

LILIBETH NEYRA-TIU, PLAINTIFF-APPELLEE, VS. HEIRS OF APOLINARIO NERA, AS REPRESENTED BY EDUARDO NERA AND EMILY NERA, DEFENDANTS-APPELLANTS.

Ponente: VELOSO, J.

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VELOSO, J.:

In this appeal, the Heirs of Apolinario Nera, represented by Eduardo Nera and Emily Nera (“Heirs of Apolinario Nera”) challenge the Decision[1] dated September 3, 2013 of the Regional Trial Court of Tabaco City[2] (“RTC”) in Civil Case No. T-2460, entitled “Lilibeth Neyra-Tiu, Plaintiff, versus Heirs of Apolinario Nera, represented by Eduardo Nera and Emily Nera, Defendants,” the dispositive portion of which reads:

“WHEREFORE, judgment is hereby rendered in favor of the plaintiff Lilibeth Neyra-Tiu and against the defendants.

- Ordering the defendants and all persons claiming rights or interest under them to peacefully vacate the property of the plaintiff and to turn over possession thereof to the latter;
- Declaring as null and void the tax declarations of the two parcels of land in the name of Apolinario Nera (Exhibits 9 and 10);
- Ordering the defendants to pay plaintiff the reasonable rentals of the two parcels of land in the amount of P2,000.00 per annum from the time of the inception of the defendants' occupancy in April 1997 until such time that defendant peacefully vacate and surrender possession of the land to the plaintiff;
- Ordering the defendants to pay the plaintiff the amount of P25,000.00 as attorney's fees, P1,500.00 for every court appearance and P20,000.00 as litigation expenses.

SO ORDERED.”[3] (emphasis supplied)

The Facts

The instant controversy stems from a Complaint for Annulment of Documents and Recovery of Possession and Ownership[4] filed by Lilibeth Neyra-Tiu (“Lilibeth”) against the Heirs of Apolinario Nera involving parcels of land located at P-2 Bagumbayan, Tiwi, Albay. The allegations of the parties, as summarized by the RTC in the herein assailed Decision are as follows:

“In their [sic] complaint, plaintiff averred being the owner of the following parcels of land located at P-2 Bagumbayan, Tiwi, Albay more particularly described as follows:

'A parcel of residential land (Lot No. 2668) situated at Bagumbayan, Tiwi, Albay. Bounded on the North by Lot No. 2667; on the South by Lot No. 2669; on the East by Road and on the West by Lot No. 2669. Containing an area of Three Hundred Eighteen (318) square meters. Declared in the name of Roberto Neyra under Tax Declaration No. 02-002-000100 and assessed at P12,720.00.'

Parcel Two (2)

'A parcel of land (Lot No. 253) situated at Bagumbayan, Tiwi, Albay. Bounded on the North by Road; on the South by Lot No. 254; on the East by Lot No. 259 and on the West by Lot No. 254. Containing an area of Three Thousand Seven Hundred Seventy Four (3,774) square meters. Declared under Tax Declaration No. 02-002-00001 and assessed at P21,060.'

Plaintiff acquired the above-mentioned parcels of land by way of Deed of Absolute Sale from Roberto Neyra and Teodorico Neyra, Jr. respectively sometime on February 9, 2005. The latter duo also acquired the same from their father the late Teodorico Neyra, Sr. on July 5, 1968. Since 1940 and even prior thereto, Teodorico Neyra, Sr. until his death [o]n September 27, 1968 and thereafter, succeeded by herein plaintiff had been in actual and peaceful[,] uninterrupted and continuous and notorious possession of the lots in question tacking that of possession of predecessor-in-interest Chino Co Lam. As a consequence of their claim of ownership, plaintiff had been paying the real property taxes due on said lots.

In 1997, however, the late Apolinario Nera, the father of the herein defendants filed an application for free-patent over above-described parcels of land claiming ownership and possession of the same. Upon obtaining knowledge, Teodorico Neyra, Jr. and Roberto Neyra filed an opposition to the application for free-patent and consequently, the said application for free-patent by the late Apolinario Nera was later on denied by the DENR. With the death of Apolinario Nera, his heirs, the herein defendants had illegally and continuously occupied the aforementioned lots despite the decision by the DENR upholding the right of Teodorico Neyra, Jr. and Roberto Neyra being the true owners and possessors of the subject lots. It was on January 13, 2005 when defendants were demanded to vacate the abovementioned land, but the same fell on deaf ears. In the hope of settling the matter, plaintiff[s] predecessors-in-interest Teodorico Neyra, Jr. and Roberto Neyra brought the matter to the Barangay Authorities of Bagumbayan for settlement, however, no settlement was arrived at because defendants did not appear despite summons made thereby the issuance of a certificate to file action.

Plaintiff said that in view of the evident bad faith of the defendants in unlawfully withholding the possession of the aforementioned parcels of land, plaintiff was constrained to file the present complaint for which she agreed to pay the services of her lawyer in the amount of P25,000.00 as attorney's fee, P1,500.00 per court appearance and litigation expense of not less than P20,000.00. All of which could have been avoided had the defendants been fair in their dealings.

Plaintiff likewise prays unto the court that defendants and all persons claiming rights or interests under them peacefully vacate their property and turn over the possession thereof to her. Also[,] plaintiff prays to render as null and void tax declaration of the two parcels of land declared in the name of the late Apolinario Nera and to order defendants to pay plaintiff reasonable rentals of the two (2) parcels of land in the amount of P2,000.00 per year commencing from the filing of the complaint until the time they vacate an[d] surrender the possession of the land to the plaintiff.

Answering, defendants Eduardo Nera and Emily C. Nera alleged that they are not the only heirs of the late Apolinario Nera thereby moved that the other indispensable parties be impleaded. They averred that they owned the lot and inherited the same from their father Apolinario Nera who in turn inherited the same from his father Gregorio Nera. The latter in turn acquired the lots by purchase from spouses Pedro Ko Lam Ko and Fabiana Consorte sometime in 1924, thus, they pray for the dismissal of the case and to confirm their ownership and possession over Lot Nos. 2668 and 253.

In view of the allegations and answer filed by the defendants Eduardo and Emily, both surnamed Nera alleging that they are not the only heirs of the late Apolinario Nera, plaintiff filed an amended complaint on September 11, 2006 copy furnished defendants' counsel Atty. Paterno Brotamonte, indicating therein the names and the respective addresses of the newly impleaded defendants. It turn[ed] out, however, that summons by way of

substituted service to the newly impleaded defendants were returned unserved for failure to locate them because of non-specific addresses supplied by counsel for answering defendants.

Thus, the Court on October 12, 2006 granted plaintiff's motion and ordered summons by publication on defendants Irma, Arnold, Enrique, Emmanuel, Alfredo, Gregorio and Eleanor, all surnamed Nera. Also, an order for extraterritorial service of summons was issued to defendant Eleanor Nera by way of registered mail pursuant to Secs. 15 and 16 of the Rules of Civil Procedure. For failure to file Answer, the Court on September 7, 2007, declared defendant Irma, Arnold, Enrique, Emmanuel, Alfredo, Gregorio and Eleanor, all surnamed Nera in default. On October 16, 2007, however, defendants Eduardo and Emily Nera with Atty. Paterno Brotamonte's special appearance for all other defendants filed a Motion for Reconsideration praying that the declaration of defendants' default be considered. On November 13, 2007, the court partially considered the Motion, but ordered the continuance of the hearing ratiocinating that since jurisdiction over the res had already been acquired by the court, the hearing may nonetheless push through. Later, a Notice of Appeal was interposed by defendants Eduardo Nera and Emily Nera, but through plaintiff's opposition, it was denied by the Court in its Order dated December 28, 2007.

Finally, pre-trial ensued and thereafter terminated. The pre-trial was issued defining the following issues:

- Who between the parties have better right of ownership and possession over the land in question?
- Whether the tax declarations in the name of Apolinario Nera be declared null and void;
- Whether the defendants be made liable by the plaintiff to pay P2,000.00 per year for the rental of these two (2) parcels of land from the filing of this instant complaint until the time that they vacate and surrender the possession of the lands to the plaintiff;
- Whether the defendants are liable for damages.”[5] (emphasis Ours)

Presented as witnesses for the plaintiff were Teodorico Neyra, Jr., Amormia Neyra, Lilibeth Neyra, Lorna Jaranilla and Edwin Rodriguez. The defendants, on the other hand, presented Raymond Ceriola, Myrna Camasis, Eduardo Nera and Emily Nera as their witnesses.

On September 3, 2013, the RTC rendered its herein assailed Decision, viz.:

“After an incisive and succinct scrutiny of the evidence adduced by both parties, this Court finds that plaintiff[s] evidence clearly preponderates in their [sic] favor having a better right of possession and title of ownership over the lots in question.

Evidently, the subject matter of this case referring to [L]ot No. 253 with an area of 3,774 sq. meters and Lot No. 2668 with an area of 318 sq. meters are both untitled lands located at Bagumbayan, Tiwi, Albay. It should be noted that these two (2) lots originated from one lot before the approval of the Tiwi Cadastral Survey in 1990.

Tracing back its ownership from its primitive owner, it reveals that the lot was first declared in the name of Juan Commigo being the primitive owner and the holder of the first tax declaration in 1907 as shown by tax declaration 2142 (Exhibit Q). Later on, in 1917[,] the lot was transferred to Chino Co Lam as borne out by Exhibit N. In 1941, the lot was transferred to Teodorico B. Neyra, Sr. as shown by Exhibit M. In turn, Teodorico Neyra, Sr. sold the lots to his two (2) children namely, Teodorico Neyra, Jr. and Roberto Neyra in 1968 (Exhibit C). Thereafter, the two siblings sold the lot to the herein plaintiff Lilibeth Neyra-Tiu who had also declared the land for taxation purposes albeit tax declaration of plaintiff's predecessor-in-interest constitute proof that she has a claim of title over the lot. Plaintiff claiming that these tax declarations together with those of her predecessors-in-interest was accompanied by possession for a long period of time which

constitutes acquisition of ownership by prescription. Evidently, therefore, plaintiff and her predecessor-in-interest had been religiously paying the real estate taxes of the lot as borne out by Exhibit P to Exhibit P-40, maintaining that the payment of taxes is enough proof of ownership because no one in his right mind would be paying taxes if the property is not his.

Indeed, this Court adhere[s] to that legal truism no less enunciated in the case of *Director of Lands vs. TAC*, 209 SCRA 214, wherein, the Supreme Court said that tax receipts and tax declarations are incontrovertible evidence of ownership. They constitute at least proof that the holder has a claim of title over the property. In that case, the Supreme Court said that tax receipts and tax declarations of ownership for taxation purposes become strong evidence of ownership acquired by prescription when accompanied by proof of actual possession of the property.

As borne out from the record, reckoning the date of acquisition of the lot by the plaintiff's predecessors-in-interest from Chino Co Lam, Teodorico Nera, Sr. had commenced exercising his rights as owner and possessor of the lot since 1939 when he installed Melecio Madrilejos as caretaker of the lot while he is in Manila.

Aptly quoting the testimony of Teodorico Nera, Jr. on this respect, he said that aside from paying taxes, his father also hired Melecio Madrilejos as caretaker of the land ever since his father bought the lots in 1939. It was his father Teodorico Nera, Sr. who executed Special Power of Attorney formalizing in 1965, authorizing Melecio Madrilejos to be the lots' caretaker. Said SPA dated January 21, 1965 was duly identified by Teodorico Nera, Jr. being the very same Special Power of Attorney whereby his father delegated to Melecio Madrilejos as caretaker of the subject lots (Exhibit S). Melecio Madrilejos continued ever since to be the caretaker of the subject lots until his death when he was succeeded by his son-in-law, Marcial Rodriguez. During the time that Melecio Madrilejos was still the caretaker, he introduced improvements on the lots like planting trees, abaca, coconuts, bananas, camotes and other fruit bearing trees. Every time the plaintiff and siblings visited the lot, they brought home the products that were harvested from the lot. Teodorico Nera, Jr. manifested that his father with the help of Melecio Madrilejos also helped in planting those coconuts and that he (Teodorico Nera), Jr. was the one covering this [sic] coconuts seedlings with soil.

Teodorico Nera, Jr.'s testimony was corroborated by Marcial Rodriguez, the successor of Melecio Madrilejos who testified during the hearing held at the DENR in RED Claim No. 930 involving Lot Nos. 253 and 2668 (DENR Decision on October 7, 1997). In that case, defense counsel Atty. Paterno Brotamonte who happened to be the same counsel posed a query upon Marcial Rodriguez when he testified. Mr. Rodriguez was then asked by Atty. Brotamonte in that DENR hearing to whom did he give the owner's share of the land, his answer was that, he sent them to Makati through Arsenio Clet, who is near to the plaintiff's residence. Arsenio Clet being the godson of his father-in-law and whenever he goes to Manila, Mr. Rodriguez would request him to bring said products or money to the plaintiff. It was only in 1965 after the execution of the SPA that Mr. Rodriguez was granted the authority to pay the real estate taxes of the two (2) lots. He was even pressed by a query from Atty. Brotamonte whether the entire harvest or the owner['s] share was applied only in the payment of taxes since 1965 up to the present and his answer was in the affirmative because that was the only amount that was generated from the produce of the land which is quite small and that the then prevailing price of palay was merely P50.00 per cavan. There were even times when the ricefield was not being tilled because it dried and that happens during dry season. With respect to the fruit bearing trees, Mr. Marcial Rodriguez said that he could not gather enough out of them because more often than not, it is stolen. In July 15, 1998, Marcial Rodriguez died as borne out by the death certificate (Exhibit MM-52). Respecting his testimony given at the DENR, the Court is inclined to admit the same pursuant to Sec. 47, Rule 130 of the Rules of Court, which provides that, 'The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross examine him'.

Withal, Atty. Paterno Brotamonte, the counsel of the defendants who was also then the counsel of Apolinario

Nera at the DENR Office was the one who conducted the cross examination of witness Marcial Rodriguez. Consequently, his testimony maybe received in evidence in this case. It is also worth noting that the decision of the DENR in declaring Teodorico Neyra, Jr. and Roberto Neyra being the legitimate possessors of the two (2) lots in question is binding in this court. This is in consonance with the Supreme Court ruling that findings of facts of administrative agencies are binding and conclusive upon the Supreme Court (Perez vs. Cruz, June 20, 2003). Undoubtedly, the said DENR case involves the same parties and subject matter as in this case and in fact, the issue of possession had already been resolved in favor of Teodorico Neyra, Jr. and Robert Neyra as found in the decision rendered by the DENR which had already became [sic] final and executory. Well settled is the rule that constitute the law of the case, that can no longer be modified nor supplemented. Et non queta movere.

Ancillary, during the course of stewardship reposed by Teodorico Neyra, Sr. to his caretaker Melecio Madrilejos, the latter was even sued by one Alfonsa Berces for having allegedly occupied the eastern portion of the lot which incident was clearly testified to by Teodorico Neyra, Jr. When he said that their caretaker Melecio Madrilejos was sued for forcible entry by Alfonsa Bersosa as borne out by the ejectment complaint as well as by the answer filed by Madrilejos marked as Exhibit Q.

Subsequent year reveal that in the year 1973, survey notification card was issued to Teodorico Neyra, Jr. and Roberto Neyra in their capacity as owners of the subject lot (Exhibits Y and Z). Then, in 1983, the duo executed the sworn statement declaring the true current and fair market value of the real properties. As already said, however, on April 1997, Apolinario Nera forcibly entered the lot without any legal authority or consent from the plaintiff prompting the plaintiff's sibling Amormia Nera to report the incident to the PNP Tiwi, Albay on April 1997 giving information that one Apolinario Nera constructed a concrete bungalow type house within their land at barangay Bagumbayan, Tiwi, Albay without their legal consent (Exhibit KK). This was even mentioned by Marcial Rodriguez in the course of his testimony given at the DENR case. Their lawyer Atty. Madrid then posed this query about Apolinario Nera having entered the subject land in question and asking Mr. Rodriguez in what manner Apolinario entered the premises where he was quoted saying, 'by force' because he destroyed the fence consisting of barb[ed] wire and that happened on August 1997. Prior to that[,] Mr. Rodriguez never saw Apolinario Nera in the premises and not event [sic] the parents of Apolinario Nera as Mr. Marcial Rodriguez does not know Apolinario Nera's parents. Mr. Rodriguez further said that prior to the forcible entry, Apolinario Nera resides at Libtong Tiwi, Albay with the Marquezes family who happens to be their relative. Thusly, Marcial Rodriguez bellied [sic] the representation made by Apolinario Nera that they had been in continuous possession of the subject lots in question. He is the authorized tenant of the subject lot. Right after the forcible entry, Mr. Rodriguez informed plaintiff via distance call in Makati informing Amormia Nera about the incident. This is borne out by the transcript of stenographic notes of Marcial Rodriguez given at the DENR case dated October 7, 1997 pages 21-23. It is, therefore, clear from the testimony given by Mr. Rodriguez that Apolinario Nera started to occupy in the subject lot only in 1997 and not prior thereto, which the plaintiff contends to be likened to a professional squatters who occupy land without express consent of the landowners. Albeit, in April 1997, in order to legitimize Apolinario Nera's stay on the land, he filed his protest against the approval of Tiwi Cadastral Survey covering the two (2) lots before the Department of Environment and Natural Resources CENRO, Region V, Rawis, Legaspi City. The same was timely opposed by Teodorico Neyra, Jr. and Roberto Neyra whereby a full[-]blown hearing as to the issue who between the parties has a better right to apply for the land was had. And so, on February 6, 2001, Oscar M. Hamada, the DENR Regional Executive Director, rendered a decision declaring that Teodorico Neyra, Jr. and Roberto Neyra are the rightful owners and possessors of the lots who are allowed to file public land application. Said decision had already become final and executory. Thusly, on July 26, 2002, an order of Execution was issued (Exhibit EE). Unfortunately, however, Apolinario Nera never vacated the premises in willful disregard of the DENR decision, thereby prompting plaintiff to file the instant case for Annulment of Documents, Recovery of Possession and Ownership exercising her right under Art. 433 of the New Civil Code.

Prescinding from the foregoing antecedent milieu, plaintiff herein is rightfully entitled to the claim of

ownership and possession of the subject lot. Art. 433 of the Civil Code, provides that: 'Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property', which was the proper step resorted to by the plaintiff herein. Corollarily, Art. 536 of the Civil Code, provides: 'In no case may possession be acquired through force or intimidation as long as there is a possession [sic] who objects thereto. He who believes that he has an action or a right to deprive another of the holding of a thing, must invoke the aid of the competent court. If the holder should refuse to deliver the thing.' This indeed properly applies to the instant case where in [sic] the plaintiff had sought for the legal quest of which they are rightfully entitled for no one can declare the law for himself, but must go to the court to prevent disturbance of the peace, thus the filing of the instant complaint.

There is no denying that the plaintiff is the lawful owner and possessor of lot[s] 253 and 2668 both located at Bagumbayan, Tiwi, Albay having purchased the same from Teodorico Neyra, Jr. and Roberto Neyra. She had tacked possession thereof from that of her predecessor-in-interest and has been in open, peaceful, adverse and notorious possession of the lot since 1939 up to the present. Plaintiff's predecessor-in-interest Teodorico Neyra, Sr. and his two children, namely: Teodorico Neyra, Jr. and Roberto Neyra were religiously paying the Real Property taxes of the lots since 1941. Undoubtedly also, the lots were declared for taxation purposes. First, in the name of Juan Commigo, then, in the name of Chino Co Lam, thereafter, in the name of Teodorico Neyra, Sr. and later on, in the name of Teodorico Neyra, Jr. and Roberto Neyra.

Finally, a decision rendered by the DENR-CENRO adjudicating Teodorico Neyra, Jr. and Roberto Neyra had legally bestowed possession of the lot in their favor whose decision had already become final and executory.

Upon the other hand, defendants' claim of ownership and possession of the subject lots is clearly unfounded. Although they present ostensive proof of ownership, nevertheless, the same was refuted and rebuffed in the decision rendered by Oscar M. Hamada, the then Regional Director of the DENR in 1997. A perusal of the decision, thus far rendered by Officer Hamada, which is quoted as follows:

'On the other hand, Protestant tried to prove the alleged sale between Co Lam Co and Gregorio Neyra by displaying a document denominated as "Confirmation of Sale" executed by Eusebio Consorte. This is introducing secondary evidence. Section 5, Rule 130 of the Rules of Court provides:

'Sec. 5. When original document is unavailable. – When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. (emphasis supplied)

Before a party can be permitted to introduce secondary evidence of the contents of a written instrument, satisfactory proof must be made of the former existence of the instrument and this necessarily involves proof of its proper execution or genuineness.

In the case at bar, Eusebio Consorte is not qualified to testify to such fact, he neither saw the document nor witnessed its execution, he learned about the sale when his mother relayed to him the alleged sale. (TSN p. 11 and 12, October 6, 1997).'

Clearly, discerning from the said ruling of the DENR, the citation pronounced was that, Eusebio Consorte was not even presented in court to identify the confirmation of sale alluded to by the defendants herein. The hearing officer said that the said confirmation of sale was merely hearsay evidence taken by the defense and has no factum probans. Clearly, without any valid document of transfer from their alleged predecessor Chino Co Lam, then, Apolinario succeeded by herein defendants, had indubitably, illegally occupied the lots now owned by the plaintiff. Inasmuch as their claim of possessory right is not clothed with any insignia of authority.

A fortiori, the tax declaration purportedly procured by Apolinario Nera declaring the subject lot[s] are consequently null and void. The Court is referring to Exhibit 9, Tax Declaration No. 95-002-0301 covering Lot

253, which purportedly cancelled Tax Declaration No. 93-002-001 in the name of Teodorico Neyra and Roberto Neyra earlier marked as Exhibit D. Also, defendants['] Exhibit 10, which purports to be Tax Declaration No. 95-002-0302 covering Lot No. 2668 purportedly cancelling Tax Declaration No. 93-022-0090 in the name of Roberto Neyra earlier marked as Exhibit G were a mere sham. This is because how could there be a subsequent issuance of tax declaration in the name of Apolinario Nera who intruded merely in 1997 and the fact moreover that Teodorico Neyra, Jr. and Roberto Neyra have neither executed any document of transfer of the lot in favor of Apolinario Nera? Plain answer to this question must be logic lead to the conclusion that defendants' acquisition of the said tax declaration are [sic] dubious. Necessarily so, Exhibits 9 and 10 must be cancelled. In consonance with the legal maxim that 'No one can improve his situation by his own wrongful act'.

The Court now comes to the plaintiff's entitlement for the use and occupancy of the subject two parcel[s] of land. This is in consonance with the ruling of the Supreme Court that 'One who deprived the real owner of the property, who is entitled to its physical possession, should pay rentals as reasonable compensation for the use and occupancy of the subject property'. In the instant case, undoubtedly, defendants' occupancy of the two (2) parcels of land, depriving the plaintiff of its use entitles the latter to demand payment of the actual use in the form of rental as reasonable compensation for its use and occupancy by the defendants. Defendants herein are [sic] undoubtedly deprived the plaintiff of the right to sue and enjoyment as well as [sic] the fruits of the property for which the plaintiff is entitled for the indemnity by way of rental. It is but right and proper that plaintiff be indemnified of the use and occupancy of the two (2) parcels of land for her failure to exercise the right of dominion and ownership over the lot as well as all the essential attributes namely: the Jus Fruendi or the right to the fruits and Jus Abutendi or the right to the use of the same in the amount of P2,000.00 per annum from the time of the inception of the defendants['] occupancy in April 1997 until such time that defendant peacefully vacate and surrender possession of the land to the plaintiff. On the other hand, the defendant is not entitled to damages instead the court awards the same to the herein plaintiff.”[6] (emphasis Ours)

Hence, this appeal.

Issues:

In their Brief,[7] the Heirs of Nera (now defendants-appellants) argued:

“THE TRIAL COURT ERRED IN FINDING THAT PLAINTIFF-APPELLEE IS THE LAWFUL OWNER AND POSSESSOR OF LOT NOS. 253 AND 2668 AS SHE AND HER PREDECESSORS-IN-INTEREST NEVER OCCUPIED AND POSSESSED THE LAND IN ANY SINGLE INSTANCE AND SHE DID NOT PRESENT EVIDENCE TO PROVE HER CLAIM OF OWNERSHIP OVER THE LAND.”[8]

Such is the issue which We shall resolve in this appeal.

OUR RULING

At the core of the parties' instant dispute is the question of whether or not plaintiff-appellee's alleged possession of the subject property has been established and whether the requisite “open, continuous, exclusive and notorious possession and occupation of the subject property” has been sufficiently complied with.

The defendants-appellants posit that the court a quo erred in considering plaintiff-appellee as the lawful owner and possessor of Lot Nos. 253 and 2668 because they are the actual occupants and possessors of the subject land;[9] plaintiff-appellee never presented any proof to establish by preponderance of evidence her claim of ownership;[10] that her tax declarations failed to show that ownership of the land was transferred by Chino Co Lam to Teodorico Neyra, Sr.;[11] instead, Chino Co Lam transferred said property to Gregorio Nera in 1924;[12] and that her claim that a certain Melecio Madrilejos is the caretaker of the subject property is only a bare assertion

with no concrete evidence.[13] What is more, defendants-appellants rely heavily on the testimony of one Eusebio Consorte - allegedly a child of Chino Co Lam – who testified that his father sold the subject land to Gregorio Nera in 1924.[14]

We are not convinced.

Under the law, “[p]ossession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of our will, or by the proper acts and legal formalities established for acquiring such right.”[15] As such, actual possession consists in the manifestation of acts of dominion over property of such a nature as a party would naturally exercise over his own[16] -- as when respondent himself is physically in occupation of the property, or even when another person who recognizes the former's rights as owner is in occupancy.[17]

Here, records show that plaintiff-appellee was able to present sufficient evidence to prove her claim of “open, exclusive, continuous and notorious possession and occupation under a bona fide claim of ownership” over the subject parcels of land. Plaintiff-appellee’s witness Tedorico Neyra, Jr. categorically testified that the open and continuous possession of the subject property started as early as 1930’s, i.e., 1939, because he and his father, Teodorico Neyra, Sr., used to visit said parcels of land in Bagumbayan, Tiwi, Albay;[18] that on July 29, 1968, he and his brother, Roberto, acquired ownership of the property by virtue of a Deed of Absolute Sale of Real Properties[19] executed by their father in their favor, for and in consideration of the sum of P875.00;[20] that their father purchased the same parcels of land from one Chino Co Lam and had been in possession thereof from 1939 up to 1968.[21] His father actually paid real property taxes thereof, as evidenced by the various property tax receipts presented by plaintiff-appellee.[22] His testimony is ably corroborated by Amormia Neyra, another child of Teodorico Neyra, Sr., who testified that she is familiar with the subject parcels of land because she used to always go there with her father during vacation and she remembers the property as having many coconut trees and bananas;[23] and that one Melicio Madrilejos worked and served as a tenant of the aforesaid property.[24]

Witness Amormia Neyra also testified that she also knew the late Apolinario Nera since sometime in 1997; she went to the PNP station of Municipality of Tiwi to report the latter’s construction of a bungalow house in the subject property without their consent and knowledge;[25] this allegation is supported by the Certification/Police Blotter dated August 27, 1997[26] which clearly showed that Amormia Neyra indeed reported the incident to the Philippine National Police of Tiwi, Albay on even date.

What is more, witness Edwin Rodriguez testified that he used to live with his grandfather, Melecio Madrilejos, in a house situated in a lot owned by Teodorico Neyra, Sr.[27] and that they planted banana, coconut and pili trees thereon;[28] that his grandfather allowed another person, Irineo Contante, to build a house beside theirs but said house was no longer there because they have been ejected by one Apolinario Nera who constructed a house in the two (2) lots in question.[29]

Evidence for the plaintiff-appellee shows that: the subject property is covered by tax declarations dating as far back as July 2, 1906 in the name of Juan Commigo[30] who transferred the same to Chino Co-Lam,[31] from whom Teodorico Neyra purchased the same[32] until they were transferred in the names of Teodorico Neyra Jr. and Roberto Neyra[33] who subsequently sold the same to herein plaintiff-appellee Lilibeth by virtue of a Deed of Absolute Sale dated February 9, 2005.[34] that the same is agricultural land and that they have paid the corresponding real property taxes thereon.[35] What is more, records further show that in 1973, Survey Notification Cards[36] were issued to Roberto Neyra and Teodorico Neyra, as owners of Lot Nos. 2668 and 253, respectively, informing them of the survey to be conducted on the said property which they claim and requesting them to appear thereon.

Considering the strength of the evidence presented, We cannot but agree with the trial court when it held that these pieces of evidence sufficiently establish plaintiff-appellee's possession and imperfect title over the subject property which is worthy of judicial confirmation. For although tax declarations, as a rule, are not conclusive evidence of ownership, they are proof that the holder has a claim of title over the property and serve as sufficient basis for inferring possession.[37] These tax declarations bolster plaintiff-appellee's claim that her predecessor-in-interest possessed and occupied the lots even before the period prescribed by law.[38]

Defendants-appellants' allegation that the subject property were sold by Chino Co Lam to Gregorio Nera in 1928, as testified to by one Eusebio Consorte failed to convince Us. We are not inclined to give credit to the Confirmation of Sale dated December 31, 1995[39] executed by said Eusebio Consorte as he was not even presented as witness and was not subjected to cross-examination. Where the affiant did not appear, or was not presented to identify his sworn statement or affidavit, said statement or affidavit is hearsay and inadmissible in evidence.[40] This was aptly explained by the court a quo when it held, viz.:

“Clearly, discerning from the said ruling of the DENR, the citation pronounced was that, Eusebio Consorte was not even presented in court to identify the confirmation of sale alluded to by the defendants herein. The hearing officer said that the said confirmation of sale was merely hearsay evidence taken by the defense and has no factum probans. Clearly, without any valid document of transfer from their alleged predecessor Chino Co Lam, then, Apolinario succeeded by herein defendants, had indubitably, illegally occupied the lots now owned by the plaintiff. Inasmuch as their claim of possessory right is not clothed with any insignia of authority.”[41] (emphasis Ours)

In view of the foregoing, it is imperative that We hold that open, exclusive, continuous and notorious possession and occupation of the subject property under a bona fide claim of ownership was established by plaintiff-appellee Lilibeth Neyra-Tiu. The totality of evidence presented was sufficient to convince this Court that her possession of the subject property – including that of her predecessors-in-interest - has been in the concept of an owner. The reconveyance of the subject parcels of land in her favor is thus proper.

WHEREFORE, the instant appeal is DISMISSED.

SO ORDERED.

Lantion, and Antonio-Valenzuela, JJ., concur.

[1] Records, Volume II, pages 462-481.

[2] Branch 15.

[3] Records, Volume II, pages 480-481.

[4] Records, Volume I, pages 1-4.

[5] Records, Volume II, pages 462-465.

[6] Records, Volume II, pages 473-480.

[7] Rollo, pages 63-72.

[8] Ibid., page 64.

[9] Rollo, page 67.

[10] Ibid., page 68.

[11] Ibid.

[12] Ibid.

[13] Ibid.

[14] Ibid., p. 69.

[15] Republic of the Philippines v. David, 436 SCRA 577, 586-587 (2004), citing Article 531, New Civil Code.hanr

[16] Ibid., citing Republic of the Philippines v. CA, 390 Phil. 1041, 1050, July 14, 2000; Reyes v. CA, 374 Phil. 236, 242-243, September 30, 1999. oblesvir

[17] Ibid.r

[18] Transcript of Stenographic Notes dated September 25, 2008, page 7.

[19] Records, Volume II, page 24.

[20] Transcript of Stenographic Notes dated September 25, 2008, page 8.

[21] Ibid., page 10.

[22] Records, Volume II, pages 36-59.

[23] Transcript of Stenographic Notes dated January 15, 2009, page 3.

[24] Ibid., page 4.

[25] Ibid.

[26] Records, Volume II, page 82.

[27] Transcript of Stenographic Notes dated September 16, 2009, page 5.

[28] Ibid., page 6.

[29] Ibid., pages 7-8.

[30] Tax Declaration No. 2142; Records, Volume II, page 35.

[31] Tax Declaration No. 7212; Records, Volume II, page 34.

[32] Tax Declaration No. 13120; Records, Volume II, page 33.

[33] Records, Volume II, pages 25-32.

[34] Ibid., pages 21-23.

[35] Ibid., pages 36-61.

[36] Ibid., page 66.

[37] Republic of the Philippines vs. Fredesvinda Almeda Consunji, G.R. No. 158897, September 13, 2007.

[38] Note 37, supra., citing Limcoma Multi-Purpose Cooperative v. Republic, G.R. No. 167652, July 10, 2007.

[39] Records, Volume II, pages 314-315.

[40] Melchor vs. Gironella, G.R. No. 151138, February 16, 2005, citing Tapiador v. Office of the Ombudsman, G.R. No. 129124, 15 March 2002, 379 SCRA 322, 330.

[41] Records, Volume II, page 479.

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