

EDGAR S. LUBRIN, PLAINTIFF-APPELLEE, VS. SPOUSES ARIEL AND IMELDA DIMAANO, DEFENDANTS-APPELLANTS.

Ponente: TIJAM, J.

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TIJAM, J.:

Before Us on appeal is the Order[1] dated May 28, 2010, issued by the Regional Trial Court [RTC] of San Fernando City, La Union, Branch 66, which granted the Demurrer to Evidence, thereby dismissing Civil Case No. 6926, for Recovery of Possession of Real Property and Damages, filed by the plaintiff-appellee, Edgar S. Lubrin [Appellee] against the defendants-appellants, spouses Ariel and Imelda Dimaano [Appellants]. The dispositive portion of the assailed Order reads:

"WHEREFORE, premises considered, the "Demurrer to Evidence" filed by defendants is hereby GRANTED and the instant case is hereby DISMISSED. Costs to the parties.

SO ORDERED."[2]

The antecedent facts are as follows:

On August 13, 2004, an Amended Complaint[3] for Recovery of Possession of Real Property and Damages was filed by the appellee, through his attorney-in-fact, Danilo S. Gacayan [Gacayan] against the appellants, before the RTC, San Fernando City, La Union, Branch 66.

Appellee alleged that he is the owner and possessor of Lot No. 20691 and Lot No. 20690,[4] both under Cad 539-D, San Fernando Cadastre, situated at Lubrin Heights, Barangay I, San Fernando City, La Union, with an assessed value of P19, 620.00 and P157, 400.00, respectively, more particularly described as follows:

LOT 20690, CAD 539-D, San Fernando Cadastre

A parcel of residential land, Lot 20690, Cad. 539-D, San Fernando Cadastre, with an area of 388 sq.m.; Bounded on the North by Lot 20691; on the East by Barangay Road; on the South by Lot Nos. 20689 and 98; and on the West by alley, Lot Nos. 9235 and 53 covered by Tax Declaration No. 93-001-040, Property Identification No. 008-01-001-01-003 with an assessed value of P157,400.00". A machine copy of the said Tax Declaration is herewith attached and marked as ANNEX "B".

LOT 20691, CAD 539-D, San Fernando Cadastre

"A parcel of residential land, Lot 20691, Cad 539-D, San Fernando Cadastre, with an area of 195 sq.m.; Bounded on the North by Barangay Pagdaraoan Boundary; on the East by Road; on the South by Lot No. 20690, Road; and on the west by Lot No. 53, Barangay Pagdaraoan Boundary." Covered by Tax Declaration No. 02-001-64085 and Property Identification No. 008-01-001-02-049 and Approved Survey Plan AP-01-006558 and approved on August 15, 2003, copies hereto attached as ANNEXES "C" and "D", respectively."

Appellee also alleged that, in May 2002, he and the appellants established the boundaries of their respective properties and fenced them. In November 2002, while he was abroad, appellants had their property surveyed by

Engr. Juanita Laddaran [Engr. Laddaran], without prior approval of the DENR-Land Management Bureau, Regional Office I, San Fernando City, La Union. Appellants executed an Affidavit of Correction based on the sketch plan resulting from the survey and then fenced a portion of appellee's properties.

On January 31, 2004, appellee arrived in the Philippines. He learned about the encroachment by the appellants on his lots so he referred the matter to the lupon tagapayamapa. They never settled amicably in the lupon, hence, a certification to file action in court was issued. Appellee demanded the appellants to remove the fence on the portion of the lots belonging to him, but the demand was unheeded.

Appellee caused the verification survey of his lots by Engr. Teresita C. Binongcal [Engr. Binongcal] which showed an encroachment of an area of 205 sq.m. on Lot No. 20690 and 57 sq.m. on Lot No. 20691. He claimed that appellants acted with fraud and evident bad faith when they fenced a portion of his lots and applied for a correction to their tax declaration without informing him, when he and appellants previously both aided each other to fence their respective properties.

Appellee prayed that judgment be rendered 1) declaring him as lawful possessor/owner of the subject properties; 2) declaring appellants' acts of occupying a portion of his properties, constructing a fence and introducing other improvements therein, as illegal; 3) ordering appellants to vacate the premises and remove the fence and improvements therein; and, 4) ordering appellants to pay monthly rentals for the use of his lots from November 2002 until complete possession thereof is restored to him. Appellee also prayed for payment of air fare, accommodation and loss of earning capacity while he was in the Philippines for a period of 2 months; moral and exemplary damages; attorney's fees, and appearance fee; litigation expenses as may be proven and costs. He likewise prayed for other reliefs just and equitable under the premises.

In their Answer[5] to the complaint, appellants denied that they and appellee mutually helped or aided each other in fencing their respective lots. Appellants admitted that Engr. Laddaran surveyed their property and they executed an Affidavit of Correction as a result of the survey. They claimed that they fenced in good faith the area that is rightfully and legally within the metes and bounds of their property, hence, the fence was not illegally constructed. Appellants prayed for the dismissal of the complaint for lack of cause of action and for payment of litigation expenses, attorney's fees, appearance fee, as well as costs of the suit, and such other reliefs just and equitable under the premises.

On October 4, 2004, the RTC issued an Order stating that upon agreement of the parties, a committee led by an Engineer from the Regional Office of the DENR shall survey the properties subject of the litigation.[6]

On January 14, 2005, Engr. Wilfredo T. Tabion [Engr. Tabion] issued a Verification Survey Report[7] on Lot Nos. 20690 and 20691, Cadastre 539-D, San Fernando Cadastre after the verification survey conducted in the presence of the parties and their surveyors. The verification survey report states:

"xxx. We run a traverse station over the subject lots and took side shots of the monuments appeared on the ground as reference in the computation of common points. Based on the data gathered, we adopted corner 2 of Lot 25475, Cad-539-D as common point and corner 10 of Lot 53, corners 2, 3, 4, 5 of Lot 20691 and corners 1, 2, 6, 7 of Lot 20690 were used for checking of the positions of the monuments.

Based on the computation, the area encroached by Dimaano over the lot of Lubrin was 66 Sq. meters while the area encroached by Lubrin over the lot of Dimaano was 26 Sq. meters. This computation was based on the actual boundary from the fences constructed by Dimaano and Lubrin. Please see attached sketch plan for ready reference.

From these findings, it appears that encroachment really exists from the actual boundaries of the lots subject of the controversy." [Emphasis supplied].

Subsequently, the parties agreed to a resurvey of the area bought by the appellants in an auction sale; and for the removal of the fence at the expense of the appellee, and if it is shown that the area actually belongs to the appellants, then it will be returned at the expense of the appellee.[8]

On October 11, 2005, Engr. Tabion submitted before the RTC a Verification Survey Report[9] over Lot No. 75, Cad. 539, San Fernando Cadastre, the property bought by the appellants in an auction sale. Based on the attached Survey Plan, the area occupied by the appellants where their house was built is 124 sq.m. designated as Lot 75-B, Lot 75-A is an Existing Road consisting of 73 sq.m. and Lot 75-C was occupied by Arnel Melicano with an area of 272 sq.m.

On October 8, 2007, during the chamber conference, the parties agreed to abide by the legal effects of the Verification Survey Report dated January 14, 2005. Appellants have renounced the 66 sq.m. which they encroached and restored the same into the ownership of the appellee. On the other hand, appellee has yet to comply with the survey report and has expressed to waive and renounce his right and interest over the encroached area of 26 square meters in favor of the appellants as shown in the verification survey report. With respect to the verification survey report dated October 10, 2005, the RTC directed the issuance of a subpoena to Engr. Tabion to explain the technical meaning of his survey report to assist the court in assessing the alleged encroachment by the appellants.[10]

When Engr. Tabion can no longer be summoned to testify on his report, the parties agreed to a new verification survey to be conducted by Engr. Joel Eden or Engr. Martin Lim of DENR, Regional Office I, San Fernando City, La Union.[11] Since appellee opposed the commission of Engr. Lim, the case was set for Judicial Dispute Resolution (JDR) where conferences were held, but the same failed.[12]

After the pre-trial was terminated,[13] trial thus ensued.

Appellee's evidence consists of his own testimony and that of Edgar Gacayan, Zenaida Avila, Ursula Lopez and Engr. Teresita Binongcal.

Appellee testified that his lots located at Lubrin Heights, Brgy. 1, San Fernando City, La Union were fraudulently surveyed and fenced by the appellants. He identified Lot No. 20691 which was declared in his name[14] and with an approved survey plan[15]; and Lot No. 20690 which was previously owned by his grandfather, Andres Lubrin,[16] both covered by Cad. 539-D, San Fernando Cadastre.[17] Appellee declared that in 1984, he acquired Lot No. 20691 through donation from his brother, Hector Lubrin. He stated that he is a forced heir of Lot No. 20690 which was administered by his father, Federico Lubrin [Federico] and he took administration thereof when the latter died. He declared that he planted trees on these parcels of land[18] adjoining the lot of the appellants, which lot the latter purchased from Magdalena Murla, who bought the same from spouses David and Ofelia Malaga.[19]

Appellee further testified that in 2002, he and the appellants agreed to and fenced their respective lots.[20] After he left for Australia, he learned from Gacayan that appellants had their property surveyed without notice, executed an Affidavit of Correction[21] and relocated their fence extending to his lots.[22] He called up appellant Imelda Dimaano about the encroachment but the latter retorted that the fence can be removed through a court order.[23] He came home and sought conciliation before the lupon tagapamayapa but to no avail. Through counsel, he demanded from the appellants to remove the fence and vacate the encroached area but they did not heed. Appellee also declared that he commissioned Engr. Binongcal to conduct a verification survey of his properties and the survey showed that appellants encroached an area of 158 sq.m. on Lot No. 20690 and 57 sq.m. on Lot No. 20691.[24]

The second witness, Edgar Gacayan testified that 3 surveys were made on the disputed property, the first was in August 2003 by Engr. Felino Perez, in his presence and the appellants. The second survey was made in 2004 by Engr. Tabion involving Lot Nos. 20690, 20691, 75-A and 75-B and witnessed by Engr. Laddaran and Engr. Binongcal. The third survey was also made by Engr. Tabion on Lot Nos. 75-A and 75-B.[25] Gacayan declared that Lot No. 20691, owned by appellee consists of 168 sq.m. as appearing in the approved survey plan.[26] He stated that under the survey plan of Engr. Tabion over Lot Nos. 20690 and 20691, the one colored in orange with an area of 66 sq.m. is the only property that is being encroached by the property of the appellants.[27] Gacayan further declared that the appellants purchased the adjoining lot from Magdalena Murla, which lot was previously mortgaged by appellee's father, Federico with La Union Development Bank. Said lot was later foreclosed by said bank. The land was bought from the bank by David Malaga, who sold the same to Murla.[28]

The third witness, Zenaida Avila [Avila], cousin of the appellee, testified that the subject lots were previously owned by Andres. Federico inherited the lots from Andres and gave to his sons, Hector and the appellee. She further stated that she is a neighbor of the appellants who bought Lot No. 75 from Magdalena Murla, adjacent to the appellee's lots and separated by a road-right-of-way which has been established for a long time.[29]

The fourth witness, Ursula Lopez [Lopez], declared that the Lubrin family is her friend since childhood. She stated that her family owns a property at the lower part of the Lubrin Heights while the appellee and the appellants own parcels of land at the upper part of the Lubrin Heights. The Lubrins and the Dimaanos own adjacent lots separated by a road which has been established for a long time.[30]

Engr. Binongcal testified that sometime in March 2004, she surveyed Lot Nos. 20691 and 20690, in relation to Lot No. 75. After the verification survey, she prepared a survey plan outlining the fence and concrete monuments on the ground. The sketch plan showed the boundaries of Lot No. 75, a portion of which was sold to the appellants and on which their house was built, the road-right-of-way, the adjacent lots of the appellee, and the existing barbwire fence. She pointed out that the road separates the realties of the appellee and the appellants.[31]

Engr. Binongcal further testified that Engr. Tabion of the DENR made a survey on Lot Nos. 20691 and 20690 in November 2004 in the presence of the parties and their respective surveyors. Engr. Tabion's survey report showed that appellants encroached an area of 66 sq.m. on appellee's lot, while appellee encroached an area of 26 sq.m. on appellants' lot. Engr. Binongcal presented the approved cadastral map of the area, identifying Lot Nos. 20690 and 20691 of the appellee, Lot No. 75 in the name of the La Union Development Bank, and the existing road between the lots of the parties. The map is based on the technical descriptions issued by the Land Management Service of the DENR.[32]

After the appellee rested his case, appellants filed a Motion with Leave of Court to File Demurrer to Evidence[33] and a Demurrer to Evidence[34] on the ground of insufficiency of evidence to justify appellee's right to relief.

Appellants argued that appellee failed to prove that he acquired Lot No. 20690 by way of succession from his grandfather, Andres. They contended that the tax declaration covering Lot No. 20690 is not in the name of the appellee because it is without any declared owner and there was no proof that he indeed paid the realty taxes over the said lot. They claimed that planting some trees and plants by the appellee over the said lot is insufficient proof of possession. Appellants averred that under the verification survey report of Engr. Tabion, appellee encroached 26 sq.m. of Lot No. 20690, which is owned by them, but he refused to renounce the same in their favor. They insisted that the private survey conducted by Engr. Binongcal cannot prevail over the verification survey report made, at the instance of the court, by Engr. Tabion, a Geodetic Engineer from the DENR. Also, the private report of Engr. Binongcal and the surveyor admitted that appellee appropriated the road-right-of-way. Appellants stressed that they already returned to the appellee the 66 sq.m. area reported by Engr. Tabion to have been

occupied by them on Lot No. 20691. It was the appellee who failed to return the 26 sq.m. lot he encroached on their property although he expressed to waive and renounce his interest and right over the said area.

Appellants prayed for the dismissal of the case and that appellee be ordered to surrender the encroached area of 26 sq.m. on their property, to vacate the road-right-of-way being occupied by him, and to allow the appellants to present evidence to prove damages. They also prayed for such other reliefs just and equitable under the premises.

In his Comment/Opposition,[35] appellee reiterated that he has a valid claim on Lot No. 20690 by virtue of succession. He and his predecessors-in-interest have been in actual, open, continuous and peaceful possession of the said property since time immemorial considering that the whole property had been designated as Lubrin Heights, and that the tax declarations are good indicia of possession in the concept of an owner. Appellee argued that the January 14, 2005 Verification Survey Report of Engr. Tabion was superseded by another survey report over Lot No. 75 since the property bought by the appellants is Lot No. 75 and not Lot No. 20690. He stressed that Lot No. 75 is separated by a road-right-of-way from Lot No. 20690 as shown by the cadastral survey. The claim of the appellants that they own a portion of Lot No. 20690 was not based on an approved survey plan but on the private survey made by Engr. Laddaran, which led them to register an Affidavit of Correction and enabled them to encroach on appellee's property, thus increasing their area. Appellee further averred that he did not comply with the appellants' demand to renounce the area he allegedly encroached since this issue is to be resolved in this suit. The appellants must present evidence to prove their claim that they own a portion of the lot he is claiming to have purchased from Magdalena Mural.

In its assailed Order[36] dated May 28, 2010, the RTC, San Fernando City, La Union, Branch 66, granted the demurrer to evidence and dismissed the case for failure of the appellee to sufficiently establish his right to relief against the appellants.

The RTC confirmed appellee's ownership over Lot No. 20691 as he acquired the same by means of donation from his brother, Hector.[37] However, as to Lot No. 20690, the RTC declared that there was no proof to show that appellee acquired the same by means of succession from his deceased grandfather, Andres or any other means and appellee even admitted during trial that he does not own the said land. The RTC upheld the approved cadastral map and the court-directed survey of Engr. Tabion over the private ground survey made by Engr. Binongcal. It expounded that under the cadastral survey, the properties of the parties are separated by a public road, which was confirmed by their neighbors Avila and Lopez and by Engr. Binongcal, hence, there is no basis for the appellee to be claiming portions of the appellants' lots. The survey report of Engr. Binongcal that appellants encroached 205 sq.m. on Lot No. 20690 is belied by the existing cadastral survey of the area and that made by Engr. Tabion. Engr. Binongcal did not sufficiently point out appellants' illegal occupation over portions of appellee's properties, nor did she reconcile her survey with that of the existing surveys of the area. The RTC stressed that Engr. Binongcal even gave credence to the verification survey report of Engr. Tabion that appellants encroached 66 sq.m. on Lot No. 20691 while appellee intruded 26 sq.m. on appellants' lot. The RTC noted that although appellants had already surrendered the 66 sq.m. area to the appellee, the latter has not renounced his interest over the 26 sq.m. area to the appellants. In this context, the RTC ruled:

"The defendants must, however, institute the appropriate action to recover the reported encroachment of the plaintiff on their lot. We are likewise precluded from ordering the Lubrin to vacate the purported public road as prayed for by the Dimaanos when they demurred. These issues were not properly raised and submitted for resolution in this case."

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Appellants moved for a reconsideration calling the attention of the RTC on paragraphs 3 and 10 of the Complaint,

where the appellee claimed ownership over Lot No. 20690 that was allegedly encroached by the appellants, as well as Annex "C" thereof which showed that appellants' property is part of Lot No. 20690, which they presently occupy, and which adjoins appellee's property. They averred that one of the issues raised during the pre-trial is whether or not appellee is the owner of Lot No. 20690, where they own a portion thereof. Appellants asserted that since appellee's ownership over Lot No. 20690 was not proven, he should be enjoined to reconvey to them the 26 sq.m. he intruded into Lot No. 20690. As to the road-right-of-way, being a public land, appellee should be ordered to vacate the same.[38]

In its Order[39] dated December 8, 2010, the RTC denied the motion for reconsideration, for lack of merit.

Hence, this appeal.

In their Brief, appellants interpose this lone assignment of error:

"The lower court erred in declaring that the 26 square meters under Lot 20690 encroached by the Plaintiff in the property of Defendants as well as the Road Right of Way occupied by Plaintiff be recovered by instituting another action for the reason that the same were not raised and submitted as issues in this case." [40]

Appellants point out that although the RTC dismissed the case for insufficiency of evidence, it did not enjoin the appellee to renounce or surrender the 26 sq.m. area he encroached on their lot and to vacate the road-right-of-way he occupied. Appellants faulted the RTC in declaring that the reported encroachment of 26 sq.m. by the appellee on appellants' lot and the occupation of the road-right-of-way by the appellee were not raised and submitted as issues in this case, such that the proper action should be filed to recover and to vacate.

The issues are:

- 1) Whether a separate action should be instituted by the appellants to recover the area of 26 sq.m. encroached by the appellee on Lot No. 20690; and
- 2) Whether the appellee could be ordered to vacate the road-right-of-way occupied by him.

The appeal is meritorious.

We agree with the RTC's disposition dismissing the subject complaint for recovery of possession of real property with damages, on demurrer to evidence by the appellee, but its failure to order the appellee to surrender the encroached area of 26 sq.m. to the appellants and to vacate the road-right-of-way, is erroneous.

We stress that, essentially, the present case involves a boundary dispute between the parties. This is evident from the subject complaint for recovery of possession of real property with damages, where the appellee alleged that the appellants encroached and fenced a portion of his properties after both parties had established the boundaries of their respective properties. Appellee claimed that the common boundary of the parties' properties was altered when the appellants caused the survey of their property by Engr. Laddaran without his knowledge, such that the area of his properties was reduced and that of the appellants increased.

In an action to recover, the claimant must (1) establish the identity of the property sought to be recovered and (2) rely on the strength of his title and not the weakness of defendant's claim.[41] It is also settled that what defines a piece of land is not the area, calculated with more or less certainty, mentioned in the description but the boundaries laid down, as enclosing and indicating its limits.[42] A case of overlapping of boundaries or encroachment depends on a reliable, if not accurate, verification survey.[43] Thus, in order to settle the dispute, the RTC ordered the conduct of a survey on Lot Nos. 20690 and 20691 by a geodetic engineer from the DENR, upon agreement of the parties.[44]

There is no doubt that appellee was able to establish his ownership over Lot No. 20691 and that the 66 sq.m. intruded by the appellants on the said lot, as stated in the verification survey report of Engr. Tabion, court-designated commissioner, had been renounced and surrendered by the appellants to the appellee.

With respect to Lot. No. 20690, the RTC correctly ruled that the appellee failed to prove by preponderance of evidence that he acquired the said lot by means of succession or any other means and appellee even admitted that he does not own the lot.[45] The RTC also upheld Engr. Tabion's verification survey report[46] that the appellants encroached the appellee's lot (Lot No. 20691) by 66 sq.m. and the appellee encroached the appellants' lot (Lot No. 20690) by 26 sq.m.

Considering that the appellee has not shown any right to possess Lot No. 20690 and that he failed to prove his title thereto, and considering further that it was established that he encroached the said lot owned by the appellants, there is no legal ground upon which to maintain appellee's possession over the said property. Thus, the RTC correctly granted the demurrer to evidence and dismissed appellee's complaint for recovery of possession of real property and damages.

Nevertheless, the RTC erred when it failed to order the restoration of the 26 sq.m. area encroached by the appellee on Lot No. 20690 to the appellants. The RTC pointed out that another action should be instituted by the appellants to recover the encroached area from the appellee since this was not raised and submitted as issue in this case.

It is lamentable why the RTC did not order the appellee to surrender the encroached area of 26 sq.m. and to vacate the road-right-of-way when the pleadings filed by the parties and the arguments proffered therein, the evidence presented, and the finding of facts and conclusion of law as expressed in the body of the Order of the RTC, pointed to and resolved the issue of encroachment or overlapping of two adjacent properties owned by the parties.

In their Demurrer to Evidence, appellants questioned appellee's claim of ownership over Lot No. 20690, and on the strength of the verification survey report of Engr. Tabion that appellee encroached 26 sq.m. on appellants' lot (Lot No. 20690), appellants posited that the appellee refused to renounce the same in their favor. Moreover, appellants prayed, among others, that the appellee be ordered to surrender the encroached area of 26 sq.m. on their property, and for such other reliefs just and equitable under the premises.

On the other hand, appellee admitted "that one of the issues to be resolved in the case is whether or not there has been an encroachment by plaintiff on the property of the defendant[s] and the defendant[s] over the property of the plaintiff"[47] Appellee further admitted that he refused to comply with the demand of the appellee to renounce the 26 sq.m. lot because this issue is to be resolved in this case.[48] To reiterate, appellee's position was premised on his claim that he is the owner of the contested property by succession.

After finding that the appellee failed to present convincing and credible evidence to substantiate his claims against the appellants, and that the testimonial and documentary evidences offered by him did not sufficiently establish his right to relief against the appellants, thereby dismissing the case,[49] the RTC did not afford the appellants the reliefs sought in their pleading, i.e., "to order the appellee to surrender/return the area of 26 square meters which they encroached on appellants lot and to vacate the road-right-of-way" when the RTC even recognized their right to the said property by upholding the verification survey report of Engr. Tabion which confirmed that the appellee intruded into the lot of appellants by 26 sq.m.

We are not unmindful that it would be superfluous for the appellants to go to court and file a separate action against the appellee simply to recover the reported encroached 26 sq.m. area on Lot No. 20690 when the same could have been properly included in the assailed Order of the RTC. Indeed, to require the appellants to file an action to recover the said 26 sq.m. area against the appellee would, in effect, amount to multiplicity of suits and

would prolong this case thereby subjecting the parties to unnecessary acts and expense and has the possibility of conflicting decisions being rendered by two trial courts which only necessitate a single judgment. Thus, We cannot countenance this action of the RTC for it has always been the objective of the bench to avoid multiplicity of suits.

Multiplicity of suits should be avoided if the filing of a separate and independent action to recover a claim would entail proving exactly the same claim in an existing action. It cannot however, be avoided when the cause of action in the two complaints are distinct and separate from each other.[50]

In the same vein, the RTC erred in declaring that it is precluded from ordering the appellee to vacate the road-right-of-way since this was not raised in this case.

In her testimony, Engr. Binongcal admitted that the right-of-way appearing in her survey is different from the right-of-way that appears on the cadastral survey that was approved by the DENR.[51] She further admitted that she is aware of the approved survey plan over Lot No. 20691 and the area of said property is 168 sq.m. She did not indicate the area of the right of way in her survey plan since what she conducted was only a verification survey based on what she saw, and not based on what appears in the cadastral survey that was approved by the government. [52] She declared that if the technical description in the cadastral survey is followed, Lot No. 20691 will remain as 168 sq.m., thus, the area indicated in her survey plan as right-of-way would not form part of Lot No. 20691.[53]

Engr. Binongcal further admitted that the road-right-of-way, as appearing in the cadastral survey is being occupied by the appellee, thus –

ATTY. VILLORIA: (Re-cross Examination)

Q: You said a while ago that the color of the back of the property of Mr. Lubrin, which is Lot no. 20691 has the same color with that of the existing right of way. Now, this road right of way, which colored orange, the same as the color of the property of Lubrin, it is now occupied by Mr. Lubrin, that is your statement a while ago? The color of the property is the same as the color of the existing road, that portion is now already occupied by Mr. Lubrin, is that your statement a while ago? Is it not?

A: Yes, sir.

Q: And you are stating that the occupancy of Edgar Lubrin of this property which is the existing right of way will not increase the area of the property of Mr. Lubrin?

A: No sir, because there is a technical description.

Q: Yes, there is a technical description but if you add the property that is being occupied by him which is the existing road right of way, that does not increase the area of the property of the Mr. Lubrin?

A: Based on the barb wire, sir.

Q: Based on the barb wire okay, it is also based on your survey which is now Exhibit "H"? The same color, it will not increase the area?

A: The question is not answerable by yes or no sir because this barb wire according to Mr. Lubrin, was fenced by Mr. Dimaano and Mr. Lubrin, sir.

Q: The area of the property of Mr. Lubrin is 168 square meters as appearing in the approved survey Plan? Is that correct?

A: Yes, sir.

Q: And they occupied the existing road right of way, if you add that to the property and the road right of way that he occupied, I repeat, would that not increase the area of the property of Mr. Lubrin? Do you know what is one plus one?

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ATTY. VILORIA: She refused to answer Your Honor. That's all Your Honor.

COURT: You have already made your point that the existing road right of way is presently occupied by Mr. Lubrin. Whether or not it would add – that would be my call.[54]

In light of this exposition that the appellee encroached the road-right-of-way as reflected in the cadastral survey, which undeniably is part of the public domain,[55] appellee can be legally ordered to vacate that portion which forms part of Lot No. 20691. The approved survey plan showed that Lot No. 20691 has an area of 168 square meters.

WHEREFORE, the foregoing considered, the appeal is GRANTED. The assailed May 28, 2010 Order of the RTC, San Fernando City, La Union, Branch 66 dismissing Civil Case No. 6926 is AFFIRMED with modification in that:

1. Appellee is hereby ordered to immediately vacate the portion of the land that forms part of the property of the appellants to the extent of 26 sq.m. and surrender possession of the same to the appellants; and
2. To vacate the portion occupied as road-right-of-way and surrender possession thereof to the Office of the District Engineer, San Fernando City Engineering District, Department of Public Works and Highways.

SO ORDERED.

Baltazar-Padilla, and Reyes-Carpio, JJ., concur.

[1] Rollo, pp. 39-48; Original Records, pp. 349-358.

[2] Rollo, p. 48.

[3] Original Records, pp. 61-67.

[4] As to lot No. 20690, Appellee claims ownership thereof as grandson and heir of Andres Lubrin.

[5] Original Records, pp. 112-113.

[6] Original Records, p. 123, Order dated October 4, 2004.

[7] Original Records, p. 128.

[8] Original Records, p. 134, Order dated May 12, 2005.

[9] Original Records, p. 172, Verification Survey Report dated October 10, 2005 – The verification survey on Lot 75, Cad-539-D, San Fernando Cadastre with an area of 469 square meters, where appellants' house is located, was conducted on September 30, 2005 in the presence of Edgar Gacayan, the representative of the appellee, assisted by his counsel.

[10] Original Records, p. 220, Order dated October 8, 2007.

[11] Original Records, p. 227, Order dated December 14, 2007.

[12] Original Records, p. 254, Order dated November 13, 2008.

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"After an extensive discussion., the Court has come to a conclusion that there is no room for settlement although

there has been partial compliance with the verification [of] [the] report dated January 14, 2005 with the defendants renouncing and restoring the area of 66 square meters unto the ownership of the plaintiff. The plaintiff has yet to comply with his share of the responsibility on the basis of the said report by renouncing his interest and rights over the area of 26 square meters."

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[13] Original Records, p. 256, Pre-Trial Order dated January 14, 2009 – The parties agreed on the following stipulation of facts:

1) That appellee is the declared owner of Lot 20691 and forced heir of Lot 20690 both of Cad. 539-D, San Fernando Cadastre covered by Tax Declaration Nos. 02-001-64085 and 93-001-040, respectively; 2) That the parties made a fence on their respective boundaries; 3) The existence of Affidavit of Correction executed by the appellants; 4) That the property owned by the appellants described as Lot Nos. 20690 and 75 were originally owned by the parents of the appellee; 5) That Lot 75 was mortgaged to the La Union Development Bank of the Philippines and foreclosed by the bank; 6) That Lot 75 was sold by Magdalena Murla to Spouses David and Ofelia Malaga.

[14] Exhibit "C", Original Records, p. 11.

[15] Exhibit "D", Original Records, p. 12.

[16] Exhibit "B", Original Records, p. 10.

[17] Exhibit "N" and "N-1", Original Records, p. 297.

[18] TSN, April 25, 2007, p. 9.

[19] TSN, April 25, 2007, pp. 5-10.

[20] TSN, April 25, 2007, p. 12.

[21] Exhibit "E", Original Records, p. 13.

[22] TSN, April 25, 2007, pp. 12-15.

[23] TSN, April 25, 2007, p. 14.

[24] TSN, April 25, 2007, pp. 16-19.

[25] TSN, March 4, 2009, pp. 10-11.

[26] TSN, March 4, 2009, p. 23.

[27] TSN, March 4, 2009, pp. 27-28 and pp. 31-34.

[28] TSN, March 4, 2009, pp. 24-26.

[29] TSN, March 12, 2009, pp. 9-14.

[30] TSN, March 9, 2009, pp. 4-6. (Note: the testimony did not touch the issue of encroachment).

[31] TSN, April 2, 2009, pp. 6-13.

[32] TSN, April 2, 2009, pp. 15-24.

[33] Original Records, pp. 313-314.

[34] Original Records, pp. 315-331.

[35] Original Records, pp. 336-343.

[36] Original Records, pp. 349-358.

[37] It is undisputed that appellants already surrendered to the appellee the 66 sq.m. they encroached on Lot No. 20691.

[38] Original Records, pp. 359-361.

[39] Original Records, p. 377.

[40] Rollo, p. 25.

[41] Article 434, Civil Code of the Philippines.

[42] Spouses Dolores Miranda Provost and Jean Provost vs. Court of Appeals, et al., G.R. No. 160406, June 26, 2006.

[43] Cambridge Realty and Resources Corp. vs. Eridamus Development, Inc., G.R. No. 152445 July 4, 2008.

[44] Original Records, p. 123, Order dated October 4, 2004.

[45] TSN, April 25, 2007, pp. 33-34.

[46] Verification Survey Report dated January 14, 2005 with Attached Sketch Plan, Original Records, pp. 128-129.

[47] Comment and Opposition to the Motion to Direct Plaintiff to Convey Encroached Area, Original Records, p. 276.

[48] Comment/Opposition to the Demurrer to Evidence, Original Records, p. 341.

[49] Last page of RTC Order dated May 28, 2010, Rollo, p. 48.

[50] Asset Privatization Trust vs. Court of Appeals, et al., G.R. No. 81024, February 3, 2000.

[51] TSN, April 2, 2009, pp. 30-36.

[52] Id., pp. 38-43.

[53] Id., pp. 53-55.

[54] TSN, August 11, 2009, pp. 22-24.

[55] ART. 420 of the Civil Code .– The following things are property of public dominion:

(1) Those intended for public use such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and other similar character.

(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

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