SPOUSES FRANCISCO CUENCO FRESNOZA AND CATALINA MAE MERCADO, REPRESENTED BY THEIR ATTTORNEY-IN-FACT, MELANIA MERCADO, PLAINTIFFS-APPELLANTS, VS. EULOGIO TOPACIO, JR. AND EDGAR C....

Ponente: CRUZ, R.A., J.

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CRUZ, R.A., J.:

THE CASE

This is an appeal under Rule 41 of the Rules of Court seeking to reverse and set aside the Decision dated November 18, 2011[1] of the Regional Trial Court (RTC) of Imus, Cavite, Branch 20 in Civil Case No. 2373-01, the dispositive portion of which reads:

xxx xxx xxx

> WHEREFORE, premises considered, judgment is hereby rendered in favor of defendant Euglogio Topacio, Jr., (sic) and against plaintiffs Francisco Cenco (sic) Fresnoza and Catalina Mae Mercado and Intervenors Ricardo T. De Leon, Jr., and Ferdinand L. Martinez as follows, viz:
>
> 1. DISMISSING the complaint of plaintiffs Francisco Cenco (sic) Fresnoza and Catalina Mae Mercado for lack of factual and legal basis;
>
> 2. DISMISSING the complaint-in-intervention of intervenors Ricardo T. De Leon, Jr., and Ferdinand L. Martinez for lack of factual and legal basis;
>
> 3. ORDERING plaintiffs Francisco Cenco (sic) Fresnoza and Catalina Mae Mercado and intervenors Ricardo T. De Leon, Jr. and Ferdinand L. Martinez to jointly and severally pay defendant Euglogio Topacio, Jr., (sic) the sum of One Hundred Thousand Pesos (Php100,000.00) as an (sic) by way of attorney's fees; and
>
> 4. ORDERING plaintiffs Francisco Cenco (sic) Fresnoza and Catalina Mae Mercado and Intervenors Ricardo T. De Leon, Jr. and Ferdinand L. Martinez to jointly and severally pay defendant Euglogio Topacio, Jr.,(sic) the costs of suit.
>
> SO ORDERED.

xxx xxx xxx “

THE ANTECEDENTS

On July 24, 2001, Spouses Francisco Cuenco Fresnoza and Catalina Mae Mercado, represented by their Attorney-in-fact, Melania Mercado, as plaintiffs, filed a complaint for recovery of possession of real property with damages against Eulogio Topacio (Topacio) and Edgar Bermudez (Bermudez), as defendants, before the Regional Trial Court of Imus, Cavite, Branch 20 docketed as Civil Case No. 2373-01.

In their complaint,[2] plaintiffs alleged the following material facts:

" xxx xxx xx

3. Plaintiffs are the registered owners of parcel of land identified as Lot 7569-J of subdivision plan, Psd-04-034208 situated at Bo. Paliparan, Municipality of Dasmariñas, Province of Cavite, containing an area of Four Thousand Six Hundred Twenty (4,620) square meters, covered by Transfer Certificate Title No. T-289613 of the Registry of Deeds for the Province of Cavite, more particularly described as follows:

"A parcel of land (Lot 7569-J) of the subd.. Plan, Psd-04-034208, being a portion of Lot 7569, Imus Estate; LRC Rec. No.), situated in Bo. of Paliparan, Mun. of Dasmariñas, Province of Cavite. Bounded on the NW., along line 1-2 by Lot 7569-M; along line 2-3 by Lot 7569-A; along line 3-4 by Lot 7569-, all of the subdivision Plan; on the NE., along line 4-5 by Paliparan St., (10.00m wide); on the SE., and SW., along lines 5-6-7-8 by Aguinaldo St., (10.00m wide) and on the SW., along line 8-1 by National Road (20.00 m. wide). Xxx containing an area of Four Thousand Six Hundred Twenty (4, 620) square meters xxx"

xxx xxx xxx

4. Sometime on 08 November 1993, the defendants filed a complaint for quieting of title against Villa Esperanza Development, Inc. alleging that xxx Ildefonso Malicsi is the owner of a parcel of land known as Lot No. 7402, Fls-2285, Imus Estate, covered by TCT No. TG-107929, Cavite.

Lot No. 7402 covered by said TCT No. TC-107929 was subdivided into several lots. One of which was Lot No. 7402-E with an area of 9,878 square meters which was the one purportedly sold to defendant Topacio to whom TCT No. 348422 was issued.

xxx xxx xxx

5. After trial, the Honorable Cesar A. Mangrobang, Presiding Judge, Branch 22 of the Regional Trial Court, Cavite, Imus Branch rendered a judgment in favor of the herein defendants (plaintiffs in Civil Case No. 828-93) xxx xxx

xxx xxx xxx

6. On 21 August 2000, a Writ of Possession was issued by the Branch Clerk of Court of said court. xxx xxx

7. On the basis of the said Writ of Possesion, defendant Sheriff IV Edgar C. Bermudez served a Notice to Vacate upon the heirs of Joaquin Vina and other persons claiming rights under them. xxx xxx

8. The said Notice to Vacate was served upon Purificacion Vina, Evelyn Vina and Percival Vina, who upon the tolerance of the plaintiffs occupied the said parcel of land covered by TCT No. T-289613.

9. After the notice to vacate was served upon the occupants of plaintiffs' property, plaintiffs through counsel sent a letter to defendant Bermudez dated 11 November 2000 informing him that the land occupied by plaintiffs' occupant is different from the parcel of land subject of the controversy in Civil Case No. 828-93 and asked him not to pursue the eviction of their occupants, xxx xxx

10. The plaintiffs and their occupants were not impleaded as parties in Civil Case No. 828-93 as the lot subject of the controversy in said case was different from that of the plaintiff's considering that the property indicated in the Notice to Vacate was Lot No. 7402-E covered by TCT No. 348422 while that of plaintiff is Lot No. 7569-J covered by TCT No. 289613.

11. Despite the letter dated 11 November 2000 addressed to defendant Bermudez, the latter still proceeded with the eviction of plaintiffs' occupants.

11.1 xxx defendants are now in actual possession of the subject parcel of land, despite the knowledge of the

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fact that they have no right whatsoever over the said parcel of land.

12. The assessed value of the aforesaid property is more than PESOS: TWENTY THOUSAND (P20,000.00) xxx xxx

13. On 04 December 2000, the plaintiff through counsel sent a demand letter to defendant through Mr. Eulogio Topacio demanding the vacation of the premises by them and the surrender of the same to the plaintiffs.

13.1 However, despite repeated demands, both oral and written, defendants refused and failed and still continue to refuses and fail to vacate the same. xxx xxx

xxx xxx xxx

" Defendant Topacio moved for the dismissal of the complaint[3] on the ground of failure to state a cause of action but the RTC denied the motion in the Order October 8, 2001.[4]

Defendant Topacio filed his Answer[5] and by way of affirmative defenses, averred that, the complaint states no cause of action because plaintiffs already admitted that the parcel of land owned by them is different from his land and he must be sued jointly with his wife.

During pre-trial, the parties manifested that there is a need for a relocation survey of the properties to determine the respective locations. By Order dated December 14, 2001,[6] the RTC directed the Community Environment and Natural Resources Office (CENRO) at Trece Martires, Cavite to designate a government surveyor who shall conduct a relocation survey. The parties were likewise ordered to submit the names of their respective surveyors.

In compliance thereto, CENRO designated Engr. Abner R. Remolar as the government surveyor.[7] Plaintiffs' chose Engr. Romeo L. Durante, a licensed geodetic engineer, as their surveyor,[8] while Defendant Topacio designated Engr. Juanito Galang as his representative in the relocation survey.[9] Thereafter, the RTC issued an Order dated February 12, 2002[10] directing the parties to submit certified true copies of their respective titles and blue print copies of the survey plans of their lots to Engr. Abner Remolar and proceed with the survey.

On February 2, 2003, Engr. Abner R. Remolar submitted to the RTC the Sketch Plan and Survey Report.[11] Pertinent portions of the Survey Report read:

" xxx xxx xxx

FINDINGS

Upon plotting and comparing the results, we have found the following:

a. Sub lot A with an area of 3,743 sq.m. is a portion of Lot 7402-E. It has a concrete house inside and planted with different kinds of vegetables.

b. The existing Molino-Paliparan Road traverses Lot 7402-E (Sub lot C)

i. The remaining portion of Lot 7402-E is being occupied generally for commercial/residential and industrial uses.

c-1: Sub lot C (A=393 sq.m.) - industrial
c-2: Sub lot E (A=2,467 sq.m.) - commercial – residential
c-3: Sub lot F (A=442 sq.m.) - commercial

d. Sub lot B with an area of 2,190 sq.m. is a vacant space.

e. Portion of Lot 7569-J, Fls-2701 was traversed by existing road (Governors Drive) and the remaining portion

overlaps with Lot 3853-N, Fls 2285.

f. The existing concrete house inside sub Lot A is allegedly owned by the defendants.

xxx xxx xxx "

In the interim, Ricardo De Leon, Jr. and Ferdinand Martinez, represented by his Attorney-in-Fact, Asistio Martinez, as intervenors, filed a motion for intervention on March 4, 2003, alleging that, they have a legal interest in the subject matter in litigation because they are the registered owners of one-half portion of Lot 7569 (one-half belonging to the plaintiff).[12] In the Order dated April 1, 2003, the RTC[13] granted the motion for intervention.

On June 18, 2003, Defendant Topacio, in his Ex-parte Manifestation and Motion, stated that intervenors' failure to submit a complaint-in-intervention constitutes a waiver and prayed that the case be submitted for decision.[14] The RTC issued an Order dated September 2, 2003 granting defendant's motion.[15]

Intervenors filed an Urgent Motion for Reconsideration and Motion to Admit Complaint-in-Intervention.[16] The RTC issued an Order dated November 17, 2003[17] granting the intervenors' motion for reconsideration and admitting the complaint-in-intervention. Thereafter, trial ensued.

On November 18, 2001, the RTC issued a Decision[18] in favor of defendants. It ruled that plaintiffs and intervenors failed to adduce evidence to prove that the fences put up by Defendant Topacio encroached upon their property. Moreover, as shown in the Survey Report prepared by Engr. Abner Remolar, Lot 7569-J covered by TCT No. T-289613 of the Registry of Deeds of Cavite, which is owned by the plaintiffs, is separate and distinct from Lot 7402-E formerly covered by TCT No. 348422 of the Registry of Deeds of Cavite and owned by Defendant Topacio. In fact, the division between the two (2) lots is the twenty meter (20 m) wide road denominated as Governor's Drive which clearly separates the two (2) lots. It also noted that the intervenors failed to interpose any objection to the Sketch Plan and Survey Report prepared by Engr. Abner Remolar within the period granted to them.

Hence, the RTC decreed:

" xxx xxx xxx

> WHEREFORE, premises considered, judgment is hereby rendered in favor of defendant Euglogio Topacio, Jr., (sic) and against plaintiffs Francisco Cenco (sic) Fresnoza and Catalina Mae Mercado and Intervenors Ricardo T. De Leon, Jr., and Ferdinand L. Martinez as follows, viz:
>
> 1. DISMISSING the complaint of plaintiffs Francisco Cenco (sic) Fresnoza and Catalina Mae Mercado for lack of factual and legal basis;
>
> 2. DISMISSING the complaint-in-intervention of intervenors Ricardo T. De Leon, Jr., and Ferdinand L. Martinez for lack of factual and legal basis;
>
> 3. ORDERING plaintiffs Francisco Cenco (sic) Fresnoza and Catalina Mae Mercado and intervenors Ricardo T. De Leon, Jr. and Ferdinand L. Martinez to jointly and severally pay defendant Euglogio Topacio, Jr., (sic) the sum of One Hundred Thousand Pesos (Php100,000.00) as an (sic) by way of attorney's fees; and
>
> 4. ORDERING plaintiffs Francisco Cenco (sic) Fresnoza and Catalina Mae Mercado and Intervenors Ricardo T. De Leon, Jr. and Ferdinand L. Martinez to jointly and severally pay defendant Euglogio Topacio, Jr.,(sic) the costs of suit.
>
> SO ORDERED.

xxx xxx xxx

" Aggrieved, plaintiffs and intervenors jointly filed a Notice of Appeal[19] which the RTC gave due course in its Order dated January 30, 2012.[20]

THE ASSIGNED ERRORS

In their Brief, plaintiffs and intervenors, as appellants before Us, advance the following issues:

> I. WHETHER THE LOWER COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN SOLELY RELYING ON THE SURVEY REPORT IN DISPOSING THE ACTION FOR RECOVERY OF POSSESSION AND RESOLVING SPECIFIC ISSUES ALLEGED IN THE COMPLAINT;
>
> II. WHETHER THE LOWER COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AWARDING THE AMOUNT OF P100,000.00 AS ATTORNEY'S FEES IN FAVOR OF DEFENDANT-APPELLEE;
>
> III. WHETHER THE LOWER COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISREGARDING THE FACT THAT THE SURVEY REPORT WAS NOT APPROVED BY THE DIRECTOR OF LANDS AND IS THEREFORE AN UNRELIABLE BASIS IN PROPERLY DISPOSING THE ISSUES OF THIS CASE.

Plaintiffs-appellants and Intervenors-appellants argue that the RTC, in dismissing the complaint and compliant-in-intervention, erred in heavily relying and giving credence to the Survey Report prepared by Engr. Abner Remolar because Intervenor-Appellant Ricardo De Leon was not represented when the said survey was conducted. Moreover, the Survey Report is merely recommendatory and lacks approval of the Director of Lands and should not be the basis for the cancellation of the certiticate of title. They also assert that Defendant-Appellant Topacio is not entitled to attorney's fees in the amount of P100,000.00.[21]

On the other hand, Defendant-Appellee Topacio maintains that the plaintiffs-appellants and intervenors-appellants, by imputing grave abuse of discretion amounting to lack or excess of jurisdiction, availed of a Petition for Certiorari, which is a wrong mode, and not an appeal.[22]

He also claims that intervenor-appellant did not controvert the findings of Engr. Abner Remolar. In fact, both appellants failed to present any evidence to show that their properties encroached, overlapped or is situated in the same place where his property lies. Clearly, there being no overlapping of two (2) properties the dismissal of the complaint and complaint-in-intervention are proper.

OUR RULING

Appellants impute to the RTC "grave abuse of discretion amounting to lack or excess of jurisdiction" for dismissing the complaint and complaint-in-intervention. "Grave abuse of discretion" is a ground for Petition for Certiorari under Rule 65 of the Rules of Court. Nonetheless, in the interest of justice, We set aside this procedural lapse and treat the grounds raised by them as "assignment of errors." Thus, the assigned errors are restated into the following: (1) whether the RTC erred in dismissing the complaint and complaint-in-intervention; (2) whether the RTC erred in awarding attorney's fees to defendant-apellee.

There is no evidence
to prove plaintiffs-
appellants' allegations
hence, the RTC did not
err in dismissing the

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complaint

It is plaintiffs-appellants' position that Lot 7402-E located at Paliparan, Dasmariñas, Cavite and formerly covered by Transfer Certificate Title No. T-348422 of the Registry of Deeds of Cavite, which was recovered by Defendant-Appellee Topacio in an action to quiet title docketed as Civil Case No. 828-93, is their property described as Lot 7569-J embraced under Transfer Certificate of Title No. 289613 issued by the Registry of Deeds of Cavite, hence, they seek to recover the possession thereof. They also assail the findings of court-appointed surveyor, Engr. Abner Remolar. They argue that it should not be given credence because intervenors-appellants were not present and included in the survey.

Accion publiciana, also known as accion plenaria de posesion, is an ordinary civil proceeding to determine the better right of possession of realty independently of title. It refers to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty.[23] To reiterate, the objective in an accion publiciana is to recover possession only and not ownership.

In civil cases, the law requires that the party who alleges a fact and substantially asserts the affirmative of the issue has the burden of proving it[24] and the party having the burden of proof must establish his case by a preponderance of evidence. "Preponderance of evidence" means that the evidence as a whole adduced by one side is superior to that of the other. In other words, preponderance of evidence refers to evidence which is of greater weight, or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth.[25]

Here, the complaint simply calls for the settlement of the issue of unlawful deprivation of their possession of Lot No. 7569-J, barring direct and collateral attacks on each of the parties' respective certificates of title. Since plaintiffs-appellants alleged dispossession of their land due to encroachment and/or overlapping of two (2) properties, it is incumbent upon them to prove such allegations.

The records disclose that plaintiffs-appellants did not present and formally offer any evidence, whether documentary and/or testimonial, to support their claims. Section 34, Rule 132 of the Rules of Court provides that the court shall consider no evidence which has not been formally offered. A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as We, the appellate court, will not be required to review documents not previously scrutinized by the trial court.[26] While documents were attached in the complaint, they are bereft of any probative value because they were not formally offered as evidence in the RTC. The case of Candido vs. Court of Appeals,[27] is instructive. There, it was held that document is not evidence when it is simply marked for identification, thus:

“ xxx xxx xxx

> A document, or any article for that matter, is not evidence when it is simply marked for identification; it must be formally offered, and the opposing counsel given an opportunity to object to it or cross-examine the witness called upon to prove or identify it. A formal offer is necessary since judges are required to base their findings of fact and judgment only — and strictly — upon the evidence offered by the parties at the trial. To allow a party to attach any document to his pleading and then expect the court to consider it as evidence may draw unwarranted consequences. The opposing party will be deprived of his chance to examine the document and object to its admissibility. The appellate court will have difficulty reviewing documents not previously scrutinized by the court below. The pertinent provisions of the Revised Rules of Court on the inclusion on appeal of documentary evidence or exhibits in the records cannot be stretched as to include such pleadings or documents not offered at the hearing of the case. (Emphasis supplied)

xxx xxx xxx “

Therefore, unless and until admitted by the RTC in evidence for the purpose or purposes for which the documents are offered, they are merely a scrap of paper barren of probative weight. To consider them on appeal will only deny the defendant-appellee the right to examine and rebut the evidence. Clearly, with no vital evidence, plaintiffs-appellants' assertions are bare and self-serving.

Besides, where there is a so-called “overlapping” of titles, the best evidence are the certificates of title themselves. A comparison of the technical descriptions of the parties' titles belie an overlapping of boundaries. The technical description of Lot 7402-E covered by TCT No. T-1193103 of the Registry of Deeds of Cavite,[28] which cancelled TCT No. T-348422 of the Registry of Deeds of Cavite, and issued in the name of Eulogio Topacio, reads:

“ xxx xxx xxx

> A parcel of land (Lot 7402-E of the subd. Plan Psu-042106-054870, being a portion of Lot 7402 (Fls 2285), Imus Estate, LRC Rec. No.), situated in the Brgy. Of Paliparan, Mun. of Dasmariñas, Prov. of Cavite. Bounded on the SW., along line 1-2 by Road (20.00 m. wide); on the NW., along lines 2-3-4 by Lot 7418; on the NE., along line 4-5 by Lot 7417, both Fls-2285; on the SE., along lines 5-6-1 by Lot 7402-F (Road 20.00 m. wide) of the subd., plan. Beginning at a pt., marked “1” on plan, being N.2 deg. 42' E., 2294.73 m. from Mon. 79, Imus Estate; thence N.67 deg. 33' W., 97.70 m. to pt. 2; thence N. 37 deg. 57' E. , 89.91 m. to pt. 3; thence N. 52 deg. 30' E., 62.82 m. to pt. 4; thence S. 79 deg. 04'E., 27.43 m. to pt. 5; thence S. 15 deg. 01'W., 143.96 m. to pt. 6; thence, S. 63 deg. 45' W., 5.00 m. to the pt. of beginning, containing an area of NINE THOUSAND EIGHT HUNDRED SEVENTY EIGHT (9,878) SQUARE METERS. All pts. referred to are indicated on the plan and are marked on the ground by P.S. cyl. conc. mons 15x60cm; bearings true; date of the original surevey; July 27, 1905- June 1, 1908 and that of the subd., survey, March 15, 1992 and was approved on April 23, 1992.

xxx xxx xxx “

On the other hand, the technical description of Lot 7569-J covered TCT No. T-289613 of the Registry of Deeds of Cavite[29] issued in the name of Spouses Francisco Fresnoza and Catalina Mercado reads as follows:

“ xxx xxx xxx

> A parcel of land (Lot 7569-J) of the subd. Plan, Psd-04-034208, being a portion of Lot 7569, Imus Estate, L.R.C. Rec. No.), situated in the Bo. Paliparan, Mun. of Dasmariñas, Prov. of Cavite. Bounded on the NW., along line 1-2 by Lot 7569-M; along line 2-3 by Lot 7569-A; along line 3-4 by Lot 7569-I, all of the subd. Plan; on the NE., along line 4-5 by Paliparan St., (10.00 m. wide); on the SE., & SW., along line 5-6-7-8 by Aguinaldo St., (10.00 m wide) and on the SW., along line 8-1 by National Road (20.00 m wide). Beginning at a pt. marked “1” on plan, being N.1 deg. 20' E., 2922.51 m. from Mon. No. 29, Imus Estate, thence N.3 deg. 19' E., 1.50 m. to pt. 2; then N.3 deg 19' E (Over) 14.75 m. to pt. 3; thence N.3 deg. 19'E., 78.45 m. to pt. 4; thence S. 67 deg. 17' E., 69.28 m. to pt. 5; thence S.16 deg. 36' W., 59.88 m. to pt. 6; thence S. 85 deg. 37' W., 21.64 m. to pt. 7; S.40 deg. 48'W, 21.03 m. to pt. 8; thence N. 67 deg. 08' W., 18.41 m. to pt. of beginning; containing an area of FOUR THOUSAND SIX HUNDRED TWENTY (4,620) SQUARE METERS. All pts. referred to are indicated on the plan and are marked on the ground by P.S. Cyl. Conc. Mons. 15 x 60 cm.; bearings true; date of original survey, July 27, 1905-June 1, 1908, and that of the subd. survey, Jan 13-20, 1989, and was approved on April 19, 1989.

xxx xxx xxx “

Based on the foregoing, Lot 7402-E owned by defendant-appellee is “bounded on the SW., along line 1-2 by Road (20.00 m. wide); on the NW., along lines 2-3-4 by Lot 7418; on the NE., along line 4-5 by Lot 7417, both

Fls-2285; on the SE., along lines 5-6-1 by Lot 7402-F (Road 20.00 m. wide) of the subd., plan." While Lot 7569-J owned by plaintiffs-appellees is bounded "on the NW., along line 1-2 by Lot 7569-M; along line 2-3 by Lot 7569-A; along line 3-4 by Lot 7569-I, all of the subd. Plan; on the NE., along line 4-5 by Paliparan St., (10.00 m. wide); on the SE., & SW., along line 5-6-7-8 by Aguinaldo St., (10.00 m wide) and on the SW., along line 8-1 by National Road (20.00 m wide)." It appears that both properties have different boundaries and are not even adjacent to each other. There is indeed disparity in the location of the properties.

Furthermore, as borne by the records, both plaintiffs-appellants and defendant-appellee agreed to the conduct of a relocation survey to verify the boundary, metes and bounds of their respective properties. To determine the respective location of the properties, the RTC ordered Community Environment and Natural Resources Office, Department of Natural Resources (CENRO-DENR), Trece Martires to designate a government surveyor to conduct a relocation survey and also directed the parties to submit the names of their respective surveyors.[30] In compliance thereto, the relocation survey was headed by Engr. Abner Remolar of the CENRO-DENR. It is noted that plaintiffs-appellants actively participated and were duly represented by their chosen geodetic engineer, Engr. Romeo Durante, in the survey. Hence, they are now estopped from questioning the results. Given the expertise and experience of the surveyor, We, like the RTC, will give weight and credence to the survey report.

The three-paged Survey Report dated January 14, 2003 prepared by Engr. Abner Remolar[31] clearly illustrates the disparity of location of the properties. It reads:

" xxx xxx xxx

> 2. That in addition to the activities mentioned earlier in the progress report submitted dated 17 September 2002, we ran additional tertiary traverse consisting of 14 stations with a perimeter of 3,097.14 last November 28, 2002 with the presence of Engrs. Romeo Durante and Juanito Galang, Geodetic Engineers of the Plaintiffs and Defendants (sic) respectively.
>
> From the last station (T-19) we measured monuments 78 & 79 of Imus Estate. These are concrete monuments measuring about 50 centimeter square by 2.5 meter high (exposed to the ground). Comparing the recent measurements from the previous positions of these monuments as described theoretically, we found that this is undisturbed and still in correct position;
>
> The true azimuth and coordinates of the said monuments were used and carried all throughout the traverse stations;
>
> 3. That the subject lots were computed and plotted using their respective tie lines as shown on the sketch plan (green dotted lines for Lot 7402-E and blue dotted lines for Lot 7569-J)
>
> Similarly the actual shape and appearance of the contested lots as pointed by both parties were measured and plotted on the sketch plan represented by black polygon.

FINDINGS

> Upon plotting and comparing the results, we have found the following:
>
> a. Sub lot A with an area of 3,743 sq.m. is a portion of Lot 7402-E. It has a concrete house inside and planted with different kinds of vegetables.
>
> b. The existing Molino-Paliparan Road traverses Lot 7402-E (Sub lot C)
>
> c. The remaining portion of Lot 7402-E is being occupied generally for commercial/residential and industrial uses.

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c-1: Sub lot C (A=393 sq.m.) - industrial
c-2: Sub lot E (A=2,467 sq.m.) - commercial – residential
c-3: Sub lot F (A=442 sq.m.) - commercial

d. Sub lot B with an area of 2,190 sq.m. is a vacant space.

e. Portion of Lot 7569-J, Fls-2701 was traversed by existing road (Governors Drive) and the remaining portion overlaps with Lot 3853-N, Fls 2285.

f. The existing concrete house inside sub Lot A is allegedly owned by the defendants.

xxx xxx xxx

In short, there is no clear evidence of overlapping because Lot 7569-J (TCT No. 289613) owned by plaintiffs-appellants, appears to be outside of Lot 7402-E owned by defendant-appellee. Because plaintiffs-appellants failed to lay the proper foundation and sustain their claims, the dismissal of the complaint is proper.

The RTC did not err
in dismissing the
complaint-in-intervention

In their complaint-in-intervention, intervenors-appellants alleged that, they have a legal interest in the matter in litigation and they owned portions of Lot 7569.[32]

This will also fail. Under Section 1, Rule 19 of the Rules of Court, intervention shall be allowed when a person has (1) a legal interest in the matter in litigation; (2) or in the success of any of the parties, or an interest against both; (3) or is so situated as to be adversely affected by a distribution or disposition of property in the custody of the court or an officer thereof. Legal interest, which entitles a person to intervene, must be in the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by direct legal operation and effect of the judgment. Such interest must be actual, direct and material, and not simply contingent and expectant.[33]

The nature of intervention proceedings had been discussed in the case of Mactan-Cebu International Airport Authority vs. Heirs of Estanislao Miñoza, et.al.,[34] viz:

“ xxx xxx xxx

> Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him, her or it to protect or preserve a right or interest which may be affected by such proceedings. It is a proceeding in a suit or action by which a third person is permitted by the court to make himself a party, either joining plaintiff in claiming what is sought by the complaint, or uniting with defendant in resisting the claims of plaintiff, or demanding something adversely to both of them; the act or proceeding by which a third person becomes a party in a suit pending between others; the admission, by leave of court, of a person not an original party to pending legal proceedings, by which such person becomes a party thereto for the protection of some right of interest alleged by him to be affected by such proceedings.

xxx xxx xxx “

It must also be stressed that intervention is not intended to change the nature and character of the action itself, or to stop or delay the placid operation of the machinery of the trial. The remedy of intervention is not proper where it will have the effect of retarding the principal suit or delaying the trial of the action.[35]

The matter in controversy is limited as to who between the parties has a better right to possession. As admitted by intervenors-appellants, Lot 7569 has already been subdivided and that they owned Lots 7569-A (TCT No. T-289604), 7569-B (TCT No. T-289605), 7569-C (TCT No. T-289606), 7569-D (TCT No. T-289607), 7569-E (TCT No. T-289608), 7569-F (TCT No. T-289609), 7569-G (TCT No. T-289610), 7569-H (TCT No. T-289611), 7569-I (TCT No. T-289612), 7569-K (TCT No. T-289614), 7569-L (TCT No. T-289615), 7569-M (TCT No. T-289616).[36] It must be remembered that the legal interest required for an intervention must be direct and immediate in character. It appears that intervenors-appellants do not possess actual legal interest at stake over Lot No. 7569-J. Hence, they would not be adversely affected by any judgment disposing of the property in litigation, whether to plaintiffs-appellants or to defendant-appellee. Moreover, We find that their intervention will only cause delay in the trial of the action and stretch the issues in the action as well as amplify the breadth of the remedies and relief. Plainly, intervenors-appellants' complaint-in-intervention, bereft of the indispensable requirement of legal interest, must perforce be dismissed.

Thus, We do not see any reason to overturn the findings of the RTC, viz:

" xxx xxx xxx

> The Court must emphasize that in order to determine with certainty the respective location of the pieces of the property involved, the Court, upon motion by the parties, directed the CENRO, Trece Martires City through its duly authorized government surveryor to conduct a relocation survey. In addition, the plaintiffs and defendant were duly represented during the conduct of the survey. Verily, the result of the survey as contained in the Survey Report and as reflected in the Sketch Plan submitted by Engr. Remolar are considered binding upon the parties. This includes intervenors who were already considered as party litigants to the instant case at the time when the Sketch Plan and Survey Report was duly approved by the Court. In fact, when the Court declared the intervenors to have waived the filing of their complaint-in-intervention the same included an instruction to the parties to file their respective objection/comment to the Sketch Plan and Survey Report otherwise, the case shall be submitted for decision. This only shows the importance that the Court has placed upon the Relocation Survey and Sketch Plan as the results of which determine the veracity of the respective claims of the parties.

xxx xxx xxx

> While in the aforesaid Survey Report Engr. Remolar included as part of his comment that Fls-2702 is of dubious origin and he went on to declare that the same be CANCELLED and EXPUNGED from the records, the same cannot be admitted by the Court considering that this case is not for annulment of title but merely for recovery of possession. To do so, would be to admit a collateral attack upon the title of the plaintiffs.
>
> Be that as it may, it is clear from the aforesaid Survey Report that there are no overlapping areas between the respective properties of the properties. To be sure, the Sketch Plan gives a clear picture of the respective position of the lots owned by the parties. A simple examination thereof would immediately show that the parcel of land covered by Lot 7402-E owned by defendant Topacio, is separate and distinct from parcel of land covered by Lot 7569-J, owned by plaintiffs spouses Fresonoza (sic). The most glaring division between the two (2) lots is the Twenty-meter wide (20m) Road demoninated (sic) as Governor's Drive which clearly separates the place plaintiff or intervenors in possession of the property presently occupied by defendant Topacio. Considering further that the plaintiffs and intervenors failed to adduce concrete evidence that the fences put up by defendant Topacio encroaches upon their property, the Court sees no justifiable reason why the same should be ordered demolished.
>
> Notably, the parties including the intervenors failed to file any objection to the aforesaid Sketch Plan and Survey Report within the period granted by the Court. More importantly, intervenors failed to present any evidence to controvert the findings in the Survey Report or to contradict the Sketch Plan. The circumstances obtaining in the case at bar, fail to convince this Court that plaintiff and intervenors were able to adduce

preponderant evidence to support their respective claims and to justify the reliefs prayed for.

xxx xxx xxx "

We sustain the award of attorney's fees in favor of defendant-appellee

Both appellants also maintain that there is no basis for the award of attorney's fees.

Article 2208 (2) of the Civil Code of the Philippines[37] allows the recovery of attorney's fees when a party was compelled to file a suit to vindicate his rights. There is no doubt that defendant-appellee was constrained to litigate and to incur expenses to protect his interest, hence, We sustain the award of attorney's fees in the amount of P100,000.00, Philippine Currency.

WHEREFORE, premises considered, the appeal is DISMISSED. The assailed Decision dated November 18, 2011 of the Regional Trial Court (RTC) of Imus, Cavite, Branch 20 in Civil Case No. 2373-01 is hereby AFFIRMED.

SO ORDERED.

Abdulwahid (Chairperson) and Barza, JJ., concur.

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[1] Penned by Presiding Judge Fernando L. Felicen, Records, pp. 311-316.

[2] Complaint; Ibid., pp. 2-12

[3] Id., pp. 36-39.

[4] Id., pp. 51-52.

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

[6] Id., p. 79.

[7] Letter dated January 8, 2001; Id., p. 83

[8] Manifestation, Id., pp. 80-81.

[9] Manifestation, Id., p. 87.

[10] Id., p. 89.

[11] Id., pp. 105-108.

[12] Id., pp.96-98.

[13] Id., p 103.

[14] Id., p. 110.

[15] Id., p. 112.

[16] Id., pp. 119-129.

[17] Id., p. 132.

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[18] Supra, Note 1.

[19] Id., pp. 322-323.

[20] Id., p.325.

[21] Appellants' Brief; Rollo, pp. 22-28.

[22] Comment on Appellants' Brief; Ibid., pp. 36-42.

[23] Aguilar vs. Spouses Alfaro, G.R. No. 164402, July 5, 2010. Citing Bejar v. Caluag, G.R. No. 171277, February 17, 2007, 516 SCRA 84, 90; Barredo v. Santiago, 102 Phil. 127, 130 (1957). Sps. Cruz v. Torres, 374 Phil. 529, 533 (1999); Bishop of Cebu v. Mangaron, 6 Phil. 286, 291 (1906); Ledesma v. Marcos, 9 Phil. 618, 620 (1908). Encarnacion v. Amigo, G.R. No. 169793, September 15, 2006, 502 SCRA 172, 179; Lopez v. David, Jr., G.R. No. 152145, March 30, 2004, 426 SCRA 535, 543.

[24] Calibre Traders, Inc., et.al. vs. Bayer Philippines, Inc., G.R. No. 161431, October 13, 2010. Citing Spouses Hutchison v. Buscas, 498 Phil. 257, 261 (2005).

[25] Jison vs Court of Appeals, G.R. No. 124853, February 24, 1998. citing See 7 Vicente J. Francisco, The Revised Rules of Court in the Philippines, Evidence (Part II, Rules 131-134), at 2-4, 542-543 [1973]

[26] Heirs of Pasag vs. Spouses Parocha, G.R. No. 155483, April 27, 2007. citing Parel v. Prudencio, G.R. No. 146556, April 19, 2006, 487 SCRA 405; Katigbak v. Sandiganbayan, G.R. No. 140183, July 10, 2003, 405 SCRA 558; Ong v. Court of Appeals, G.R. No. 117103, January 21, 1999, 301 SCRA 387. People of the Philippines v. Alicante, G.R. Nos. 127026-27, May 31, 2000, 332 SCRA 440.

[27] G.R. No. 107493, February 1, 1996. citing Francisco, Vicente J., The Revised Rules of Court of the Philippines, Vol. VII, 1973 ed., p. 495, citing 5 Ency. of Evidence, p. 469. p. 497, citing U.S. v. Solana, 33 Phil. 582 (1916); Dayrit v. Gonzales, 7 Phil. 182 (1906). De Castro v. Court of Appeals, 75 Phil. 834 (1946).

[28] Marked as Exhibit “1” for the defendant; Records (Minutes and Exhibits) pp. 29-30.

[29] Marked as Exhibit “2” for the defendant; Records (Minutes and Exhibits), p. 31.

[30] Supra, Note 6.

[31] Survey Report, Records, pp. 105.108.

[32] Id., pp. 125-128.

[33] Perez vs. Court of Appeals, G.R. No. 162580, January 27, 2006. Citing Nordic Asia Limited v. Court of Appeals, G.R. No. 111159, July 13, 2004, 434 SCRA 195, 198. Pagtalunan v. Tamayo, G.R. No. 54281, March 19, 1990, 183 SCRA 252, 257.

[34] G.R. No. 186045, February 2, 2011. Citing Asia’s Emerging Dragon Corporation v. Department of Transportation and Communications, G.R. Nos. 169914 and 174166, March 24, 2008, 549 SCRA 44, 49. Metropolitan Bank and Trust Co. v. Presiding Judge, RTC Manila, Br. 39, G.R. No. 89909, September 21, 1990, 189 SCRA 820, 824.

[35] Big Country Ranch Corporation vs. Court of Appeals, et.al., G.R. No. 102927, October 12, 1993.

[36] Marked as Exhibits “1” to “1-K”, Records (Minutes and Exhibits), pp. 1-12.

[37] Article 2208 (2) of the Civil Code of the Philippines provides:

" xxx xxx xxx

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

xxx xxx xxx "

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