

BENJAMIN DALISAY, PLAINTIFF-APPELLANT, VS. FERNANDO TUMAMPIL AND TEODORA TUMAMPIL, DEFENDANTS-APPELLEES. PPELLANT.

Ponente: LLOREN, J.

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LLOREN, J.:

This is an appeal under Rule 41 of the 1997 Rules of Civil Procedure seeking to set aside the April 5, 2011 Decision[3] of the Regional Trial Court of Alabel, Sarangani Province, 11[th] Judicial Region, Branch 38, in Civil Case No. 93153, an action for Declaration of Nullity of an Extra-Judicial Agreement with Recovery of Possession to Real Property, Damages and Attorney's Fee. The said Decision dismissed the complaint filed by plaintiff-appellant, the dispositive portion of which reads:

WHEREFORE, considering that (sic) foregoing, for failure of the plaintiffs to establish their case by the preponderance of evidence this case is hereby DISMISSED. Also, for failure of the defendants to prove by preponderance of evidence their claim of compulsory counterclaim, the same is likewise ordered DISMISSED.

SO ORDERED.

The facts as culled from the records:

On December 11, 1997, plaintiff-appellant Benjamin Dalisay filed a Complaint[4] before the trial court against defendants-appellees Fernando and Teodora Tumampil. The complaint was for the declaration of nullity of an extrajudicial agreement and with the recovery of possession of the real property involved in the said agreement.

In his complaint, Dalisay alleged that he is the registered owner of a parcel of land located in Malungon, Sarangani and covered by Original Certificate of Title No. (V-16912) P-7802.[5]

On February 28, 1989, Benjamin Dalisay and Fernando Tumampil entered into an Agreement[6] concerning the said parcel of land. It was agreed that Dalisay will “exchange”[7] the property for an amount of P60,000.00 to be paid in installments by Tumampil. The agreement reads in full:

AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

That I, BENJAMIN P. DALISAY, SR., of legal age, married, Filipino and resident of Caloocan City and FERNANDO TUMAMPIL, also of legal age, married, Filipino and resident of Malungon, South Cotabato after having sworn to in accordance with law hereby depose and say:

-WITNESSETH-

That for and in consideration of the sum of Pesos Sixty Thousand (P60,000) payable in six years, first down payment of which is to be paid on or before February 28, 1989 and the balance payable every year thereafter at the rate of P10,000.00 per payment after which a certificate of title consisting of 6.022 hectares more or less in exchange of the same.

That in case of default, the amount advance will be forfeited and will give option to resell the property to other interested parties.

That the lot is situated in Biangan, Malungon, South Cotabato under original certificate of title No. (V-16912) P-7892.

That a deed of sale shall be made upon completion of the terms and conditions of the stipulated contract as herein specified.

That the parties hereto signed below at Malungon, South Cotabato this 28[th] day of February, 1989.

Sgd.

BENJAMIN P. DALISAY SR.

AFFIANT

(Thumbmark)

FERNANDO TUMAMPIL

AFFIANT

SIGNED IN THE PRESENCE OF:

Sgd.

1. ALBERTO TUMAMPIL[8]

Not sgd.

2. LEON BUENO

By virtue of the said agreement, Fernando Tumampil was able to take possession of the land, tilled and cultivated the same without paying the agreed installments as stipulated in the agreement.

Demands were made for Fernando Tumampil to pay or vacate the land but the same were unheeded. Because of the unjustifiable refusal of Fernando Tumampil to comply with the demands of Benjamin Dalisay, the latter concluded that “there is a need to declare the said extra judicial agreement a nullity after all plaintiff is still the registered owner of the said land”.

In their Answer,[9] spouses Tumampil alleged that they are the true owners and possessors of the subject property since the 1940's up to the present. Since Benjamin Dalisay was never in possession of the land, it is the contention of spouses Tumampil that the former acquired his title through fraudulent means.

It was only in the year 1989 that Benjamin Dalisay came in the land and Fernando Tumampil was made to execute a document which he never understood since he was illiterate.

Spouses Tumampil simply resisted the demands of Benjamin Dalisay to vacate the land as they (spouses Tumampil) firmly believed that they are true owners and possessors of the land.

After the pre-trial, the parties presented their witnesses before the trial court.

Benjamin Dalisay testified that he acquired the subject lot when he applied for a Homestead Patent before the DENR of Buayan, General Santos City way back in 1952; and that, not a single person opposed his application. Eventually, the title was given to him.[10]

Sometime in 1970, Dalisay authorized a certain Henry Villareal to manage the property and the latter took possession thereof.[11]

In February 28, 1989, Dalisay and Fernando Tumampil entered into the assailed agreement. A barangay captain read and translated the contents of the agreement before Fernando Tumampil affixed his thumbmark therein. Fernando Tumampil then immediately took possession of the subject property thereafter. Fernando Tumampil was able to pay half of the agreed amount or Php 30,000.00. When Dalisay demanded the remaining balance, Fernando Tumampil, however, refused to pay.[12]

Benjamin Dalisay admitted however, that when he applied for the title of the land, he was not in actual possession thereof since he was residing in another place.[13]

Domenciana Dalisay, the wife of Benjamin Dalisay, testified that she was not aware of the written agreement between her husband and Fernando Tumampil; however, she was aware that Fernando Tumampil was instructed to take care of the lot and the latter will give some share of the harvest to them (Dalisay).[14]

There was an attempt to settle the case with Fernando Tumampil at the office of the barangay captain. The settlement was for the parties to divide the lot into two equal portions. However, Fernando Tumampil refused to agree with such conditions.[15]

She testified further that when she first visited the area in 1959, Fernando Tumampil and his wife were already staying in the area.[16] And it was the Tumampils who cut the trees and cleared the area since the latter were working thereon.[17]

The testimony of the OIC of the Register of Deeds was dispensed with as the defendants-appellees admitted the existence and due execution of the Original Certificate of Title No. P-818.[18]

During the course of the trial, both Benjamin Dalisay and Fernando Tumampil died on January 12, 2003[19] and February 11, 2004,[20] respectively.

The defendants-appellees vehemently denied the allegations of the Dalisays.

Teodora Tumampil, the wife of the late Fernando Tumampil, testified that her husband has been working on the subject land even before they got married in 1953. They and their children lived in the land publicly and exclusively. Teodora Tumampil also testified that she knew Henry Villareal and that the latter never took possession of the land. She claimed that she didn't know the person of Benjamin Dalisay and the alleged agreement with her husband until the case was filed against them. She asserted that Benjamin Dalisay and his wife have neither taken possession nor visited the land since Fernando Tumampil started working thereon way back in 1952. The subject land was then a forest filled with big trees, and it was her husband and their children who cleared the area and converted the land into a rice field.[21]

Teodora Tumampil further testified that her highest educational attainment was only Grade VI and that her husband does know how to write. They have paid the real property taxes assessed on the subject lot. However, they haven't engaged the services of any Geodetic Engineer to survey the area and they have not undertaken any effort to obtain a title to the land as they are not aware of the procedures to do so.[22]

The defendants-appellees then presented Editha Tumampil Deloria, the daughter of spouses Tumampil. She testified that since she was born in 1959, she and her family were living in the subject land. Her father owned the land and that she cannot remember any person to whom her father was giving any share of the harvest of the land.[23] Editha then presented several tax declarations for the years 1972 up to the present showing that her father was the declared owner of the subject land and official receipts showing that they have paid the taxes thereon. She also testified that from year 1998 to 2001, she was paying for three (3) hectares instead of six (6). She went to the Municipal Assessor's Office to inquire as to the discrepancy of the land area but she got no response from the said office. She had not seen any documents relating to the partition of the land and that she had no idea as to whose instance was the partitioning made.[24]

Editha Tumampil Deloria further testified that Benjamin Dalisay first came to their land in 1987.[25] Later on, her father and Benjamin Dalisay have a confrontation at the DENR, Malungon, Sarangani Province and at the Office of the Barangay Captain. Benjamin Dalisay was insisting at that time that he has a title in the land so he could take it away from them (the Tumampils).[26]

Editha Tumampil Deloria also testified that she knew Henry Villareal as the latter was her schoolmate. However, she denied the allegations of Benjamin Dalisay that Henry Villareal was managing the land. She claimed that her father never gave any share of the harvest to the said Henry Villareal.[27]

Arsenia Buan testified for defendants-appellees. Arsenia Buan was a native B'laan and a resident of Balacayo, Malungon, Sarangani Province. She testified that she has known the Tumampils for more than thirty (30) years as their lands are adjacent to one another. Fernando Tumampil whom he called as "Manong Nandoy" cleared the subject land as it was once filled with big trees and converted it into a rice field. According to her, no other person took possession of the said land except the Tumampils.[28]

Roberto Tumampil, the son of spouses Tumampil, took the witness stand. He denied that he was one of the witnesses of the alleged agreement between his father and Benjamin Dalisay; that he did not sign in the name of Alberto Tumampil and that he did not know the latter. He also testified that his father was illiterate; his father did not know how to write and did not understand the English language.[29]

The last witness presented by the defendants-appellees was Nenita Ociones, an Assessment Clerk of the Municipal Assessor's Office of Malungon, Sarangani Province. She testified that as early as in the year 1969, Lot No. 743-Pls-219, with an area of six (6) hectares, was declared under the name of Fernando Tumampil in Tax Declaration No. 2320. Several revisions of the tax declaration then went on, and in 1981, Tax Declaration No. 81 revealed that the said lot contains only three (3) hectares and not six (6). The documentary basis for the said revision and reassessment was kept by the Provincial Assessor's Office of Koronadal; their Office (Municipal Assessor's Office of Malungon) has no copy of such document. Up until the latest tax declaration in 2001, which is ARP #. 99-001-01070, the land declared under the name of Fernando Tumampil has an area of three (3) hectares.[30]

After considering the evidence of the parties, the trial court rendered the assailed Decision dismissing the Complaint filed by Benjamin Dalisay. In so ruling, the trial court ratiocinated as follows:

Now, the agreement dated February 28, 1989 which is exhibit "G" that the plaintiff is praying to be nullified is a private document because it was not Notarize however, the plaintiffs failed to show and prove that defendant

Fernando Tumampil was duly informed of its contents considering that the document is written in English language and Tumampil is illiterate. Also, the area where the defendants are staying and occupying since early 1950's may not be the area registered in the name of the plaintiff Benjamin Dalisay who admitted that he never occupied and stay in the area subject of this case but authorized a certain Henry Villareal to administer and manage the said area. Unfortunately, the said Henry Villareal was not presented by the plaintiffs to confirm that he indeed administer and manage the area of Dalisay and worse, as indicated in the said authorization dated June 6, 1997 (Exh. "F") and as quoted above, that Benjamin Dalisay, Sr., owner of Lot 743, PLS 219 having an area of three (3) hectares, located at S. Balacayo, Poblacion, Malungon, Sarangani Province. Further, the claim of the plaintiffs for damages because of loss of income from the produce of the land subject of this case, again the plaintiffs failed to show proof of the same but merely allegations.

Aggrieved, Benjamin Dalisay interposed the present appeal with the following lone assignment of error:

THE LOWER COURT COMMITTED A REVERSIBLE ERROR IN DISMISSING THE CASE AGAINST PLAINTIFF-APPELLANTS FOR FAILURE TO PROSECUTE BY PREPONDERANCE OF EVIDENCE.[31]

Benjamin Dalisay posits that their agreement, which is a public document, with Fernando Tumampil is very clear in its import that in case of default, the amount advanced will be forfeited and that he (Benjamin Dalisay) will then have the option to sell the properties to other buyers. The agreement clearly stated that only upon the full payment of Fernando Tumampil will a deed of sale be made.

Benjamin Dalisay also posits that almost all of the witnesses of the defendants-appellees admitted his (Benjamin Dalisay) evidence.

The appeal is not meritorious.

It should be noted that the agreement is not a public document. Section 19, Rule 132 of the Rules of Court distinguishes between a public document and a private document for the purpose of their presentation in evidence, viz:

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.

Certainly, the present agreement is not a public document. While Benjamin Dalisay alleged that the agreement was made by a certain Barangay Captain, the same is belied by the document itself which clearly shows the utter lack of any signature of the said barangay captain.

Also, Benjamin Dalisay failed to present clear evidence to the effect that Fernando Tumampil, in affixing his thumbmark therein, understood the import of the agreement which was written entirely in English. This is important because defendants-appellees claimed that their father was illiterate and was only duped by Benjamin Dalisay to affix his thumbmark in the agreement.

What further cast doubts on the veracity of the agreement is the signature of the alleged witness therein. There is a superimposition on what appears to be the name Alberto Tumampil. Benjamin Dalisay alleged that such witness was one of the children of Fernando Tumampil. However, Fernando Tumampil does not have a child named Alberto.

Contrary to the allegation of Benjamin Dalisay, the defendants-appellees did not admit the former's written agreement of the parties as evidence but stood firm on their stand that their father owned the land. Defendants-appellees clearly established the fact that they possessed the land as early as in the 1950s.

On the other hand, Benjamin Dalisay admitted that he was never in actual possession of the land. Anent his allegation that he authorized a certain Henry Villareal to manage the land way back in the 1970s, this Court finds the same to be not credible. Aside from the fact that Henry Villareal was never presented in court, the Authorization Agreement[32] which supposedly gave him the authority to manage the land was only made in June 6, 1997, just few months before the Complaint was filed. Also, the defendants-appellees have amply proven that while they were in possession of the land, Henry Villareal never came and interfered with their possession.

Moreover, the claim of Benjamin Dalisay that Fernando Tumampil only took possession of the land after the execution of the agreement in 1989 was rebutted by no less than his own wife, Domenciana Dalisay, who testified that when she first visited the land in 1959, the spouses Tumampil were already in possession of the land.

These circumstances taken all together support the ruling of the trial court that the land where the defendants-appellees are occupying may not be the same area registered in the name of Benjamin Dalisay. Other than the unsigned sketch plan[33] of what appears to be Lot No. 743, Pls – 219, no other evidence was submitted by Benjamin Dalisay to show the exact area as covered by his title.

On a side note, this Court would like to call the attention of the court a quo of its failure to follow the established procedures concerning the deaths of the party litigants. As stated beforehand, both Benjamin Dalisay and Fernando Tumampil died during the course of the trial. The respective counsels of both parties then filed their Motions for Substitution[34] in compliance to Section 16, Rule 3 of the 1997 Rules of Court.[35] The court a quo took note of the said motions but it never issued an Order for the appearance of the legal representatives of both decedents. Such failure of the court a quo is clearly a direct contravention of the said provision of the Rules of Court. Its attention is called that a similar incident in the future will not be tolerated but will be dealt with severely.

This Court is well aware of the dire consequences when there is a failure to order a substitution of legal representatives to a deceased party litigant. However, considering that the heirs of both parties herein voluntarily appeared, participated in the case, and presented their respective evidence, this Court deems it wise that the requirement of a formal substitution of parties need not be rigidly applied.[36]

WHEREFORE, premises considered, the APPEAL is DISMISSED. The April 5, 2011 Decision of the Regional Trial Court of Alabel, Sarangani Province, 11th Judicial Region, Branch 38, in Civil Case No. 93153 is hereby AFFIRMED in toto.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Azcarraga-Jacon and Contreras, JJ., concur.

- [1] Died on January 14, 2003, Records, pp. 217 - 219
- [2] Died on February 11, 2004, Id, pp. 273 - 276
- [3] Records, pp. 470 – 480, penned by Executive Judge Jaime I. Infante
- [4] Records, pp. 1 - 4
- [5] Id, p. 5
- [6] Id, p. 10
- [7] Id, p. 1
- [8] The handwritten name “Palec” is superimposed on the typewritten name “Tumampil”.
- [9] Records, pp. 75 - 81
- [10] TSN dated June 29, 2000, pp. 567 - 568
- [11] TSN dated June 29, 2000, pp. 568 - 570
- [12] TSN dated June 29, 2000, pp. 570 - 575
- [13] TSN dated November 21, 2000, p. 610
- [14] TSN dated July 23, 2002, pp. 617 - 619
- [15] TSN dated July 23, 2002, pp. 619 - 622
- [16] TSN dated March 24, 2004, p. 631
- [17] TSN dated March 24, 2004, pp. 634 - 635
- [18] Records, p. 189
- [19] Id, pp. 217 - 219
- [20] Id, pp. 273 - 276
- [21] TSN dated August 13, 2004, pp. 658 - 665
- [22] TSN dated August 13, 2004, pp. 667 - 672
- [23] TSN dated August 27, 2004, pp. 678 - 681
- [24] TSN dated August 27, 2004, pp. 682 - 693
- [25] TSN dated August 27, 2004, p. 693
- [26] TSN dated August 27, 2004, pp. 699 - 702
- [27] TSN dated August 27, 2004, pp. 702 - 704
- [28] TSN dated June 15, 2005, pp. 717 - 722
- [29] TSN dated July 19, 2005, pp. 738 - 742

[30] TSN dated August 4, 2006, pp. 773 - 779

[31] Rollo, p. 45

[32] Records, p. 261

[33] Id, p. 6

[34] Records, pp. 217 – 219; Id, pp. 273 - 276

[35] Sec. 16. Death of party; duty of counsel.

Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs. The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

[36] Vda. de Salazar vs. Court of Appeals, G.R. No. 121510 November 23, 1995

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