

**LORETO SERAFION “LARRY” SERVAS, PLAINTIFF-APPELLEE, VS.
MARIA APIO, SUBSTITUTED BY HER HEIRS, NAMELY: FRUCTUOSO
APIO, MA. LUISA A. SERVAS, AVELINA A. FELIZARIO, ANNABELLE A.
ALC...**

Ponente: ASUNCION-VICENTE, J.

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ASUNCION-VICENTE, J.:

The Case

Before this Court is an appeal from the Decision dated August 28, 1998 of the Regional Trial Court (RTC) of Imus, Cavite, Branch 20 in Civil Case No. BCV-94-27, the dispositive portion of which reads:

“WHEREFORE, premises considered, judgment is rendered in favor of plaintiff and against defendants as follows:

a) Declaring plaintiff to be the absolute owner and rightful awardee of Lot 23, Blk. 1-G Extension, PSU-04-25744; &

2. Ordering defendants and all persons claiming under them to surrender the possession of said lot to plaintiff.

SO ORDERED.”[2]

The Facts

The subject matter of this controversy is a parcel of land with an area of ninety (90) square meters, more or less, situated in General Mariano Alvarez (GMA), Cavite, particularly known as Lot 23, Block 1-G Extension, Psu-04-25744 (subject lot, for brevity).

The subject lot was awarded by the National Housing Authority (NHA) in favor of plaintiff-appellee Loreto Serafion “Larry” Servas (hereinafter plaintiff-appellee) in 1991 as evidenced by a Deed of Absolute Sale dated May 27, 1991.[3] Claiming that defendants-appellants Maria Apio and Marilou Apio (hereinafter defendants-appellants) are unlawfully withholding possession of subject lot from him by refusing to vacate and continuously asserting their claim over the subject lot, plaintiff-appellee filed a complaint[4] for quieting of title with damages before the RTC of Imus, Cavite on February 15, 1994.

On March 18, 1994, defendants-appellants filed their Answer[5] claiming that plaintiff-appellee was not the real awardee but an impostor because the real awardee was defendant-appellant Marilou Apio's common-law husband Larry Servas with whom she had been separated since 1989 but prior to their separation, or since 1986, had already been occupying the subject lot. In 1987, said Larry Servas applied with the NHA for the award to him of subject lot and in 1988, defendant-appellant Marilou Apio received an Individual Notice of Award from the NHA. When defendant-appellant Marilou Apio and Larry Servas separated in 1989, she continued paying the taxes on the subject lot in the name of her common-law husband.

After trial on the merits, the trial court ruled in favor of plaintiff-appellee, rationalizing in this wise:

“From the evidence adduced, it is clear that plaintiff is the rightful awardee of the lot in question. Undoubtedly, plaintiff and defendant lived together for a while as common-law husband and wife. It is even possible that a child was born during their cohabitation. But then, the act of defendant Maria Luisa Apio or Marilou Apio in filing another application before the NHA for the same lot applied for by plaintiff, when the latter was abroad and at the time that the papers of plaintiff were missing, is uncalled for. What is even worse is that defendant Marilou Apio submitted a fake marriage contract to the NHA to make it appear that she and Larry Servas are legally married. Believing that she is the legal wife of plaintiff, the NHA was misled in issuing an award in her favor. It was only after plaintiff returned home from abroad that he learned about the fraud perpetrated by the defendants. Thus, in an investigation conducted by the NHA, the award issued to defendant was cancelled. NHA upheld the award given to plaintiff which led to the issuance of a deed of sale in his favor.

“It may be true that plaintiff when (sic) defendant Marilou Apio lived under a common-law relationship and a child was born out of their illicit relationship. It is equally true that defendants stayed and occupied the premises in question for quite sometime, as against plaintiff who might have been an absentee awardee. However, defendants should have sought the cancellation of the award to plaintiff before the NHA. As it is, the NHA has already ruled in favor of plaintiff when it executed a deed of sale in his favor.”[6]

Feeling aggrieved, defendants-appellants appealed the decision of the trial court before this Court.

The Issues

In their Brief, defendants-appellants assigned the following errors allegedly committed by the trial court.

I.

THE TRIAL COURT ERRED IN NOT FINDING THAT DEFENDANT-APPELLANT MARIA LUISA APIO, AS THE COMMON-LAW WIFE OF PLAINTIFF-APPELLEE SERVAS, IS A CO-OWNER OF THE SUBJECT PROPERTY; AND AS SUCH, DEFENDANT-APPELLANT MA. LUISA APIO HAS A VALID CLAIM THEREON;

II.

THE TRIAL COURT ERRED IN NOT FINDING THAT DEFENDANT-APPELLANT MA. LUISA APIO CANNOT BE ORDERED TO VACATE THE SUBJECT PROPERTY; and

III.

ASSUMING ARGUENDO THAT PLAINTIFF-APPELLEE SERVAS IS THE SOLE OWNER OF THE SUBJECT PROPERTY, THE PRESENT ACTION IS NOT THE PROPER RECOURSE AVAILABLE FOR PLAINTIFF-APPELLEE SERVAS TO RECOVER THE SUBJECT PROPERTY FROM DEFENDANTS-APPELLANTS.[7]

The Court's Ruling

The appeal is devoid of merit.

On the first and second assigned errors.

The first and second assigned errors, being interrelated, shall be discussed jointly.

In their appellants' brief, defendants-appellants put forth the argument that plaintiff-appellee and defendant-appellant Marilou (Ma. Luisa) Apio were common-law spouses when subject lot was awarded by the NHA. Having been acquired by both of them during their cohabitation, the subject lot is co-owned by them

pursuant to Article 148 of the Family Code.[8]

Plaintiff-appellee in his appellee's brief debunks this claim of common-law relationship by defendants-appellants as being utterly baseless, as in fact, such claim is contrary to their evidence, both testimonial and documentary. In her testimony, defendant-appellant Marilou Apio claimed that plaintiff-appellee is not the same person as the Larry Servas who is her common-law husband. To the same effect is the testimony of their witness Romeo Felizardo who testified that plaintiff-appellee is not the Larry Servas who asked him to construct their house in GMA sometime in 1983. Even assuming that they once maintained a common-law relationship, plaintiff-appellee is very much married to his wife Modgina Papa, before, during and after the approval of his housing application in GMA, Cavite.[9]

We rule for the plaintiff-appellee.

Defendants-appellants' contention that plaintiff-appellee and defendant-appellant Marilou Apio lived together as husband and wife and thus the subject lot is co-owned by them under Article 148 of the Family Code is a matter which was raised by herein defendants-appellants for the first time in this appeal.

It must be emphasized that defendants-appellants, during the trial of this case, were resolute in their theory that plaintiff-appellee was not the same Larry Servas whom defendant-appellant Marilou Apio had common-law relations with. This is evident from the following assertions of defendants-appellants in the court below:

- Defendants-appellants averred in their Answer that plaintiff was misrepresenting himself as LARRY SERVAS the rightful awardee, occupant and resident of the subject property when in fact he is not.[10]
- Defendants-appellants stated in their Pre-trial Brief that plaintiff has committed wholesale fraud in misrepresenting himself as Larry Servas, the rightful awardee and common-law husband of defendant Marilou Apio also known as Ma. Luisa Servas.[11]
- During her cross-examination on 13 September 1996, defendant-appellant Marilou Apio testified that Larry Servas, his common-law husband, is different from herein plaintiff Loreto Servas.[12]
- During the direct examination of defendants-appellants' witness Romeo Felizardo, he testified that plaintiff-appellee is not the same person as the common-law husband of Marilou Apio in the name of Larry Servas.[13]

In this appeal, however, defendants-appellants changed their theory and now are claiming that plaintiff-appellee is the common-law husband of defendant-appellant Marilou Apio and that the subject lot is co-owned by them.

It is a basic rule that where a party adopts a certain theory in the trial court, he will not be permitted to change his theory on appeal, for to permit him to do so would not only be unfair to the other party, but it would also be offensive to the basic rules of fair play, justice and due process.[14]

Moreover, it was never categorically proven that plaintiff-appellee and defendant-appellant Marilou Apio lived together as husband and wife. There is nothing in the records of the case which could support defendants-appellants' new theory of cohabitation and co-ownership.

But even assuming it is true that plaintiff-appellee and defendant-appellant Marilou Apio were common-law husband and wife, still Article 148 of the Family Code does not, and will not apply, so as to consider the subject lot as co-owned by them.

Article 148 of the Family Code provides:[“Art. 148. In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties through their actual joint contribution of money,

property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contribution and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit. xxx.”]Article 148 applies only to properties acquired by the parties during the subsistence of their cohabitation and not afterwards. In this case, assuming that plaintiff-appellee and defendant-appellant Marilou Apio lived together as common-law spouses, the subject lot was, however, acquired by plaintiff-appellee at the time when they were already separated. Defendant-appellant Marilou Servas testified that she and Larry Servas separated in 1989,[15] while the subject lot was acquired by herein plaintiff-appellee in 1991 as evidenced by the Deed of Sale[16] executed in his favor by the NHA. Clearly, Article 148 does not apply in this case. Consequently, not being a co-owner under Article 148, defendant-appellant Marilou Apio has no valid claim over the subject lot and may be properly ordered to vacate the same.

On the third assigned error

Defendants-appellants contend that assuming arguendo that plaintiff-appellee is indeed the sole owner of the subject lot and he seeks to regain possession thereof, an action to quiet title is not the proper recourse available to him. They argue that the award in favor of Marilou Apio had already been cancelled by the NHA, hence, there is no more cloud over plaintiff-appellee's title to speak of. The appropriate remedy, therefore, is an action for recovery of possession and not an action to quiet title. Thus, the complaint filed below must be dismissed.[17]

The pertinent provisions of the Civil Code on quieting of title, particularly Articles 476 and 477 provide:

“Article 476. 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 is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

“An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

“Article 477. The plaintiff must have legal or equitable title to or interest in the real property which is the subject matter of the action. He need not be in possession of said property.”

For an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its prima facie appearance of validity or legal efficacy.[18]

With respect to the first requisite, there is no doubt that plaintiff-appellee has a legal title over the subject property. The NHA awarded the subject lot and executed the corresponding Deed of Sale in his favor after tendering full payment of the purchase price. On the basis of the said Deed of Sale, a transfer certificate of title was issued in his name.

The second requisite, however, is not obtaining in this case. The alleged claim of defendants-appellants over the subject lot does not have a prima facie appearance of validity or legal efficacy. In fact, such claim is non-existent because the NHA had already cancelled the award earlier made in favor of defendant-appellant Marilou Apio on the grounds of falsification of public document and misrepresentation.[19]

Be that as it may, defendants-appellants are already precluded from questioning the propriety of the action to quiet title filed by plaintiff-appellee before the trial court. This is a matter of defense on the part of defendants-appellants which We cannot allow to be raised in this appeal, not having been raised in the court

below. Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.[20]

Furthermore, this Court cannot close its eyes to the injustice being suffered by plaintiff-appellee. The NHA already awarded the subject lot and executed the Deed of Sale in his favor as early as 1991. There is ample evidence on record that plaintiff-appellee is the rightful awardee and owner of the subject property, and yet he could not enjoy the use and possession thereof because of defendants-appellants' baseless claim. This Court will no longer allow injustice to prevail in this case by dismissing the action to quiet title on the ground that it is an improper recourse.

It must also be emphasized that it is not the caption of the complaint but the allegations therein that determine the nature of the action and the Court shall grant relief warranted by the allegations and the proof even if no such relief is prayed for.[21] It was alleged and proven that plaintiff-appellee is the awardee and owner of the subject lot. Defendants-appellants never questioned the award in favor of plaintiff-appellee. In fact, by claiming co-ownership with him in this appeal, they recognize the validity of the award by the NHA to plaintiff-appellee. The said award has long become final and executory. Thus, it is but proper to order defendants-appellants and all persons claiming rights under them to surrender the possession of the subject lot to plaintiff-appellee.

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit. The Decision dated August 28, 1998 of the RTC of Imus, Cavite, Branch 20 is hereby AFFIRMED.

SO ORDERED.

Sabio, Jr., (Chairman) and Bato, Jr., JJ., concur.

[1] p. 42, Rollo

[2] p. 198, Records

[3] Exhibit "A", Folder of Exhibits

[4] pp. 1-4, Records

[5] pp. 22-27, Records

[6] pp. 197-198, Records

[7] p. 35, Rollo

[8] pp. 36-37, Rollo

[9] pp. 54 and 56, Rollo

[10] p. 26, Records

[11] p. 43, Records

[12] tsn, hearing on 13 September 1996, pp. 6-7

[13] tsn, hearing on 21 January 1997, p. 8

[14] Philippine National Construction Corporation v. Court of Appeals, 467 SCRA 569 citing Drilon v. Court of Appeals, 270 SCRA 211

[15] tsn, hearing on 13 September 1996, p. 7

[16] Exhibit "A", Folder of Exhibits

[17] p. 37, Rollo

[18] Calacala v. Republic, 464 SCRA 438, 444

[19] pp. 30, 32, Folder of Exhibits

[20] Section 1, Rule 9 of the 1997 Rules of Civil Procedure

[21] Lorbes v. Court of Appeals, 351 SCRA 716, citing Solid Homes, Inc. v. Court of Appeals, 271 SCRA 157

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