied)

In the *Heirs of Spouses Arcilla v. Teodoro*<sup>16</sup>, this Court clarified that the ruling in the *Lopez* case is inapplicable because the Rules of Evidence which were then effective were the old Rules, prior to their amendment in 1989. When the Rules of Evidence were amended in 1989, the introductory phrase "*An official record or an entry therein*" was substituted by the phrase "*The record of public documents referred to in paragraph (a) of Section 19*"<sup>17</sup>, as found in the present Rules. Also, Section 25 of the former Rules became Section 24 of the present Rules.

On this note, the case of *Heirs of Spouses Arcilla* explained further:

if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by the secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

<sup>15</sup> G.R. No. L-77008, December 29, 1987, 156 SCRA 838.

<sup>16</sup> G.R. No. 162886, August 11, 2008.

<sup>17</sup> *Ibid.*

It cannot be overemphasized that the **required certification of an officer in the foreign service under Section 24 refers only to the documents enumerated in Section 19 (a)**, to wit: written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers of the Philippines, or of a foreign country. The Court agrees with the CA that **had the Court intended to include notarial documents as one of the public documents contemplated by the provisions of Section 24, it should not have specified only the documents referred to under paragraph (a) of Section 19.**<sup>18</sup> (emphasis supplied)

As the Rules explicitly provide that the required certification of an officer in the foreign service refers only to written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers of the Philippines, or of a foreign country, as found in Section 19(a), Rule 132, such enumeration does not include documents acknowledged before a notary public abroad.

With all these, We rule on the validity of the subject notarial document. What is important is that [Nustad] certified before a commissioned officer clothed with powers to administer an oath that she is authorizing Atty. Lucila to institute the petition before the court *a quo* on her behalf.<sup>19</sup>

A notarized document has in its favor the presumption of regularity, and to overcome the same, there must be evidence that is clear, convincing and more than merely preponderant; otherwise, the document should be upheld.<sup>20</sup>

Lastly, Tujan-Militante's contention that the TCTs under the name of Nustad are invalid because of her citizenship constitutes a collateral attack on the titles. The CA correctly ruled that the issue as to whether an alien is or is not qualified to acquire the lands covered by the subject titles can only be raised in an action expressly instituted for that purpose.<sup>21</sup>

**WHEREFORE**, the instant appeal is **DENIED**. Accordingly, the Decision dated February 27, 2013 and Resolution dated October 2, 2013, of the Court of Appeals in CA-G.R. SP No. 124811 are **AFFIRMED in toto**.

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<sup>18</sup> *Heirs of Spouses Arcilla v. Teodoro*, Ibid.

<sup>19</sup> *Heirs of Spouses Arcilla v. Teodoro*, G.R. No. 162886, August 11, 2008.

<sup>20</sup> *Abalos v. Heirs of Torio*, G.R. No. 175444, December 14, 2011.

<sup>21</sup> *Director of Lands v. Gan Tan*, G.R. No. L-2664, May 30, 1951.

**SO ORDERED.**

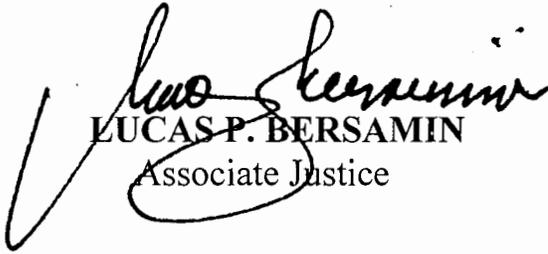


**NOEL GIMENEZ TIJAM**  
Associate Justice

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**LUCAS P. BERSAMIN**  
Associate Justice



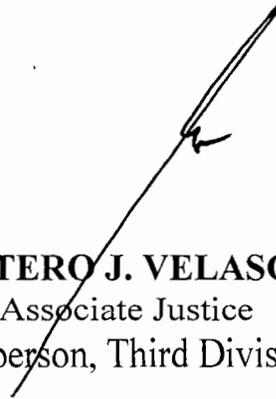
**BIENVENIDO L. REYES**  
Associate Justice



**FRANCIS H. JARDELEZA**  
Associate Justice

**ATTESTATION**

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



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**

Chief Justice

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Third Division

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