

**SPS. VICTORIANO DEGUITO, SR. AND CORAZON A. DEGUITO,  
PLAINTIFF-APPELLANTS, VS. CLARA NABABLIT, MAGDALINO  
ABARRACOSO, PEDRO ABARRACOSO, PAULINO ABARRACOSO AND  
MIGUEL ABARRACOSO, ...**

Ponente: LAGURA-YAP, J.

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**LAGURA-YAP, J.:**

The present appeal seeks to nullify the October 2, 2008 Decision[2] rendered by Regional Trial Court, Branch 33, Calbiga, Samar (RTC) in Civil Case No. 2005-1078 for Recovery of Possession, Ownership and Damages, with Preliminary Injunction.

**THE ANTECEDENTS**

On January 4, 2005, appellants filed the Verified Complaint[3] against appellees. They claim that they are owners of Lot 280, more particularly described as follows:

A parcel of agricultural land designated as cadastral Lot No. 280 of the Hinabangan Cadastre containing an area of 54,025 square meters more or less bounded on the North by Lot 283; on the East by the Hinabangan River; on the South by Brgy. Binobucalan and on the West by Lot 279 and barangay road with an assessed value of Php26,580.00 and covered by Tax Declaration No. ARP 07-015-0915 in the name of Victoriano Deguito.

Appellants also claimed that appellees, by means of force, threats, strategy and intimidation, entered into a portion of Lot 280 in 1985, and eventually the whole lot, in 2002. Appellants prayed that they be declared the owner of Lot 280 and that appellees be ordered to surrender the property back to them.

On February 14, 2005, appellees filed their answer[4] alleging that they never forcibly ousted appellants from Lot 280. They claimed that they are owners of the property having inherited it from their grandfather and have been in open, adverse and actual occupation of the same ever since.

During pre-trial, appellants disclosed[5] that their claim of ownership over Lot 280 is based on the Extrajudicial Settlement and Sale[6] executed by a certain Guillermo Nabual in their favor. Based on the said document, Nabual, on March 25, 1982, sold to appellants a parcel of land, covered by Tax Declaration 162 (Nabual property), more particularly described as follows:

A parcel of an Agricultural land situated in Malangsa, Hinabangan, Samar, bounded on the North by Juancho Abanag, on the East by Malangsa Creek, on the South by Ponciano Paracale and on West by Juancho Abanag; with an area of 4 hectares, 55 ares, 50 centares and assessed for taxation purposes at P164.61 in the name of Juan Nabual.

On June 17, 2005, the RTC issued the pre-trial order, which defined, among others, one of the issues of the case as:

- Better right to own and possess a parcel of land identified as Lot 280, CAD 1059-D, situated at Brgy. Rawis, Hinabangan, Samar, with an area of 54,022 sq. meters, and damages, which is the main issue.

x x x

During trial, appellants presented, among others, the December 3, 1999 Certification[7] from the Municipal Assessor, Hinabangan, Samar, to prove their payment of real estate taxes over Lot 280.[8] It states:

Certification

TO WHOM IT MAY CONCERN:

This is to certify that as per records of this office, Lot No. 280 and Tax Declaration No. 01273 was declared in the name of VICTORIANO DEGUITO, located at Brgy. Rawis and Bejawan, Brgy. Concord, Hinabangan, Samar, with an area of 54,025 sq. m. and 18-00-00 has. respectively.

On October 2, 2008, the RTC issued the assailed Decision, the dispositive portion of which reads:

WHEREFORE, premises considered the instant case is DISMISSED. For want of legal and factual basis, the claim for damages and attorney's fees by the plaintiff is hereby DENIED. Costs de oficio.

Hence, this appeal.[9]

The RTC ruled that the location and description of the property sold to appellants by Nabual (upon which they based their claim of ownership) is different from Lot 280, the property in controversy. The RTC held that appellants failed to support their theory that they are owners of Lot 280, thus, they are not entitled to the relief prayed for.

ISSUE

THE RTC ERRED IN HOLDING THAT THE PROPERTY SOLD TO THEM BY NABUAL IS NOT THE SAME AS LOT 280.

### THE ARGUMENTS

Appellants argue that the RTC should not have ruled on the description and location of Lot 280 because the matter was not made an issue in the pre-trial order. Besides, they were able to show with particularity the actual boundaries of Lot 280. The description is so definite that an officer of the court can go to the area and locate the property. Appellants point out that the property they claim (Lot 280) and the property being claimed by appellees are one and same.

Appellants further assert that the RTC erred in ruling that the location of Lot 280 and the Nabual property are different because the December 3, 1999 Certification[10] from the Municipal Assessor, Hinabangan, Samar shows that Malangsa is a sitio of Brgy. Rawis. They also imply that although there are discrepancies between the description of the two properties, they are the same. The difference can be attributed to the fact that early tax declarations are based on estimation rather than computation, citing *Director of Lands v. Funtilar*. [11]

Finally, appellants allege that they were in prior possession of Lot 280 but appellees forcibly ousted them. Granting arguendo that appellees were indeed the owners of the property, their act of using violence and force was unjustifiable. They should have filed a case in court instead. Appellees' unlawful acts of using violence make them liable for damages.

## THE COURT'S RULING

The appeal is WITHOUT MERIT.

To start with, the RTC did not err when it compared the description of the Nabual property with that of Lot 280 even if the matter was not raised as an issue in the pre-trial order. A pre-trial order is not intended to be a detailed catalogue of each and every issue that is to be taken during the trial, for it is unavoidable that there are issues that are impliedly included among those listed or that may be inferable from those listed by necessary implication which are as much integral parts of the pre-trial order as those expressly listed.[12]

Based on the June 17, 2005 pre-trial order, the main issue of the case was, who between the parties has the right to own and possess Lot 280. Necessarily, the RTC, in order to resolve the matter, has to look into the identity of the property being claimed by appellants, and examine whether they have documents to prove their claim of ownership over it.

Under Article 434 of the Civil Code, to successfully maintain an action to recover the ownership of a real property, the person who claims a better right to it must prove, first, the identity of the land claimed, and; second, his title thereto.[13] In other words, the person who claims that he has a better right to the property must, first, fix the identity of the land he is claiming by describing the location, area and boundaries thereof, and; second, he must prove that the parcel of land was the object of a deed.[14]

There is no question that appellants have met the first requisite. They have sufficiently described Lot 280. We have no reason to doubt that the description of the said lot is so definite that a person can go to the area and locate it. We cannot also deny that the property being claimed by appellant (Lot 280) and the property being claimed by appellees are one and same.

What the appellants failed to satisfy is the second requisite. They failed to prove their title over Lot 280. No proof was shown that they are its owners. The Extrajudicial Settlement and Sale, upon which appellants based their ownership over Lot 280, shows that it pertains to a different property. As shown in the table below, the description of the property bought by appellants from Nabual is not the same as Lot 280, thus:

|                                                                                   |
|-----------------------------------------------------------------------------------|
| Nabual Property Lot 280                                                           |
| Type Agricultural Agricultural                                                    |
| Location Malangsa, Hinabangan, Samar Rawis, Hinabangan, Samar                     |
| Area 4 hectares, 55 ares, 50 centares (45,550 square meters) 54,025 square meters |
| Boundaries                                                                        |
| North Juancho Abanag Lot 283                                                      |
| East Malangsa Creek Hinabangan River                                              |
| South Ponciano Paracale Brgy. Binobucalan                                         |
| West Juancho Abanag Lot 279 and a barangay road                                   |

Appellants explain the discrepancies by arguing that differences in the boundaries and descriptions are common in early tax declarations. They cite *Director of Lands v. Funtilar*, which states:

x x x Such differences are not uncommon as early tax declarations are, more often than not, based on approximation or estimation rather than on computation. More so, if the land as in this case was merely

inherited from a predecessor and was still held in common. Differences in boundaries described in required municipal forms may also occur with changes in boundary owners, changes of names of certain places, a certain natural boundary being known by more than one name or by plain error. Neither was it uncommon then to designate the nearest, most visible natural landmarks such as mountains, creeks, rivers, etc. to describe the location or situation of the boundaries of properties in the absence of knowledge of technical methods of measuring or determining boundaries with accuracy, especially where as in this case, the same were made merely by humble farm people. Certain discrepancies, if logically explained later, do not make doubtful, the identification of the property as made, understood and accepted by the parties to the case.

We are not impressed.

As enunciated in Director of Lands, the discrepancies has to be logically explained. This was not done so in this case. For instance, there is no evidence showing that the Malangsa creek is now known as the Hinabangan River, or that the property owned by Ponciano Paracale is now Brgy. Binobucalan.

Appellants tried to draw a connection between the Nabual property and Lot 280 by explaining that Malangsa is a sitio of Brgy. Rawis as supposedly shown by the December 3, 1999 Certification of the Municipal Assessor, Hinabangan, Samar. However, there is not even a mention of Sitio Malangsa in the certification. It merely states that Lot No. 280 and Tax Declaration No. 01273 were declared in the name of appellee Victoriano.[15] Moreover, the said document was adduced by appellants only to prove that they have paid real estate taxes on Lot 280,[16] not to prove that the Nabual property and Lot 280 are the same. It may be worth mentioning that appellants' payment of realty taxes over Lot 280 does not help their cause. Payment of taxes does not conclusively prove ownership of the land paid for.[17] Besides, appellees presented their own evidence showing that they too have paid taxes over Lot 280.[18]

We cannot deny the possibility that the Nabual property and Lot 280 may, after all, be the same land. However, We cannot make such a declaration in the absence of convincing proof. Again, appellants failed to logically explain the discrepancies between the property sold to them by Nabual and Lot 280, the property they now claim as their own. Thus, We have no other recourse but to deny appellants' plea that they be declared owners of Lot 280. A person who claims ownership of real property is duty bound to clearly identify the land being claimed in accordance with the document on which he anchors his right of ownership.[19] Proof of ownership together with identity of the land is the basic rule.[20] In this case, although appellants was able to identify the land they were claiming, they failed to present proof of its ownership.

As to the claim that appellees used force to wrest Lot 280 from appellants, suffice it to say that this remains unsubstantiated. Appellants' witnesses even failed to describe with particularity how and when appellees employed violence. We note that appellant Victoriano was the Chief of Police in Hinabangan, Samar.[21] At the very least, he should have secured a police blotter to document appellees' use of force and violence against them.

Actori incumbit onus probandi. Upon the plaintiff in a civil case lies the burden of proof. Appellants being the plaintiffs must therefore establish their case by preponderance of evidence; failing to do so results in their defeat.[22]

WHEREFORE, the appeal is DENIED. The assailed October 2, 2008 Decision is AFFIRMED in toto.

### **SO ORDERED.**

Ingles,[1] and Lopez, JJ., concur.

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[1] Acting Chairperson, in lieu of Justice Edgardo delos Santos (who is on wellness leave), per Office Order No.

13-14-GTI dated June 14, 2014.

[2] Records, p. 382.

[3] Records, p. 1.

[4] Records, p. 23.

[5] See Pre-Trial Brief, records, p. 75; See also records, p. 284.

[6] Exhibit “Q,” 120.

[7] Exhibit “N,” records, p. 198.

[8] See Plaintiffs' Formal Offer of Documentary Exhibits, records, p. 284.

[9] Rollo, p. 26.

[10] Records, p. 198.

[11] G.R. No. L-68533, May 23, 1986.

[12] Philippine Export and Foreign Loan Guarantee Corporation v. Amalgamated Management and Development Corporation, et al., G.R. No. 177729, September 28, 2011.

[13] Sps. Hutchison v. Buscas, G.R. No. 158554, May 26, 2005.

[14] Sps. Hutchison v. Buscas, *supra*.

[15] See *Supra*.

[16] See *Supra*.

[17] Ebreo, et al. v. Ebreo, et al., G.R. No. 160065, February 28, 2006.

[18] See Exhibits “9,” “10,” “11,” “12,” records, pp. 306-311.

[19] Gesmundo, et al. v. CA, et al., G.R. No. 119870, December 23, 1999.

[20] Gesmundo, et al. v. CA, et al., *supra*.

[21] TSN, Victoriano, Direct Examination, April 21, 2006, p. 6.

[22] Aleligay v. Laserna, et al., G.R. No. 165943, November 20, 2007.

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