

ANDRES M. GUERRA, ANCHETA M. GUERRA-HERRERA, IRENE B. GUERRA-BERNARDO ALLEN B. GUERRA, ANGELITA B. PONCIANO, FLORENCIO C. BACALZO, JUANITO MANDANAS, JAIME B. MANDANAS, JOSEPHINE...

SP No. 95994, September 12, 2008

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Court of Appeals

Petition for Review, under Rule 42 of the Rules of Civil Procedure, of the Decision dated November 23, 2005 of the Regional Trial Court, Branch 9, Balayan, Batangas, affirming with modification the Municipal Trial Court's Decision in Civil Case No. 4407 entitled "Andres M. Guerra, et al., Plaintiff-Appellees, versus Maximina B. Pasia and Jorge B. Pasia, Defendant-Appellants," for Partition, Specific Performance and Damages. The dispositive portion of the appealed Decision states:

WHEREFORE, premises considered, the decision of the lower court is hereby modified deleting the award of attorney's fees and the order to demarcate the area covered by the alleged right of way and affirmed the rest in toto.

SO ORDERED.[2]

The subject of this case is a 558 square-meter residential lot, known as Lot 226 A-E, Located along J.P. Rizal Street in Tuy, Batangas which belonged to the deceased spouses Monatano Bacalzo and Simeona Carandang and inherited by the petitioners, their children namely: Dominga, Argueda, Fe Esperanza, Beatriz, Angelita and Florencio Bacalzo, all of whom are likewise deceased with the exception of Angelita, married to Godofredo Ponciano, and Florencio C. Bacalzo, married to Bituin Bacalzo, Their eldest sister, respondent Maximina B. Pasia, is substituted by her children Jorge and Cristino.

Simeona Carandang died in February 1945 while Montano Bacalzo died in March 1954. In 1956, Maximina and her siblings renovated the old bamboo and nipa residential house built by their parents with materials consisting of wood, cement and galvanized iron. Some of the materials were taken from their father's stockyard; the rest were bought with money contributed by the siblings although Maximina had the bigger monetary contribution. In later years, as the siblings contracted marriages, only Maximina and her family remained in the renovated house, In 1982, Beatriz and her husband Andres Guerra, with the tacit agreement of her siblings, constructed their own house on a 78 square-meter portion of the lot right beside the house occupied by Maximina and her family. In 1986, Angelita and her husband Godofredo Ponciano built their home on a 55 square-meter portion of the property. Within the same year, Fe Esperanza and her husband Juanito Mandanas also established their home on an 88 square-meter portion of the land. The remaining 270 square meters were reserved for Dominga, Agueda and Florencio.[3]

In 1998, Maximina and her son Jorge again renovated the old family residential house, erecting a tall concrete wall contiguous to the wall of the house of Beatriz. Two windows on the elevated concrete wall overlooked Beatriz's house. Maximina's new roof overlapped Beatriz's roof where Maximina laid a pipe or conductor to block

the rainwater from falling thereon. Maximina's son, respondent Jorge Pasia, used a portion allotted for the right of way to park his car causing inconvenience to the occupants of the interior portions who could not pass through with ease. All these minor irritants caused Beatriz's husband, Andres Guerra, to request that the problems be rectified immediately. Defendant-respondents paid him no heed.[4]

On May 5, 2003, petitioners filed the herein case for partition, specific performance and damages in the Municipal Trial Court of Tuy, Batangas against Maximina and Jorge Pasia. In their Complaint,[5] petitioners averred that they exerted honest efforts to resolve the dispute with respondents, they being members of the same family but to no avail as the respondents refused to partition the property.

On May 3, 2005, the MTC rendered judgment[6] in favor of petitioners disposing as follows:

WHEREFORE, in view of the foregoing, it is hereby ordered:

- That the estate of the deceased spouses Montano Bacalzo and Simeona Carandang described in paragraph 7 of the complaint, excepting the area for the right of way, be partitioned among the parties-litigants and that the parties submit to the court the corresponding deed of partition for approval.

- That once the parties shall have agreed to the respective shares of each heir, all encumbrances on any house of any co-owner by another house of another co-owner be removed particularly between the houses of the late Beatriz Guerra and the defendants as follows:

- a) That the defendants remove at their expense the roof (galvanized iron sheet) overlapping the house of the late Beatriz Guerra;

- b) That the defendants remove the conductor pipes laid on the top of the roof of Beatriz Guerra; and

- c) That the defendants close the two (2) steel windows on the wall contiguous to the wall of the house of Beatriz Guerra.

- That the parties-litigants demarcate the area covered by the right of way by a hollow block wall, and

- That the defendants pay the plaintiffs the amount of Thirty Thousand Pesos (P30,000.00) for attorney's fees.

SO ORDERED.

Respondents appealed before the Regional Trial Court. Meanwhile Maximina died and was substituted by her sons Jorge and Cristo Valentino Pasia. On November 23, 2005, the RTC rendered the assailed Decision affirming the decision of the MTC but deleting the award for attorney's fees and the order segregating the right of way.

Petitioners disagreed with the modification and filed this petition for review with the following assignment of errors:

ASSIGNED ERRORS

- THE REGIONAL TRIAL COURT COMMITTED ERROR IN DELETING FROM THE DECISION OF THE MUNICIPAL TRIAL COURT (MTC), TUY, BATANGAS, THE ORDER TO DEMARCATHE THE RIGHT OF WAY WITH HOLLOW BLOCK WALL;

- THE REGIONAL TRIAL COURT COMMITTED ERROR IN DELETING FROM THE DECISION OF THE MUNICIPAL TRIAL COURT (MTC), TUY, BATANGAS, THE AWARD OF ATTORNEY'S FEE TO THE PLAINTIFFS.[8]

The petition lacks merit.

On the first assigned error, a careful reading of the Decision would have sufficiently resolved plaintiff-petitioners'

misgivings. The pertinent portion thereof state:

Anent the findings of the lower court to demarcate the area covered by the right of way, the same should be done after partition, since as of the moment they are all entitled to the said undetermined portion of the lot as co-owners thereof and must agree on the area that should belong to each of them. To allow the demarcation of the same at this stage would be premature since no final determination of the respective portion of the shares of the heirs have been made such that it could be said that no changes would be created on the area occupied by the other heirs.[9] (emphasis Ours)

From the foregoing, it is readily seen that the segregation or demarcation of the right of way is merely suspended until the submission and approval of the deed partition by the siblings.

On the other assigned error, we find the deletion of the MTC's award for attorney's fees reasonable. The general rule is that attorney's fees may be awarded when parties are compelled to litigate or to incur expenses to protect their interest by reason of an unjustified act of the opposing party.[10] In the case at bench, petitioners failed to prove their allegation that they had to resort to the courts and litigate because of respondent's malicious and intractable refusal to partition the property. In fact, as found by the MTC, affirmed by the RTC, respondents had impliedly consented to an informal partition as evidenced by the fact that petitioners were able to construct and establish their respective family homes, on specific portions of the property although in varying measurements.[11] Good faith is always a question of intention and is determined by outward acts[12] which in the case at bench, had been shown through respondent's tacit agreement to petitioners' use and occupation of their respective lots within the subject property. Moreover, it is settled that no premium should be placed on the right to litigate, hence not every winning party is entitled to an automatic grant of attorney's fees.[13] The general rule is that attorney's fees are not recoverable unless a party can show that he falls under any of the instances enumerated in Article 2208 of the Civil Code.[14] We agree with the court a quo that under the circumstances prevailing in this case, petitioners do not qualify.

To restore peace and harmony between the parties, they are urged to immediately execute their deed of partition. It is hoped that this case with its consequent hassles and heartaches over many years will have taught this family the precious lesson that they must live peaceably with each other.

WHEREFORE, finding no reversible error in the appealed judgment, We hereby deny the instant Petition. The assailed Decision is AFFIRMED.

SO ORDERED.

Abdulwahid and Dy-Liacco Flores, JJ., concur.

[1] Rollo, pp. 127-132.

[2] Id, p. 132.

[3] Id., pp. 67, 81, 106.

[4] Id., p. 105.

[5] Id., pp. 103-111.

[6] Id., pp. 103-111.

[7] Id., p. 111.

[8] Id., p. 13.

[9] Id., RTC Decision dated November 23, 2005 p. 131.

[10] Philippine National Bank vs. RBL Enterprises, Inc., 430 SCRA 299, 310 (2004).

[11] Supra, see text for note 5; of Sketch Plan, p. 43.

[12] Tan vs. Bantegui, 473 SCRA 663, 676 (005), of Tolentino, Vol. 2 (1992) p. 45.

[13] Orosa vs. Court of Appeals, 329 SCRA 652, 664 (2000).

[14] Tan vs. Mandap, 429 SCRA 711, 721 (2004).

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