MILAGROS P. ORTIGAS, LOURDES P. BENIPAYO, HERNANDO PINEDA, JR., KATHRYN P. DELA SERNA, MA. THERESA BIACO, EDMUNDO A. CHAVES, GLORIA JEAN CHAVES, ARABELLA C. FERNANDO, ZENAIDA C....

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SINGH, J.:[**]

This is an appeal from the Decision[1] dated 20 August 2010 of the Regional Trial Court (RTC), Branch 41, Cagayan de Oro dismissing the Complaint[2] in Civil Case No. 2002-233 for "Quieting of Title, Recovery of Possession and Damages" dated 14 August 2008, entitled "Milagros P. Ortigas, Lourdes P. Benipayo, Hernando Pineda, Jr., Kathryn P. De la Serna, Ma. Teresa C. Biaco, Edmundo A. Chaves, Gloria Jean Chaves, Arabella C. Fernando, Zenaida C. Dela Llana, Susan Chaves and Isabel R. Veloso (collectively referred to as plaintiffs-appellees) v. Santiago Quintana, Sr. (Quintana), Noel Nagpakan, John Doe Daligdig, Estanilao Olingay, Lito Bontuyan, Ernesto Pablo, Ronnie Latoja, Fortunato Bonbon, Eduardo Tigley, Roel Menoro, Fructuoso Lawas, Antonio Pingkain, Leonardo Estrera, Jr., John Doe Carias, Salvador Peligro, Antonio Redondo, Fe Cafe, Ernesto Laurel, Benjamin Codilla (Codilla), Rolando Arabia, Jocelyn Gonzales, John Doe Guerta, Exequiel Alaba and Restituta Alaba (Alaba), Manuel/ Lolita Abasolo, Carlito Cabanatuan, Judith/Jessie Gayramara, Allan Fernandez, Carlito Litanon, Liberato Pendong, John Doe Diaz and Alfredo Magno, Sr. (Magno), Danilo Salvacion and Maria Dio."

The Factual Antecedents

The Court adopts the findings of fact of the RTC:[3]

> "Plaintiffs are registered owners of ten (10) parcels of land situated at Bolocboloc and Suntingon, Barangay Bugo, Cagayan de Oro City. The subject lands are the following:
>
> - Lot 4-B Pcs-10-001414, containing 4,000 square meters registered in the name of Salome R. Veloso under TCT No. T-124355;
>
> - Lot 5, Pcs-10-001414, containing 5,000 square meters registered in the name of Gloria R. Chaves under TCT No. T-105627;
>
> - Lot 6, Pcs-10-001414, containing 5,000 square meters registered in the name of Trinidad R. Pineda under TCT No. T-105628;
>
> - Lot 7, Pcs-10-101414, containing 2,308 square meters registered in the name of Milagros P. Ortigas under TCT No. T-105626;
>
> - Lot 8, Pcs-10-001414, containing 4,893 square meters registered in the name of Milagros P. Ortigas under TCT No. T-105630;
>
> - Lot 9, Pcs-10-001414, containing 14,158 square meters registered in the name of Salome R. Veloso under TCT No. T-105631;

- Lot 10, Pcs-10-001414, containing 14,158 square meters registered in the name of Gloria R. Chaves under TCT No. T-105632;

- Lot 11, Pcs-10-001414, containing 14,159 square meters registered in the name of Trinidad R. Pineda under TCT No. T-105633;

- Lot 15, Pcs-10-101414, containing 44,851 square meters registered in the names of Trinidad Pineda, Efigenia Reyes, Gloria Chaves and Salome Veloso under under TCT No. T- 105637;

- Lot 16, Pcs-10-001414, containing 204,561 square meters registered in the names of Trinidad Pineda, Efigenia Reyes, Gloria Chaves and Salome Veloso under TCT No. T- 105638;

which parcels of land have a combined assessed value of P272,280.00.

The answering defendants are the owners of the following parcels of land adjoining plaintiffs' properties:

NAME

LOT NO.

TITLE/TD NO.

AREA

Quirico Alaba,
represented by
Exequiel Alaba

19722, Cad-369-D

P-3660

4,624 sq.m.

Benjamin Codilla 19724, Cad-369-D P-936 46,433 sq.m.

Santiago Quintana, Sr. 19709, Cad-369-D TD-014739/ TD-014062 37,394 sq.m.

19708, Cad-369-D P-2736 18,728 sq.m.

19707, Cad-369-D P-3346 8,006 sq.m

Alfredo Magno, Sr. 1, Pcs-10-00173 T-112775 102,452 sq.m.

Plaintiffs claim that more than a year prior to the filing of this case, answering defendants or their representatives occupied portions of the land owned by the plaintiffs. They demanded for the defendants to vacate the premises but defendants refused; thus, plaintiffs filed a case before the Lupon Tagapamayapa of Barangay Bugo, Cagayan de Oro City. However, no settlement was reached by the parties; hence, this case.

Defendant Benjamin Codilla maintains that the land he is occupying has been owned by his ancestors since 1957, that he occupies the land in the concept of an owner, and that he is in open and continuous possession of the subject land.

Defendants Heirs of Quirico Alaba assert that they are the owners of the land they are occupying as the same is covered by Original Certificate of Title No. P-3360 in the name of Quirico Alaba, their predecessor-in-interest, and that they had occupied the land since the lifetime of their said predecessor-in-interest.

Defendant Santiago Quintana, Sr. avers that he is the registered owner of Lots No. 19707, 19708 and 19709 with

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corresponding Original Certificates of Title Nos. P-3346, P-27368 and P-4008. He claims to have been in actual possession of these parcels of land since 1969.

Defendants Judith Gayramara, Jessie Gayramara, Allan Fernandez and Carlito Litanon claim that they are the owners of the lots they occupy as they had bought them from Quirico Alaba on May 26, 1960. Defendants Jessie and Judith Gayramara further argue that a case for annulment/cancellation of title had been filed against the plaintiffs herein before RTC-Branch 17, Cagayan de Oro City.

Defendant Alfredo Magno, Sr. claims that he is the registered owner of the land he occupies as evidence by Transfer Certificate of Title No. T-112775 issued on September 24, 1996, with an area of 102,452 square meters.

When the case was called for Pre-trial on August 25, 2003, the parties agreed to the appointment of a commissioner to conduct a relocation survey over the subject parcels of land. The Court appointed Engr. Benigno Manlangit, who died before he could render a report. Thus, the Court appointed Engr. Crisanto M. Bagares as the new commissioner to conduct the relocation survey.

On September 19, 2005, Engr. Bagares submitted a Commissioner's Report dated September 13, 2005. The Commissioner's Report was approved by the Court on January 9, 2006 as there were no objections from the parties.

The Commissioner's Report states:

“COMES NOW, the herein Court Commissioner, unto this Honorable Court most respectfully render (sic) report on the survey conducted on the properties subject of the above-captioned case as follows, to wit:

1.That the undersigned was duly appointed as Court Commissioner for the above-captioned case and have (sic) duly taken his oath on the 17[th] of April 2004;

2. That per records of this case, the properties subject of this case are Lots 4, 5, 6, 7, 8, 9, 10, 11, 15 & 16, Pcs-10-001414 located at Bugo, Cagayan de Oro City covered by respective Transfer Certificate of Titles (sic) registered in the names of the plaintiffs;

3. That with due notice to the parties, their respective counsels copy furnished the Branch Clerk of Court the first survey was conducted on January 26 – 27, 2005, however, it was not completed due to the actuation of Mr. Santiago Quintana, Sr. who was cooperative the first day when we started the survey but when we were inside his claimed property the next day, he became violent and drove as (sic) out. The survey was then suspended until the matter is settled. A partial report was then submitted for consideration by the Honorable Court;

4. That in compliance to the Court Order dated July 8, 2005, the survey was continued with two (2) police escorts on July 27 – 29, 2005. We first ask permission from Mr. Santiago Quintana to pass through his claimed property to continue the survey ordered by the Court. However, he was still violent asking copies of the tax payment receipts and titles of the plaintiffs and he told us that we were paid and working for the plaintiffs. We were not able to enter his claimed property but we proceeded (sic) the survey on the eastern and western adjoining lots of (sic) what he claims;

5. That the result of our survey is indicated in the attached sketch plan marked as Annex 'a' and submitted as an integral part of the herein report with the individual claims of the defendants described as follows:

CLAIM OF DEFENDANT SANTIAGO QUINTANA, ET AL.
Colored-Brown

“The claim of the above-named defendants are the whole of Lots 8, 9, 10, 11 and portion of Lots (sic)16,

Pcs-10-001414, containing a total area of approximately FIFTY FIVE THOUSAND SIX HUNDRED EIGHTY SIX (55,686) SQUARE METERS. At the southern boundary of the above-mentioned lots adjoins (sic) Lots 19707, 19708, and 19709, Cad. 369-D owned by defendant Santiago Quintana per record of this case. Along the common boundary of the above-mentioned lots, the terrain is mountainous, planted mainly with coconuts about 50 years old, patches of bananas and some fruit trees and Gmelina. Defendant, Santiago Quintana and members of his family are residing and built their residential houses on Lots 9 & 10 together with several persons, a basketball court, Roman Catholic Chapel and at the frontage of the concrete road designated as Lot 19, Pcs-10-001414, the houses that we were able to identify are:

Alfredo Daven (CHB maker) FlorentinoMandapitan

Gil Batencilla (7th Day Adventist Church) Estanislao Olingay

Eddie Bajao Renato Daligdig

Carlito Bantayan Violita Olingay

Noel Castillon Doroteo Lacaba

Narciso Gamba Prudiente Kahilis

Mani Limbag Alberto Vargas

“All houses are inside the shaded area marked SEVERAL HOUSES inside Lot 9 & 10. Other owners of houses in the shaded area cannot be accounted for due to resistance of Mr. Santiago Quintanna to the survey. Even the Police officers escorting us cannot persuade him to allow us to enter his claim (sic) in the litigated property.

CLAIM OF DEFENDANT BENJAMIN CODILLA, ET AL.
Enclosed by heavy red lines

'The claim of the above-name defendant on (sic) the litigated property are (sic) portions of Lot 16, the whole of Lot 7 and portion of Lot 6, Pcs-10-001414 containing a total area of FOURTY (sic) SEVEN THOUSAND FOUR HUNDRED TWENTY (47,420) square meters approximately. Planted to coconuts about 50 years old more or less, few mangoes and bananas with a mountainous to rolling terrain. The said defendants, Mr. Jonathan Diaz and Danilo Codilla owns (sic) houses inside Lot 6 claimed by the said defendant while Mr. Noel Guerta, Eduardo Codilla and Alberto Sante each built their residential houses on Lot 7 likewise claimed by defendant Benjamin Codilla. That the southern boundary of that portion of Lot 16 claimed by defendant Codilla subject of this case are Lots 19723 & 19724, CAD.369-D owned by defendant Benjamin Codilla, where his mango plantations, coconuts and bananas are located.'

The defendant Codilla and his family are cooperative to the survey team, guide us to the boundaries of their claim and offered food and snacks.

CLAIM OF DEFENDANT ALFREDO MAGNO, ET AL.,
Colored Yellow and Green

'The claim of defendant Alfredo Magno is a portion of Lot 15, Pcs-10-001414 containing an area of TWO THOUSAND SEVEN HUNDRED SIXTEEN (2,716) square meters approximately, the house of Mr. Danilo Salvacion and Amparo Dio are built also inside the litigated portion of Lot 15. It appears that the 2 PS cylindrical concrete monuments planted inside Lot 15 mislead (sic) the defendants to believe the property of Mr. Alfredo Magno extends until that boundary monuments. Mr. Alfredo Magno owns Lot 1, Pcs.10-001773, the southern boundary of the litigated portion of Lot 15. Mr. Danilo Salvacion is cooperative with the survey team, pointed out

the existing boundary corners in the vicinity.'

CLAIM OF DEFENDANTS HRS. OF QUIRICO ALABA, ET AL.,
Colored Orange

'This claim of the above defendants are two (2) portions of Lot 16, and portions of Lots 4, 5, & 6, all of Pcs-10-001414 containing an area of 13,515 and 3,200 square meters respectively. And marked as Parcel '1' and Parcel '2' in the attached sketch plan.

Parcel No. '1' is a portion of Lot 16, 4, 5 & 6, all of Pcs-10-001414 and persons who reside and own houses inside are as follows:

Noel Alaba - inside Lot 4, Pcs-10-001414

Edwin Alaba - inside Lot 5, Pcs-10-001414

Marlon Cabataan - inside Lot 16, Pcs-10-001414

Gilbert Alaba - inside Lot 16, Pcs-10-001414

Gemma Calago - inside Lot 16, Pcs-10-001414

Lolita Abasolo - are inside Lot 16 and the other one inside Lot 5, Pcs.10-001414 (2 houses)

Roger Alaba - inside Lot 5, Pcs-10-001414

Exequil Alaba - inside Lot 5, Pcs-10-001414 representative of the Hrs. of Quirico Alaba

Roberto Generali - inside Lot 5, Pcs-10-001414

'This parcel of planted to Gmelina, corn, coconuts and bananas.'

Parcel No. '2' is portion of Lot 16, Pcs-10-001414, mountainous planted with coconuts and bananas. The southern boundary is Lot 19722, CAD. 369-D covered by OCT No. P-3360, registered in the name of Quirico Alaba. The herein defendants are cooperative to the survey team and acted as guide to point out their claims.

CLAIM OF DEFENDANT JUDITH / JESSIE GAYRAMARA
Colored Green

'The claim of the above-named defendants is a portion of Lot 16, Pcs-10-001414 containing an area of SEVENTEEN THOUSAND FIVE HUNDRED TWENTY (17,520) square meters approximately. Owners of houses found therein are the following:

Liberato Pendang
Judith Gayramara
Carlito Litanon and
Formerly Diaz, now Galarpe

The area is planted with old coconuts and bananas. They are cooperative to the survey team, assist in pointing out the boundary corners of their claim. The terrain is partly mountainous and partly flat.

That the parties are requested to deposit to the branch Clerk of Court their respective balance of the Commissioner's fees or to the undersigned on or before the next hearing of the case.

WHEREFORE, this commissioner's report together with the sketch plan marked Annex 'A' and lot descriptions of Lots 1 to 19, Pcs-10-001414 marked Annex 'B' submitted as an integral part of the herein report is most

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respectfully submitted for the consideration and evaluation of the Honorable Court."

On 20 August 2010, the RTC rendered the appealed Decision in favor of plaintiffs-appellees, the fallo of which reads:

> "WHEREFORE, premises considered, the court finds plaintiffs to be the rightful possessors of the litigated properties, being its true and rightful owners. Accordingly, defendants are ordered to vacate the same and remove any improvement they had introduced thereon within 30 days from the finality of this Decision.
>
> The claim for damages, attorney's fees and the counterclaims are dismissed for insufficiency of evidence.
>
> No pronouncement as to costs.
>
> SO ORDERED."[4]

Hence, defendants-appellants Heirs of Quirico Alaba,[5] defendant-appellant Santiago Quintana, Sr.[6] and defendant-appellant Benjamin Codilla[7] filed their respective Notices of Appeal.

The Issues

The defendants-appellants' respective formulation of the issues8 center on the following questions:

> I.
> DID PLAINTIFFS-APPELLEES PROVE BY PREPONDERANT EVIDENCE NOT ONLY THEIR CLAIM OF OWNERSHIP, BUT OF ENCROACHMENT BY THE DEFENDANTS-APPELLANTS?
>
> II
> WILL PRESCRIPTION RUN AGAINST A TORRENS TITLED LOT?
>
> III
> ARE PLAINTIFFS-APPELLEES GUILTY OF FORUM SHOPPING?

The Ruling of the Court

Preponderant evidence
support the RTC Decision.

In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence.[9] By preponderance of evidence is meant that the evidence adduced by one side is, as a whole, superior to that of the other side. Essentially, preponderance of evidence refers to the comparative weight of the evidence presented by the opposing parties. As such, it has been defined as "the weight, credit, and value of the aggregate evidence on either side," and is usually considered to be synonymous with the term greater weight of the evidence or greater weight of the credible evidence. It is proof that is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[10]

Article 476 of the New Civil Code provides:

> "Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding, which appears valid or effective but is in truth and in fact invalid, ineffective, voidable, or enforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title."

Article 477 of the same Code states:

> "The plaintiff must have legal title or equitable title to, interest in the real property which is the subject-matter of the action. He need not be in possession of said property."

Quieting of title is a common law remedy for the removal of any cloud upon or doubt or uncertainty with respect to title to real property. For an action to quiet title to prosper, two indispensable requisites must concur, namely: (a) plaintiff or complainant has a legal or equitable title to or interest in the real property subject of the action; and (b) the deed, claim, encumbrance, or proceeding claimed to be casting doubt on his title must be shown to be in fact invalid or inoperative despite its prima facie appearance of validity or legal efficacy.[11] The competent court is tasked to determine the respective rights of the complainant and other claimants to place things in their proper place and to make the one who has the right would see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce any desired improvements, as well as use, and even abuse the property.[12]

In the instant case, plaintiffs-appellees were able to prove, by preponderance of evidence, their claim that defendants-appellants encroached upon their respective parcels of land.

Plaintiffs-Appellees submitted Transfer Certificate of Title No. 124355[13] (Lot 4-B, consisting of 4,000 sq. m.), Transfer Certificate of Title No. T-105627[14] (Lot 5, consisting of 5,000 sq. m.), Transfer Certificate of Title No. T-105628[15] (Lot 6, consisting of 5,000 sq. m.), Transfer Certificate of Title No. 105629[16] (Lot 7, consisting of 2,308 sq. m.), Transfer Certificate of Title No. 105630[17] (Lot 8, consisting of 4,893 sq. m.), Transfer Certificate of Title No. 105631[18] (Lot 9, consisting of 14,158 sq. m.), Transfer Certificate of Title No. 105632[19] (Lot 10, consisting of 14,158 sq. m.), Transfer Certificate of Title No. 105633[20] (Lot 11, consisting of 14,159 sq. m.), Transfer Certificate of Title No. 105637[21] (Lot 15, consisting of 44,851 sq. m.); and Transfer Certificate of Title No. 105638[22] (Lot 16, consisting of 201,861 sq. m.). These titles established plaintiffs-appellees' ownership over the subject properties.

On the other hand, defendants-appellants Alaba, Codilla, Magno, Quintana and Gayramara also presented proof of their ownership of certain parcels of land which the evidence established as Lot 19722 Cad-369-D under Transfer Certificate of Title No. P-3660 (Alaba); Lot 19724 Cad-369-D under OCT No. P-936 (Codilla); Lot 1 Pcs-10-00173 under Transfer Certificate of Title No. 112775 (Magno); and Lots 19707, 19708 and 19709 under OCT Nos. P-3346 and P-2736, and Tax Declaration Nos. 014739 and 014062 (Quintana).

In the case a quo, there was no question about the respective titled lots of plaintiffs-appellees and defendants-appellants. The only question was whether defendants-appellants were occupying their properties or those of plaintiffs-appellees.

To settle this issue of fact, the parties agreed to the RTC's appointment of a Commissioner to conduct a relocation survey. The Commissioner conducted the survey using the titles and tax declarations of all parties. Thereafter, he submitted his report to the RTC which approved it after giving the parties sufficient opportunity to comment.

Significantly, defendants-appellants agreed to have the court-appointed Commissioner verify the factual issue of encroachment. Given the opportunity, defendants-appellants did not question the accuracy and veracity of the Commissioner's Report[23] dated 13 September 2005 submitted by Engr. Crisanto M. Bagares,[24] which confirmed that defendants-appellants extended beyond the boundaries of their lands resulting to encroachment on plaintiffs-appellees' lands. The RTC interpreted the Commissioner's Report, as follows:

> “a. Santiago Quintana encroached on Lot 8 owned by Milagros P. Ortigas under TCT No. 105630; on Lot 9 owned by Salome R.Veloso under TCT No. 105631; on Lot 10 owned by Gloria R. Chavez under TCT No. 105633 (should be TCT No. 1054632); on Lot 11 owned by Trinidad R. Pineda under TCT No. 105633; and on Lot 16 owned by Trinidad R. Pineda, Efigenia Reyes, Gloria Chavez and Salome Veloso under TCT No. T-105638. The encroachments at the southern boundary of the above-mentioned lots which adjoin Lots 19707, 19708 and 19709, Cad. 369-D owned by defendant Santiago Quitana sum up to FIFTY FIVE THOUSAND SIX HUNDRED EIGHTY SIX (55,686) square meters;

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> b. Defendant Benjamin Codilla encroached on the whole Lot 7 owned by Milagros P. Ortigas under TCT No. T-105632, and on portions of Lot 6 owned by Trinidad R. Pineda under TCT No. T-105631 and of Lot 16 owned by Trinidad R. Pineda, Efigenia Reyes, Gloria Chavez and Salome Veloso under TCT No. T-105638. The encroachments total to FOURTY (sic) SEVEN THOUSAND FOUR HUNDRED TWENTY (47,420) square meters;
>
> c. Defendant Alfredo Magno encroached on a 2,716-sq. m. portion of Lot 15 owned by plaintiffs Trinidad Pineda, Efigenia Reyes, Gloria Chaves and Salome Veloso under TCT No. No. T-105637;
>
> d. Defendant Heirs of Quirico Alaba encroached on 13,515-sq. m. of (sic) portion of Lot 4 owned by Salome R. Veloso under TCT No. T-124355, Lot 5 owned by Gloria R. Chavez under TCT No. T-105627, and Lot 6 owned by plaintiff Salome R. Veloso under TCT No. T-105631, and a 3,200-sq.m., portion of Lot 16 owned by Trinidad R. Pineda, Efigenia Reyes, Gloria Chavez and Salome Veloso under TCT No. T-105638; and
>
> e. Defendant Jessie and Judith Gayramara encroached on 17,520 sq. m. of portion of Lot 16 owned by Trinidad R. Pineda, Efigenia Reyes, Gloria Chavez and Salome Veloso under TCT No. T-105638."

These findings are unequivocal. The Sketch Plan[25] delineates the respective properties of plaintiffs-appellees and those of Alaba, Codilla, Magno, Quintana and the Gayramaras. It clearly depicts the boundaries of the parties' respective properties based on the technical descriptions of the titles of the parties. More importantly, it shows the encroachment on plaintiffs-appellees' properties by defendants-appellants and the exact extent of the same. The Sketch Plan is actually self-explanatory and the results of the relocation survey as illustrated in the Sketch Plan are beyond doubt.

In corroboration of the Commissioner's Report, Engr. Rey Almerol, a Geodetic Engineer hired by plaintiffs-appellees to conduct a separate survey, testified:

> "Atty. Velez: These ten lots covered by the ten titles, Exhibits 'A' to 'J', owned by the plaintiff already issued in favour of the plaintiff, are they located back to each other or near each other?
>
> Engr. Almerol: They are adjoining each other.
>
> Q:
>
> So, adjoining one another?
>
> A:
>
> Adjoining one another, yes.
>
> Q:
>
> Did she mention who are these persons to you?
>
> A:
>
> Yes, sir.
>
> Q:
>
> Please tell the Court their family names?
>
> A:
>
> Gayramara, Codilla, Magno, Quintana and Alaba.
>
> Q:

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These five (5) persons mentioned, do they own property within that vicinity of the defendant?

A:

Yes.

Q:

How do you know, did you see any of their titles or Tax Declaration?

A:

No.

Q:

But you know that they are owners of the adjoining lots?

A:

Yes, they are adjoining lots and then by the record of DENR, there is a lot there titled.

Q:

Did you make a relocation survey as requested by Mrs. Ortigas?

A:

Yes.

Q:

And did you reduce that relocation in writing?

A:

Yes.

Q:

I am showing to you a Sketch Plan already marked Exhibit 'K' in the pre-trial, please tell the Honorable Court, at the Sketch Plan you made after relocating the ten lots belonging to the plaintiffs and the lots belonging to the defendants, is that the relocation survey?

A:

Yes.

Q:

Did you place there when you conducted the relocation survey?

A:

Yes.

Q:

When?

A:

May 14 and 16, 2002.

Q:

Did you authenticate this survey by placing your signature thereon?

A:

Yes.

Q:

I am showing to you again Exhibit 'K', Mr. Almerol, you said that there are ten lots you relocated and you have been identifying these titles, will you show to Court by pointing at the outer boundaries of lot 16, just point what are the outer boundaries of lot 16?

A:

This one up to this gray.

Interpreter: Witness pointed to a portion of a lot colored gray, brown, blue, green and a shaded portion.

Atty. Velez : Please point in Exhibit 'K' the outer boundaries of lot 4?

A:

This one.

Atty. Velez to Court: We make the following manifestation Your Honor, the witness has indicated on Exhibit 'K', the outer boundaries of lot 16.

Atty. Velez: How about lots 4, 5, 6 and 7, please point to the Court which are the outer boundaries of lots 4, 5, 6 and 7?

A:

This one.

Interpreter: Witness pointed to a portion of a lot in brown color. Witness pointed to TCT # 124355, TCT# 105637, T-105628 and T-105629.

Atty. Velez: Will you point to the outer boundaries of lots 8, 9, 10 and 11?

Interpreter: Witness pointed to the shaded portion colored green of T-105633, T-105632, T-105631 and T-105630.

Atty. Velez: And lastly, please point to the outer boundary of lot 15?

A:

This one.

Interpreter: Witness pointed to the shaded portion colored yellow, T-105637.

Atty. Velez: I am showing to you Exhibit “K”, a line from east to west, here up to there, will you kindly inform this Honorable Court what does this line represents?

A:

Represents boundary line between Milagros Ortigas and the defendants.

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Q:

What is this line?

A:

Composed of south portion of the land, southern boundary.

Q:

So, in other words, all the lots north this line that you are pointing to belongs to the plaintiff, is that correct?

A:

Yes.

Q:

And who are the owners of the lots south of the line?

A:

Alaba, Quintana, Codilla.

Q:

Will you please repeat that, this lot southern boundary line shaded blue belongs to whom?

A:

Alaba.

Court: What is the lot number?

A:

OCT# P-360.

Atty. Velez to Witness (Q): South of this boundary line, there is a lot there shaded pink, who owns this portion?

A:

Benjamin Codilla.

Q:

Will you please mention to the Court, the title number?

A:

TCT P-936.

Q:

Also south of the same line is a lot shaded green, whose lot is this?

A:

Quintana.

Q:

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Please tell the Honorable Court the title number?

A:

No title number.

Q:

But there is a number here?

A:

Tax Declaration.

Court: What is that Tax Declaration?

A:

01206739.

Atty. Velez: And the next lot going to west, a shaded yellow, south of the boundary line, whose lot is this portion shaded yellow?

A:

Alfredo Magno.

Q:

Is there a title number there?

A:

There is none.

Q:

You said that you were hired by Mrs. Ortigas to find out if this five persons and their families have encroached into the lots owned by the plaintiff, what was your findings?

A:

This portion is occupied by Quintana, Alaba and Gayramara.

Interpreter: Witness pointed to the portion shaded blue of the sketch plan.

Atty. Velez: How about this portion shaded brown?

A:

Portion also occupied by Benjamin Codilla.

Q:

How about this portion shaded green, who was occupying that lot?

A:

Quintana.

Q:

And this portion shaded yellow, north of boundary line, who was occupying that?

A:

Alfredo Magno."[26] (emphasis supplied)

Atty. Rodriguez, counsel for defendant-appellant Magno conducted cross-examination upon Engr. Almerol, thus:

"Q:

But this one with yellow marking portion of land occupied by Alfredo Magno, in other words that portion which is occupied by Alfredo Magno is this small portion?

A:

No, the lot 15, the shaded portion.

Q:

The lot 15 shaded portion?

A:

The lot 1.

Q:

Yes, but in your shaded portion # 15, it states there Trinidad Pineda, et al.? Trinidad Pineda is 15, while portion of land occupied by Alfredo Magno is this one, which is dotted, not this one which is not dotted, I am asking where is that occupied?

A:

This portion.

Interpreter: Witness pointed to the lot 15 shaded yellow.

Atty. Rodriguez (Q): But why is it that in your Exhibit "K" it is stated that lot 15 is occupied by Trinidad Pineda, et al.?

Atty. Velez to Court: Not occupied Your Honor, owned.

Atty. Rodriguez to Court: I am not asking ownership, I am asking occupation.

Atty. Rodriguez (Q): Now, in your portion of land occupied by Alfredo Magno is this one?

Court:

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The Court is aware that the shaded portion as testified by this witness occupied [owned] (sic) by Trinidad Pineda is occupied by defendant Magno. The unshaded portion as testified to by this witness is the lot owned and occupied by Magno but the shaded portion overlaps that of the property of Trinidad Pineda and which is also occupied by Magno, that was the testimony of this witness, right?

Atty. Rodriguez to Witness: Alright, show to me that portion occupied by Alfredo Magno?

A:

This one.

Q:

Why is it that in your Exhibit 'K' it only stated Trinidad Pineda, how about this one, this smaller portion, who occupied this one?

A:

The land Alfredo S. Magno.

Q:

How about this land that is shown.

A:

It is also occupied by Alfredo Magno part of this title.

Q:

Yes, but this portion occupied by Alfredo Magno is how many square meters?

A:

More or less 1,000 sq. m."[27]

As counsel for defendant-appellent Alaba, Atty. Pajarillo cross-examined Engr. Almerol:

"Q:

You said earlier that the basis of your survey is the titles given to you by the complainant in this case, are the titles the only basis that you made or do you have any other basis for the survey?

A:

Plans coming from the DENR, subdivision plans.

xxx xxx xxx

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Q:

Mr. witness, the approximate area of the defendant that you said that they occupied and encroached the area of the complainant, what was the basis of that survey that you have taken, the area that were allegedly occupied by the defendant?

A:

By the technical description of titles that we are going to survey, we found out that this is the result of the past survey that is the actual possession of the Alaba.

Q:

Mr. witness, the approximate area of the defendant that you said that they occupied and encroached the area of the complainant, what was the basis of that survey that you have taken, the area that were allegedly occupied by the defendant?

A:

By the technical description of titles that we are going to survey, we found out that this is the result of the past survey that is the actual possession of the Alaba.

Q:

But you were not able to see the title that the Alabas have in order to help the survey in their area that they were supposed to have or encroached in the area of the complainant?

A:

I got a copy from the Bureau of Lands also.

Q:

But there is also a possibility that the area occupied by the Alaba is within the area as stated in there (sic) own certificate of title?

A:

No.

Q:

So, do you mean to say that your survey is accurate enough?

A:

The relocation is the accurate and then the actual possession of Alaba is only this portion.

Interpreter: Witness pointed to the portion colored brown.

Witness (continuing): This is the title. The distance between there and the Alaba is in the actual but if you see in the actual, no land there, all are occupied by the Alaba.

Interpreter: Witness pointed to the shaded portion brown"[28](emphasis supplied)

Atty. Banaag, counsel for defendant-appellant Santiago Quintana, also cross-examined Engr. Rey Almerol:

"Q: Mr. Witness, you testified that the green portion were occupied by Quintana?

A: Yes.

Q: And this only a portion of lot 11, 10, 9 & 8 in the shaded portion?

A: That is a portion of lot 8, 9, 10 & 11.

Q: You actually visited the area?

A: Yes.

xxx xxx xxx

Q: But this upper portion, south portion of the green marked were titled in the name of Quintana?

A: Yes.

xxx xxx xxx

Court: Of course, what is disputed here is boundary, right? There is allegation that there is overlapping boundaries?

Atty. Banaag: Yes Your Honor."[29]

In contrast, defendants-appellants merely offered bare allegations.

In asserting his ownership of Lot 276277, defendant-appellant Exequil Alaba claimed ownership over Lot 276277 after he supposedly acquired it from his father, Juan Alaba. [30] He was born, and is still living, on the subject property.[31] Exequil Alaba presented a Survey Notification Card dated 28 October 1965.[32] He testified that the Sketch Plan prepared by Engr. Crisanto Bagares is the same with his cadastral survey and was surprised why it was subdivided.[33] Further, he presented an affidavit executed by Quirico Alaba on 6 July 1965, attesting to possession and cultivation of the subject property and a tax declaration over the same. However, Exequil Alaba presented Original Certificate of Title No. P-3660 dated 12 April 1958 over Lot No. 19722 (Cad-369-D).[34]

On the part of defendants-appellants Codilla and Gayramara, defendant-appellant Gayramara argues that she and her husband have lived in the subject property since 1966.[35] They acquired the subject property from defendants-appellants Quirico and Benjamin Codilla.[36] However, Gayramara testified that the transfer certificate of title is still in the name of Quirico Alaba and the tax declaration for the lands is still in the name of her parents-in-law. [37] Contradicting her direct testimony, Gayramara later testified that it was her father-in-law who purchased the subject property from Quirico Alaba and Benjamin Codilla,[38] not her.

The third defendant-appellant Candelaria Rusiana claims that her father, Santiago Quintana, has been residing at the lot covered by OCT No. P-3346 (Lot No. 19707), OCT No. P-2736 (Lot No. 19708) and OCT No. P-4008 (Lot No. 19709) since 1950.[39] According to the Commissioner's Report dated September 13, 2005, Santiago Quintana's family occupies Lots 9 and 10. Candelaria Rusiana presented no document to establish ownership of Lots 9 and 10.

Defendant-Appellant Codilla testified to corroborate that Antonio Gayramara purchased a parcel of land from his grandmother[40] before the war and before he was born, [41] but no instrument was presented to prove the sale of the 17,520 sq. m. property from Victor Codilla because according to him, he was merely informed by his grandfather of the sale to the Gayramaras.[42]

Defendant-Appellant Codilla testified that he has a copy of OCT No. P-936 (Lot 19724, Cad. 369-D). He admitted that he has no other titled lot and that he occupied the lot a long time ago (referring to the entire Lot 7 and Lot 16, and a portion of Lot 6), which when surveyed was shown to cover a total encroached portion of 47,420 sq. m.. [43]

All of the foregoing assertions of defendants-appellants failed to overcome the evidence presented by plaintiffs-appellees, principally the Commissioner's Report, which defendants-appellants themselves did not object to and which appellants Alaba, Codilla, Magno, Quintana and Gayramara even co-marked as their own exhibits.[44]

Worthy of note is the case of Heirs of Margarito Pabaus v. Heirs of Amanda Yutiamco,[45] wherein the Supreme Court elucidated:

> "The case of overlapping of title necessitates the assistance of experts in the field of geodetic engineering. The very reason why commissioners were appointed by the trial court, upon agreement of the parties, was precisely to make an evaluation and analysis of the titles in conflict with each other. Given their background, expertise and experience, these commissioners are in a better position to determine which of the titles is valid. Thus, the trial court may rely on their findings and conclusions." (emphasis supplied)

Encroachment by defendants-appellants was thus firmly established.

No acquisitive prescription
of registered land.

The argument of prescription by adverse possession cannot hold water. Section 47 of Presidential Decree 1529 categorically provides that "no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession."[46] As correctly discussed by the RTC:

> "xxx the litigated portions is (sic) part and parcel of plaintiff-appellee landholdings and covered by certificates of titles under the Torrens system (sic). As such, it is covered by the provisions of Act 496, amended by PD 1529, and article (sic) 1126 of the Civil Code; thus, acquisitive prescription does not lie. Adverse, notorious and continuous possession under a claim of ownership for the period fixed by law is ineffective against a Torrens title. Title to land can no longer be acquired by prescription after a Torrens title has been issued for it."[47]

Thus, adverse, notorious and continuous possession of a land will not vest ownership upon the possessor and defeat the rights of a registered owner under the Torrens System. The certificates of title serves as evidence of an indefeasible title to the property in favor of the person whose names appear therein.[48]

Defendants-Appellants' claims of long and uninterrupted possession in the concept of owner are thus unavailing.

Plaintiffs-Appellees did no
commit forum shopping.

Forum shopping occurs when, as a result or in anticipation of an adverse decision in one forum, a party seeks a favorable opinion in another forum through means other than appeal or certiorari by raising identical causes of action, subject matter and issues. Stated a bit differently, forum shopping is the institution of two or more actions

involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would come out with a favorable disposition.[49] An indicium of the presence of, or the test for determining whether a litigant violated the rule against, forum shopping is where the elements of litis pendentia are present or where a final judgment in one case will amount to res judicata in the other case.[50] For the bar of litis pendentia to be invoked, the concurring requisites must be present: (1) identity of parties, or at least such parties as represent the same interests in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to res judicata in the other.[51]

Defendants-Appellants failed to proved that there exists identity of parties, subject matter and causes of action between the instant case and the case for annulment/cancellation of titles and reversion of land in "Republic of the Philippines v. Trinidad Roa," docketed as Civil Case Case No. 97-356, pending before RTC, Branch 17, Cagayan de Oro City. The Complain[t52] dated 16 May 1997 filed by the Republic of the Philippines alleges:

> "4. xxx
>
> 5. A petition dated September 18, 1980 was filed by the residents of Casinglot, Suntingon and Bugo, Cagayan de Oro calling for the annulment and cancellation of TCT Nos. T-5940, T-9100 to 9109, T-6155, and T-1775 covering parcels of land situated in the aforementioned Barangays of Cagayan de Oro City;
>
> 6. xxx TCT Nos. T-5940, T-9100 to 9109, T-6155, and T-1775 were irregular and of dubious origin;
> 6.1 TCT No. T-6155 in the name of Soledad Nery, Trinidad R. Pineda, Adela Reyes, Efigenia Reyes, Maria R. Peres was issued on April 21, 1966. It emanated from TCT No. RT-4 (20) by virtue of a Deed of Absolute Sale inscribed in the latter title on April 21, 1966. TCT No. RT-4 (20) was originally issued to Trinidad Roa on September 14, 1939 and covers Lot No. 21083, Cadatral 369-O, the parcel of lands described in TCT No.T-6155;
>
> 6.2 TCT No. RT-4 (20) originated from TCT No. T-15. On the face of TCT No. RT-4 (20), it appears that it originated from OCT No. 63 which was allegedly registered on the 15th day of June 1926 pursuant to Decree No. 217494 issued in GLRO Record No. 1003. The alleged existence of OCT No. 63 and TCT No. T-15 was based merely from its entries as appearing on the face of TCT No. RT-4 (20) but actually there are no records on file with the Registry of Deeds of Cagayan de Oro and the Registry of Deeds of Misamis Oriental;
>
> 6.3 What appears from the Registry of Deeds of Misamis Oriental is OCT No. P-63 registered in the name of the Heirs of Catalino Mansancagan under Homestead Patent No. AV-3588 involving a parcel of land located in Gingoog City, Misamis Oriental with an area of 187,935 square meters, transcribed in Registration Book on August 28, 1950. " (emphasis supplied)

The subject matter of the instant case are TCT Nos. T-124355, T-105627, T-105628, T-105629, T-105630, T-105631, T-105632, T-105633, T-105637 and T-105638, which are clearly distinct from the subject aforementioned certificates of title in Civil Case No. 97-356. Moreover, the parties are different. Notably, only some of the plaintiffs-appellees were impleaded as respondents in Civil Case No. 97-356, while none of defendants-appellants admit to being parties therein.

All told, the RTC did not err in rendering the assailed Decision, the same being in accord with the applicable law and evidence on record.

WHEREFORE, the appeal is DENIED. The assailed Decision dated 20 August 2010 of the Regional Trial Court, Branch 41 of Cagayan de Oro City in Civil Case No. 2002-233 is AFFIRMED IN TOTO.

SO ORDERED.

Badelles, J., Acting Ch., and [*]Inting, JJ., concur.

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[*] New Member vice Justice Romulo V. Borja, who inhibited, per Raffle dated 16 July 2014.

[**] This Case was re-raffled to the new Ponente only on 8 July 2014.

[1] Records, Volume III, pp. 1226-1238, pp. 1239-1251; Rollo, Annex A to the Benjamin Codilla's Appellant's Brief, pp. 74-86.

[2] Records, Volume I, pp. 1-6, pp. 7-12.

[3] Rollo, pp. 75-81; Records, Volume III, pp. 1227-1233.

[4] Records, Volume III, p. 1238; Rollo, p. 86.

[5] Records, p. 1259; p. 1260.

[6] Records, p. 1263; p. 1264.

[7] Records, p. 1268; p. 1269.

[8] Rollo, Appellant's Brief of the Heirs of Quirico Alaba, p. 40; Appellant's Brief of Benjamin Codilla, pp. 62-63; Appellant's Brief of Santiago Quintana, Sr., pp. 62-63.

[9] Section 1, Rule 133 of the Revised Rules of Evidence.

[10] Republic of the Philippines v. Reyes-Bakunawa, G.R. No. 180418, 28 August 2013, citing Encinas v. National Bookstore, Inc., G.R. No. 162704, 19 November 2004.

[11] Heirs of Margarita Prodon v. Heirs of Maximo Alvarez and Valentina Clave, G.R. No. 170604, 2 September 2013.

[12] Ibid.

[13] Folder of Exhibits, Exhibit A, pp. 1-2.

[14] Folder of Exhibits, Exhibit A-1, pp. 3-4.

[15] Folder of Exhibits, Exhibit A-2, pp. 5-6.

[16] Folder of Exhibits, Exhibit A-3, pp. 7-8.

[17] Folder of Exhibits, Exhibit A-4, pp. 9-10.

[18] Folder of Exhibits, Exhibit A-5, pp. 11-12.

[19] Folder of Exhibits, Exhibit A-6, pp. 13-14.

[20] Folder of Exhibits, Exhibit A-7, pp. 15-16.

[21] Folder of Exhibits, Exhibit A-8, pp. 17-18.

[22] Folder of Exhibits, Exhibit A-9, pp. 19-20.

[23] Records, pp. 768-771.

[24] Records, Oath of Office dated 19 April 2004 of Engr. Crisanto Bagares, p. 558.

[25] Exhibits Folder, Exhibit R for plaintiffs-appellees; Exhibit 1-Codilla; Exhibit 2-Magno; Exhibit 3-Alaba; Exhibit 4-Quintana; Exhibit 10-Gayramara.

[26] TSN, Direct examination of Engr. Rey Almerol, 8 May 2007, pp. 11-19.

[27] TSN, Cross-examination of Engr. Rey Almerol, 8 May 2007, pp. 21-23.

[28] TSN, Cross-examination of Engr. Rey Almerol, 8 May 2007, pp. 27-30.

[29] TSN, Cross-examination of Engr. Rey Almerol, 8 May 2007, pp. 30-33.

[30] TSN, Direct examination of Exequil Alaba, 19 November 2008, p. 6.

[31] TSN, Direct examination of Exequil Alaba, 19 November 2008, p. 5.

[32] TSN, Direct examination of Exequil Alaba, 19 November 2008, p. 9.

[33] TSN, Direct examination of Exequil Alaba, 19 November 2008, p. 9.

[34] TSN, Cross examination of Exequil Alaba, 19 November 2008, p. 14.

[35] TSN, Direct examination of Judith Gayramana, 31 August 2007, p. 4.

[36] TSN, Direct examination of Judith Gayramana, 31 August 2007, p. 4.

[37] TSN, Direct examination of Judith Gayramana, 31 August 2007, pp. 13-14

[38] TSN, Re-direct examination of Judith Gayramana, 31 August 2007, p. 17.

[39] TSN, Direct examination of Candelaria Quintana Rusiana, 1 April 2009, p. 4.

[40] TSN, Direct examination of Benjamin Codilla, 13 December 2007, p. 11.

[41] TSN, Direct examination of Benjamin Codilla, 13 December 2007, p. 16.

[42] TSN, Direct examination of Benjamin Codilla, 17 April 2008, p. 7.

[43] TSN, Cross examination of Benjamin Codilla, 17 April 2008, p. 5.

[44] Supra Note at 25.

[45] G.R. No. 164356, 27 July 2011, citing Manotok Realty, Inc. v. CLT Realty Development Corporation, G.R. Nos. 123346, 134385 and 128767, 29 November 2005.

[46] Rodolfo V. Francisco v. Emiliana M. Rojas, and the legitimate heirs of Jose A. Roxas: Jose Ferdinand M. Rojas II, Rolando M. Rojas, Jose M. Rojas, Jr., Carmelita Rojas-Jose, Victor M. Rojas, and Lourdes M. Rojas, G.R. No. 167120, 23 April 2014.

[47] Records, Volume III, Decision dated 20 August 2010, p. 1249.

[48] Supra at Note 46.

[49] Michelle Lana Brown-Araneta v. Juan Ignacio Araneta, G.R. No. 190814, 9 October 2013.

[50] Ibid.

[51] Ibid.

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[52] Folder of Exhibits, Exhibit 1 for defendant-appellent Gayramana, pp. 38-60.

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