

MARIA L. PARAS, PLAINTIFF-APPELLEE, VS. ANGELINA VDA. DE LINGAT, DEFENDANT-APPELLANT.

Ponente: SABIO, JR., J.

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SABIO, JR., J.:

Brought to this Court for review through this appeal under Rule 41 of the 1997 Rules of Civil Procedure is the Decision,[1] dated October 24, 2003, in Civil Case No. 12324 of the Regional Trial Court of San Fernando City, the dispositive portion of which reads as follows:

“WHEREFORE, finding prepondering weight to support and sustain plaintiff’s complaint, judgment is hereby rendered in favor of plaintiff and against defendant, as follows:

- 1) Ordering defendant to deliver to plaintiff Transfer Certificate of Title No. 364106-R;
- 2) Ordering defendant to execute an updated deed of sale in favor of the plaintiff, and pay thereafter the corresponding capital gains tax and other lawful taxes and fees required of an owner prior to the registration of sale and transfer of ownership thereof to plaintiff as buyer;
- 3) Ordering defendant to pay plaintiff the amount of Php50,000.00 as and for attorney’s fees;
- 4) Ordering defendant to pay plaintiff Php25,000.00 as and for litigation expenses; and
- 5) Ordering defendant to pay the costs of suit.

For utter lack of merit, defendant’s counterclaims are hereby dismissed, without prejudice to instituting an action to recover possession of the excess lot (accion publiciana) against Rizal Paras.

SO ORDERED.”

The records disclose the following antecedent facts, which are pertinent in the present appeal, to wit:

The disputed facts:

Appellant alleges that the late Pedro Lingat was formerly the owner of two parcels of land located at Telabastagan, San Fernando, Pampanga covered and described under Transfer Certificate of Title Nos. 173267-R and 173268-R, both of the Registry of Deeds of Pampanga.

Upon the death of Pedro Lingat on October 31, 1987, the aforementioned properties were consolidated and subdivided in accordance with the project partition of the inheritance and to terminate the intestate proceedings.

As a result of the consolidation and subdivision of the said properties, a portion of eight hundred thirty square meters (830 sq. m.) was allotted to, herein, appellant and was issued in her name Transfer Certificate of Title (TCT) No. 364106-R of the Register of Deeds of Pampanga.

In the year 2001, or fourteen years after the death of Pedro Lingat, appellant was asked by the appellee to deliver the certificate of title to the latter. Appellant, however, does not recall having signed a Deed of Absolute Sale in

favor of the appellee. She submits, however, that assuming there was a sale, appellee dealt directly with her husband. She, likewise, alleges that she did not find any records of the sale when she went over her husband's records.

Upon the other hand, appellee asseverates that she purchased from the appellant and the latter's late husband an undivided portion of agricultural lot for residential purposes with an area of eight hundred thirty (830) square meters, as evidenced by the Deed of Sale of Undivided Portion of a Parcel of Land.[2]

According to the appellee, due to her persistent demands, the purchased lot was segregated in the name of the appellant under TCT No. 364106-R of the Register of Deeds of Pampanga. Without any lawful or valid reason, however, appellant kept the title. She sent a demand letter to the appellant to deliver the title to her, but the same fell on deaf ears. Thereafter, she referred the matter to the barangay for conciliation, but proved futile.

The undisputed facts:

On August 22, 2001, appellee filed a Complaint for Specific Performance with Damages[3] against appellant before the Regional Trial Court (RTC) of San Fernando, Pampanga. It was docketed as Civil Case No. 12324.

On October 22, 2001, appellant filed her Answer with Counterclaim[4] to the complaint.

After the issues had been joined, the case was set for pre-trial there being no settlement reached between the parties. On the basis of the testimonial and documentary evidence presented by the appellant and the appellee, the court a quo rendered its judgment in favor of the appellee as stated at the outset. Unfazed, the appellant filed her Notice of Appeal[5] on November 11, 2003.

Appellant now comes to this court, through this appeal, with the following submissions, to wit: (1) the lower court erred in denying defendant's motion for an ocular inspection; (2) the lower court erred when it denied the admission of Exhibits "2" and "3" for being immaterial and irrelevant (3) the award of attorney's fees and litigation expenses are excessive.[6]

In her first assigned error, appellant submits that appellee claims to have bought from the late Pedro Lingat a portion of the latter's property. According to her, appellee is occupying an area of 1,040 square meters. Assuming, as proffered by her, that appellee did, in fact, bought the property with an area of 830 square meters only, it appears that there is an excess area of 210 square meters. She alleges that the determination of the issue as to whether appellee occupies an excess area is so material since in her permissive counterclaim, she claims for reasonable rent for the unlawful use and occupation of the said area.

For starters, we deem it proper to discuss the propriety of an ocular inspection during trial. Ocular inspection, as a general principle, should be granted only where it is reasonably certain that it will be of substantial aid to the court in reaching a correct verdict, and the court may refuse to make the inspection where it is already familiar with the premises involved, or where photographs, diagrams, or maps in evidence adequately present the situation, or where changes have taken place since the time to which the action relates, or where it is not shown that the conditions are the same.[7] At any rate, whether such an ocular inspection should have been made or not, rested upon the discretion of the court a quo.[8] There are, to be sure, exceptions to this general rule but none of them obtains in this case.

There is no showing that the lower court erred in denying the motion. The trial court correctly refused to make the inspection in view of the fact that the testimonial and documentary evidence adequately established both the appellee's and appellant's respective allegations. However, even if the ocular inspection were granted by the court a quo, such grant would not alter, much less obliterate, her obligation to transfer the title of the portion of

land covered by the sale in appellee's favor. We will save the discussion concerning this matter when we resolve the next issue.

In her second assigned error, appellant posits that the lower court erred in denying the admission of Exhibits "2" and "3" because the said documents tend to prove her claim that appellee is occupying an area more than the latter allegedly bought from her late husband. Thus, as claimed, the documents are relevant as they relate directly to the fact in issue.

Appellant's argument fails to persuade us.

Due process of law is not denied by the exclusion of irrelevant, immaterial, or incompetent evidence, or testimony of an incompetent witness. It is not error to refuse evidence, which although admissible for certain purposes, is not admissible for the purpose, which counsel states as the ground for offering it.[9]

In the case at bench, Exhibits "2" and "3", which tend to prove that appellee is encroaching upon the property of Angela Lingat, appellant's daughter, are irrelevant and immaterial, in as much as, the issue before the court a quo is whether appellant caused the segregation of the appellee's property from the undivided land owned by the late Pedro Lingat and caused the corresponding TCT to be issued in appellee's name, the same having been agreed upon during the execution of the deed of sale. Therefore, the documents, as the lower court had correctly ruled, are immaterial and irrelevant to the issue before it.

At any rate, even if we were to consider these exhibits in resolving this appeal, they would not improve the position of the appellant for the following reasons as will be, hereinafter, discussed.

It can be gleaned from the submissions of the appellant that she is admitting the sale of 830 sq. m. of land to the appellee, for if she were not, she would not have bothered seeking the court's permission for an ocular inspection during trial to determine if the latter encroached an excess of 210 sq. m. of land included in the 1040 sq. m. of land titled in her daughter's name. It seems, also, that appellee had taken possession of the land, but title, thereto, as previously stated is under the appellant's daughter's name.

With the appellant's admission of the sale, it is of no consequence to the appellee how the lands involved were subdivided among Pedro Lingat's heirs. As far as the appellee is concerned, she has interest and right only over a part of the undivided parcel of land, then, owned by the late Pedro Lingat.

Now, as the records stand, we can now make pronouncements on the case before us without the said exhibits.

First, pursuant to the deed of sale executed on February 9, 1983, Pedro Lingat delivered actual and constructive possession of the portion of the property to the appellee, who immediately occupied and took possession, constructed a house thereon. Second, since the sale, appellee continuously possessed and occupied the property, as owner, up to present. Third, a provision in the 1983 Deed of Sale, which stated that the parcel of land bought by the appellee would be titled in her name, has not been complied with until the present time. Lastly, even after appellee began to possess the property and after repeated demands to transfer the title of the 830 sq. m. of land herein sold to the appellee, appellant, as an excuse for her unjustified inaction, stubbornly insisted that appellee was encroaching upon the 210 sq. m. land owned by her daughter.

From the foregoing pronouncements, therefore, appellee, on the strength of the 1983 deed of sale, properly brought an action for specific performance to compel the transfer of title of the portion of land covered by the sale in her favor. In the first place, during the distribution of the inheritance and pursuant to the project of partition agreed upon among the heirs, it was, then, indubitable on the part of the appellant to have segregated a portion consisting of 830 sq. m. of land in favor of the appellee. Had appellant not been remiss of her obligation, this

present controversy would not have been brought up at the outset.

How the appellant and those claiming rights over the property will subsequently adjust the partition of the lands previously covered by TCT No. 173267-R and TCT No. 173268-R to reconcile with the appellee's claim over the 830 sq. m. portion of the land is a problem exclusively for the appellant and the heirs of Pedro Lingat to settle among themselves.

Moreover, in the absence of an express agreement to the contrary, the court holds that all fees and expenses incident to the re-survey of the property, preparation of the subdivision plan of the property, registration, and transfer of title to the 830 sq. m. land in the name of the appellee shall be borne by the appellant.

In her last assigned error, appellant submits that the lower court did not state in its decision any justification for the award of attorney's fees and litigation expenses. Hence, there is no basis for such an award.

We agree.

In the case of *Philippine National Bank v. Court of Appeals*,^[10] the High Court, therein, disallowed the award of attorney's fees for lack of factual and legal basis. Citing the case of *Pimentel v. Court of Appeals*,^[11] the Court ruled, thus:

(...)“With respect to petitioner's contention that the respondent court erred in affirming the trial court's decision awarding Php10,000.00 attorney's fees to private respondent, we rule in favor of petitioner. The text of the trial court's decision does not mention the reason for the award of attorney's fees and the award was simply contained in the dispositive portion of the trial court's decision. It is now settled that the reasons or grounds for an award must set forth in the decision of the court.

The court a quo failed to state in its decision the basis for awarding the attorney's fees. Thus, we are constrained to delete it. The same holds true with the award of litigation expenses and is, likewise, deleted.

WHEREFORE, the appealed decision is, hereby, MODIFIED. Appellant is ordered to cause the resurvey of the property covering 830 sq. m. presently occupied by the appellee and segregate the same to be embodied in a subdivision plan prepared by a competent geodetic engineer of the whole property covered by TCT No. 364106-R. After doing so, appellant is ordered to present the subdivision plan and TCT No. 364106-R to the Register of Deeds of San Fernando, Pampanga, for cancellation of the TCT upon the registration of the Deed of Sale, dated February 9, 1983, made in appellee's favor. The Register of Deeds of San Fernando Pampanga shall, thereupon, cancel said TCT and issue separate titles, pursuant to the subdivision plan, one, in the name of, herein, appellee covering 830 sq. m., and the other, in the name of the appellant for the rest of the property.

All fees and expenses incident to the resurvey of the property, preparation of the subdivision plan, registration, and transfer of title, covering 830 sq. m. of land in the name of the appellee, and all other costs under this transaction shall be borne by the appellant, without prejudice to such agreement(s) as the parties may have arrived at in the meantime or in the future.

The awards of attorney's fees and litigation expenses are, hereby, DELETED.

SO ORDERED.

Asuncion-Vicente and Bato, Jr., JJ., concur.

[1] Rollo, pp. 60-63.

[2] Exhibit “A”, Records, p. 87-88.

[3] Records, pp. 2-5.

[4] Ibid., pp. 18-22.

[5] Records, p. 179.

[6] Appellant’s Brief, p. 1, Rollo, p. 30.

[7] Ricardo J. Francisco, Evidence, 3rd ed. 1996, p. 52.

[8] See People v. Baniel, July 15, 1997.

[9] People v. Larranaga, Jr., G.R. No. 138874-75, February 3, 2004.

[10] 395 SCRA 272, 284-285.

[11] 307 SCRA 38.

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