

EMILIO PURUGGANAN, PLAINTIFF AND APPELLEE, VS. FELISA PAREDES AND TRANQUILINO BARRERAS, DEFENDANTS AND APPELLANTS.

G.R. No. L-23818. January 21, 1976

Ponente: MARTIN, J.

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MARTIN, J.:

The main issue in this appeal is whether or not the summary judgment of the Court of First Instance of Abra based on the pleadings and reports submitted by the commissioner in Civil Case No. 738 entitled Emilio P. Purugganan vs. Felisa Paredes, et al. was correctly rendered.

Plaintiff-appellee Emilio Purugganan is the owner of a piece of a residential lot subdivided as Lot 1 and Lot 2, situated at the poblacion of Bangued, Abra and technically described under Torrens Title No. R-6 in his name, adjacent to and bounded on the North by the lot of defendant-appellant Felisa Paredes. The lots of the plaintiff-appellee are subject to an easement of drainage in favor of the defendants-appellants fully quoted in the Decree of Registration of the Court of First Instance of Abra, G.L.R.O. Rec. No. 3256, to wit:

"That the oppositor (Felisa Paredes) withdraws her opposition to the registration of the lots Nos. 1 and 2 of the applicant, and in compensation to said withdrawal by the oppositor of her opposition, the applicant agrees to respect an easement of servitude over a portion of the lots Nos. 1 and 2 which is EIGHT AND ONE HALF (8-1/2) meters in length commencing from point 4 of Lot No 2 and stretching towards Lot No. 1 going Eastward, and the width is ONE (1) meter, in order that the rain water coming from the roofing of a house to be constructed by the oppositor over the ruins of her brick wall now standing along the Northeastern boundary of Lot 1 shall fall into the land of the applicant."

In or about the month of March 1951, the defendants-appellants constructed a house on their lot adjacent to Lots 1 and 2 of plaintiff-appellee in such a manner that the southern side of their house is exactly on the brick wall, the southern side of which is the demarcation line between the plaintiff-appellee and the defendants-appellants, demolishing said brick wall and built thereon the southern wall of their house with 3 windows. The house constructed by the defendants-appellants is 2-1/2 meters longer than the length of roofing allowed in the abovequoted Decree of Registration, and has an outer roofing (eaves) of 1.20 meters, protruding over the property of the plaintiff-appellee which is .20 meter wider than that allowed in the same Decree of Registration, and the rain water from the GI roofing falls about 3 meters inside Lots 1 and 2 of the plaintiff-appellee. The defendants-appellants also placed 3 windows each on the first and second floors of their house on the side facing Lots 1 and 2 of plaintiff-appellee. From the time the defendants-appellants started to construct their house, the plaintiff-appellee has repeatedly and continuously been demanding from the defendants-appellants that the construction of their house be in accordance with the easement, but the defendants-appellants refused to observe the easement and to close their windows. They also prohibited the plaintiff-appellee from constructing a party wall between points 1 and 2 of Lot 2 and between points 2 and 3 and 4 of Lot 1.

In their answer, defendants-appellants admitted the allegations in paragraph 4 of the complaint with respect to the

existence of an "Amicable Settlement" with the plaintiff-appellee but interposing a denial of the rest and alleging that the ruined brick wall which stands between the properties of the plaintiff-appellee and their properties solely and exclusively belongs to them to the exclusion of the plaintiff-appellee, the same having been inherited by defendant-appellant Felisa Paredes from her ascendants from time immemorial, possessing them, peacefully, continuously and adversely against any other party for so many years up to the present; they also admitted having constructed a house on the very lot owned by them, with windows on the side facing the south, the same as the house which turned into ruins by reason of the bombing of Bangued in March 1945, but they denied that the same was constructed in or about March 1951, as said house was reconstructed and re-erected on the ruins of a Spanish-built house sometime in later months of 1950. They further alleged that the house standing on the dominant estate pertaining to Felisa Paredes was constructed long before the issuance of the Decree of Registration alluded to in the complaint and that they have not violated the terms of the Decree of Registration referred to in paragraph 4 of the complaint; that the windows alluded to in paragraph 7 of the complaint had long existed before the Decree of Registration in question was issued, in the same way that said windows existed long before the bombing of Bangued in March 1945 and therefore, plaintiff-appellee, as owner of the servient estate, is estopped from questioning the existence of said windows; that since time immemorial, the house bombed in March 1945, on which ruins stands the present house, had windows facing Lot No. 1, in the same way the windows of the present house are so constructed facing same Lot No. 1 a long time with notice, knowledge and acquiescence of the plaintiff-appellee as owner of the servient estate. Defendants-appellants prayed that plaintiff-appellee be ordered to respect all existing construction on their lot and to refrain from constructing a party wall to obstruct the easement of light and view: that the easement of light and view be inscribed on the title of plaintiff-appellee's lots as well as to pay the actual moral and consequential damages.

On September 7, 1959, the trial court pursuant to a pre-trial agreement issued an order appointing the Provincial Land Officer of the Bureau of Lands, Ilocos Norte, or his duly authorized representative to relocate the monuments and determine the boundary line between the lots of the parties involved.

On May 5, 1962 plaintiff-appellee filed a motion for summary judgment in accordance with the prayer of his complaint except the portion relative to damages where he reserved his right to present his evidence. He supported his motion for summary judgment with an affidavit of merits to which he has attached the Original Certificate of Title No. R-6, the Decree of Registration for the issuance of said certificate of title, the Order dated September 7, 1959 and the report of the Commissioner. In asking for summary judgment plaintiff-appellee contended that from the respective pleadings of the parties and the Commissioner's Report relative to the relocation and boundaries of his lands and the adjacent lands of defendants-appellants which are both covered by Torrens Certificate of Title, it is evident that there is no genuine issue as to any material fact, except as to the amount of damages.

On June 4, 1962 defendants-appellants opposed the motion for summary judgment on the ground that their answer to the plaintiff-appellee's complaint has raised genuine and material issues of facts. In their supporting affidavit, defendants-appellants alleged that the plaintiff-appellee was the private surveyor who surveyed their lot in 1925 and that in the course of his survey he had acted in bad faith when he excluded the portion of their land, which was the subject matter of their opposition to the registration of plaintiff-appellee's lots; that they constructed their house in 1950 without any protest from the plaintiff-appellee and was almost complete when the Decree of Registration was issued by the court; that the plaintiff-appellee knew fully well that the defendants-appellants were merely reconstructing a house which had been existing prior to the bombing of Bangued in 1945; and that the brick wall standing along the house is exclusively owned by them.

On July 30, 1962, the lower court rendered the now questioned Summary Judgment, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING CONSIDERATION, summary judgment is hereby rendered in favor of the plaintiff and against the defendants:

- (a) Ordering the defendants to reconstruct the roof and eaves of their house on the southern side now existing on their lot such that the falling water shall not fall on curve into the lots of the plaintiff beyond one meter from the boundary line and by 8-1/2 meters in length and to remove the said protruding eaves and roof;
- (b) Ordering the herein defendants to reconstruct the wall of their house on the southern side either by placing in two meters north of the boundary line if they desired their windows on the first and second floors to continue to exist, or to permanently close the three windows on the second floor and such other openings and apertures facing the lot of the plaintiff;
- (c) Ordering the defendants to comply with what is ordered above in Pars. (a) and (b) within sixty (60) days from the finality of this judgment. Upon their failure to do so the Provincial Sheriff of Abra is hereby authorized to implement this judgment and execute the acts mentioned in Pars. (a) and (b) hereof, at the expense of the defendants;
- (d) Enjoining perpetually the herein defendants from prohibiting the plaintiff from making such legal and lawful constructions on his lots up to the boundary between plaintiff's lot and defendants' lot, provided always that such construction in whatever form, as a firewall, fence, etc., shall not violate the easement of drainage in favor of the defendants, and to conform with the provisions of Art. 675 of the New Civil Code; and
- (e) Ordering the defendants from further encroaching into plaintiff's lots and molesting the said plaintiff in the lawful exercise of dominion over his own property."

Plaintiff-appellee reserved his right to adduce evidence with respect to damages.

On September 3, 1962 defendants-appellants moved for reconsideration of the foregoing decision on the ground that there is a genuine and material issue of fact and that said decision is unsupported by law and evidence. Whereupon the court a quo, deferring in the meantime any action on the motion, issued an order appointing Atty. Gelacio Bolante, Clerk of Court, to act as commissioner to make an ocular inspection on the premises of the lot in question and to measure the eaves of the house of the defendants-appellants to find out whether it conforms with the annotation contained in the Torrens Certificate of Title of the plaintiff-appellee.

On December 4, 1962 the Clerk of Court submitted his report. After receiving a copy of said report defendants-appellants manifested to the court that they agree with the findings of facts therein and prayed that judgment be rendered in accordance therewith and that their ownership of the brick wall mentioned in said report be confirmed.

On July 23, 1963 the trial court denied the motion for reconsideration of its summary judgment.

Hence, this appeal.

Defendants-appellants contended that the lower court erred in rendering a summary judgment because (1) there is actually a genuine issue of material facts raised in the pleadings; (2) that it made a finding of fact not supported by any evidence; and (3) that it rendered a summary judgment without any legal basis. They claimed that after denying the allegations of plaintiff-appellee's complaint that they have violated the easement of drainage there was actually a genuine issue of material fact presented. The allegation referred to is that contained in paragraph 6 which states that the roof of defendants' house protrudes by .2 meter wider and 2-1/2 meters longer than that allowed by the Decree of Registration. This denial in paragraph 4 of the Answer of the defendants-appellants reads as follows:

"That the defendants deny the allegations in paragraph 6 of the complaint, and allege that the house standing

on the dominant estate pertaining to Felisa Paredes, was constructed long before the issuance of the Decree of Registration alluded to in the complaint, the herein defendants not having violated the terms of the Decree of Registration referred to in paragraph 4 of the complaint."

Again in their opposition to the motion for summary judgment, defendants-appellants repeated the same denial and averments by alleging therein:

"Defendants specifically denied these allegations of the plaintiff and alleged that (a) the house of the defendants was constructed sometime in the latter months of 1950, before the issuance of the Decree of Registration adverted to by the plaintiff, and therefore could not have violated that said Decree, and (b) that the windows complained of by the plaintiff are reconstructed windows of the reconstructed house of the dominant estate which had been in existence since the Spanish Regime, with the knowledge, acquiescence and toleration of the plaintiff and his predecessors in interests for more than sixty (60) years."

Even the supporting affidavit of defendants-appellants alleged that the brick wall standing along their house and adjacent to the land of the plaintiff-appellee is owned by them. A close look at the foregoing denials however, will show that the allegations defendants-appellants were trying to challenge relate to the validity of the easement of drainage as annotated in the Certificate of Title of plaintiff-appellee and not to the allegation that the roof of defendants-appellants protrudes by .2 meter wider and 2-1/2 meters longer than that allowed by the Decree of Registration. This must be the reason why in his summary judgment, the trial judge noted the first issue as: "(1) that the house now standing on the lot of the defendants was constructed before the issuance of the Decree of Registration and, therefore, such construction did not violate said Decree of Registration particularly the easement annotated on the Original Certificate of Title No. R-6 * * *."

It is only in their Motion for Reconsideration that defendants-appellants made the clarification that the issue is not whether their house was constructed before or subsequent to the Amicable Settlement but whether or not the roofing was .2 meter wider and 2-1/2 meters longer than the distance allowed in the Decree of Registration. So after the clarification, the trial judge ordered that an ocular inspection of the premises of the lots in question be made and the eaves of the house of the defendants-appellants be measured whether it conforms with the annotation contained in the Torrens Certificate of Title of plaintiff-appellee. After the ocular inspection defendants-appellants readily manifested their conformity to the findings of fact made by the commissioner appointed by the court. Under such a situation it would seem that there was no need for a trial on the merits to resolve the question as to whether the defendants-appellants' roof was constructed in violation of the easement of drainage of plaintiff-appellee. All that remained for the trial court to do was to evaluate the facts and the arguments in the pleadings and the reports of the commissioner.

Defendants-appellants faulted the trial court for concluding that they have violated the conditions of the easement of drainage without taking into consideration the report of the commissioner appointed by it. After going over the pleadings of the parties and the reports of the commissioner, we find no substantial ground to disturb the conclusion of the trial court. Defendants-appellants have made a mistake in applying the distances prescribed in the Decree of Registration to the roofing of their house. They failed to comprehend the meaning of the phrase "servidumbre de vertiente de los tejados" constituted on the land of the plaintiff. Translated, it means the easement of receiving water falling from the roof which is an encumbrance imposed on the land of the plaintiff-appellee. Consequently, the distances prescribed in the Decree of Registration should not correspond to the width and length of the roof of the defendants-appellants' house but to the distance of the rain water falling inside the land of the plaintiff-appellee because the encumbrance is not the roof itself but the rain water falling inside the property of the plaintiff-appellee. The Amicable Settlement, which was the basis of the Decree of Registration, clearly states that the servitude on the land is to the extent of the distances set forth thus:

"* * * the applicant agrees to respect an easement of servitude over a portion of the lots Nos. 1 and 2 which is EIGHT AND ONE HALF (8-1/2) meters in length commencing from point 4 of Lot No. 2 and stretching towards Lot No. 1 going Eastward, and the width is ONE (1) meter, in order that the rain water coming from the roofing of a house to be constructed by the oppositor over the ruins of her brick wall now standing along the Northeastern boundary of Lot 1 shall fall into the land of the applicant."

And the Decree of Registration tersely states that a portion of Lot 1 and 2 consisting of 8-1/2 meters long and 1 meter wide is subject to the easement of receiving water falling from the roof. If these distances were made to correspond to the measurement of the roof then the encumbrance on plaintiff-appellee's property would be more than the distances specified in the Certificate of Title. The report submitted by the Commissioner appointed by the lower court to make an ocular inspection of the premises involved shows that the eaves of the house of defendants-appellants juts 98 centimeters inside the property of the plaintiff-appellee and measures 8 meters and 20 centimeters in length; that during ordinary rain the water falling from the eaves of the defendants-appellants' house fall within one meter from the boundary line of plaintiff-appellee's property and during heavy rains more than one meter from said boundary line. The foregoing findings and observations of the Commissioner weaken defendants-appellants' disclaimer that they did not violate the conditions of the easement of drainage of plaintiff-appellee. There is such a violation because the roof of the defendants-appellants protrudes by 98 centimeters over the property of plaintiff-appellee, so that during a heavy rainfall the propulsion of the water would go as far as one meter over the property of the latter. Obviously the lower court is correct in finding the defendants-appellants to have violated the conditions of the easement of drainage of plaintiff-appellee.

Defendants-appellants also blamed the trial court for ruling that they have not acquired an easement of light and view of the property of the plaintiff-appellee. The trial court's ruling that defendants-appellants have not acquired an easement of light and view on the property of the plaintiff-appellee is premised on Section 39 of Act 496 in accordance with which the servient estate was registered. Said Section provides:

"Every person receiving a certificate of title in pursuance of a decree of registration * * * shall hold the same free of all encumbrance except those noted on said certificate * * *."

The same section, however, provides: "But if there are easements or other rights appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure, and shall be held to pass with the land until cut off or extinguished by the registration of the servient estate or in any other manner (Sec. 39, Act No. 496, as amended by Act No. 2011, and Sec. 4, Act No. 3621). In the case of *Cid vs. Javier*, 108 Phil. 850, 853, plaintiff's lot (dominant) as well as defendants' lot (servient) are covered by Original Certificate of Title Nos. 7225 and 7545 respectively. In both of them, there does not appear any annotation with respect to the easement supposedly acquired by prescription which counting the twenty (20) years from 1913 or 1914 would have already ripened by 1937, date of the decrees of registration. In said case our Supreme Court held:

"Granting that in the instant case an easement of light and view was acquired by prescription, it was cut off or extinguished by the registration of the servient estate under the Torrens System without the easement being annotated on the corresponding certificate of title, pursuant to Sec. 39 of the Land Registration Act (Act 496)."

The lower court correctly applied the foregoing doctrine to the case at bar.

Indeed if defendants-appellants had acquired the said easement of light and view by prescription through user since time immemorial why did they not intervene in the registration proceedings for the inclusion of said easement in the Certificate of Title of plaintiff-appellee as an encumbrance thereon, in the same manner that the easement of drainage was annotated in the Certificate of Title of plaintiff-appellee? The easement of drainage was inscribed in the Certificate of Title of plaintiff-appellee in their favor by virtue of an amicable settlement resulting

from their opposition to the registration of plaintiff-appellee's property. In this light, their defense of user "since time immemorial" becomes flimsy and is merely being used to simulate a factual issue.

Finally, defendants-appellants argued that the summary judgment of the lower court has no legal basis. Summary judgment is employed as a method of disposing a case when the pleadings, depositions, admission and affidavits filed by the parties show that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law (Section 3 of Rule 34). In the case at bar the plaintiff-appellee's right to the reliefs sought is dependent on the existence or non-existence of the easement of drainage and of light and view in favor of the defendants-appellants as well as on the conditions attached to such easements. There is no dispute that plaintiff-appellee's property was registered in 1951 under the Torrens System and that only the easement of drainage is annotated on his Certificate of Title, subject to prescribed distances. But what defendants-appellants have advanced as factual issues are: (1) that they have not violated the prescribed distances of the easement of drainage; and (2) that the easement of light and view was in existence since time immemorial. The first factual issue was resolved by the report submitted by the commissioner to which defendants-appellants have given their conformity. The second factual issue is immaterial to the disposition of the case because the servient estate was registered in 1951 without the easement of light and view being annotated on the title. Since the supposed easement of light and view is not annotated on the title, it becomes immaterial whether such easement existed since time immemorial. On this point, there is no need to have a trial on the merits and a summary judgment would appear to be in order.

In view of the foregoing, the summary judgment appealed from is hereby affirmed with costs against defendants-appellants. So ordered.

Teehankee (Chairman), Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

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