

**LEONARDO CABUDOL, PASTOR CABUDOL, DANIEL CABUDOL AND
JESUS CABUDOL, PETITIONERS, VS. HON. NUMERIANO G. ESTENZO,
ETC., REMIDIO BACUNAL, AND GENEROSA VENCESLAO-BACUNAL,
RESPONDENTS.**

G.R. No. L-21170. September 27, 1966

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

On May 22, 1962, respondents Remigio Bacunal and Generosa Venceslao-Bacunal filed against petitioners before the Court of First Instance of Ormoc City an action, docketed as Civil Case 546-0, for the recovery of possession of a five-hectare portion of Lot No. 10266, covered by Transfer Certificate of Title No. 4067 of the register of deeds of said city, and praying that they be declared owners thereof and given its possession, plus damages and attorney's fees.

Petitioners filed their answer denying the material allegations of the complaint and praying for its dismissal on the ground that the land being occupied by them is not Lot 10266 but Lot No. 10103 of the Ormoc cadastre, which petitioners possessed and owned in common, and covered by Original Certificate of Title No. P-66 of the Register of Deeds of Ormoc City.

The case having been called for trial, the parties submitted a compromise agreement, the pertinent portions of which read:

"a. That the parties have agreed and their lawyers, to have the court appoint a duly licensed Surveyor in the person of Porfirio Ayuyao of this City, to make the relocation of lots Nos. 10266 and 10103, both of the Ormoc Cadastre, covered by T.C.T. No. 4067 of the Office of the Register of Deeds of Ormoc City, and O.C.T. P-66 of the Office of the Register of Deeds of Ormoc City, claimed respectively by the plaintiffs and defendants; after which said Surveyor shall submit his written report of the relocation to the Court;

"b. That a Commissioner of the Court in the person of Mr. Iluminado Dumagsa, shall be appointed, to be present when the relocation of both lots will be made;

"c. That the Surveyor shall indicate in his relocation maps with the concurrence of the Court Commissioner, the portions of the two lots in the possession of both parties and/or third persons;

X X X X

"e. That the adjoining owners of the lots claimed by the respective parties shall be notified of the date when the relocation shall be made, so that they, or their representatives may be present when the relocation shall be made, if they so desired; x x x

"e. That upon submission by the Surveyor of the relocation maps and the joint report of the Surveyor and Commissioner of the Court, the portions trespassed by either of the parties herein the possession of the land shall be delivered to the corresponding owner immediately, as shown by their respective titles;

"f. That the party who has trespassed, as disclosed and verified by the relocation map and joint report, shall pay exclusively for the services of the Surveyor the amount of P200.00, otherwise, the parties shall pay proportionately for said services, in relation to the extent of the trespass one party has made on the other, or proportionally; x x x."

Based on the foregoing compromise agreement, the trial court rendered decision on September 21, 1962, with the following dispositive portion:

"WHEREFORE, decision is hereby rendered in accordance with the foregoing compromise agreement and after the Surveyor and the Commissioner of the Court shall have submitted their report, it is hereby ordered that the party who has trespassed, as disclosed and verified by the relocation map and joint report, shall pay exclusively for the services of the Surveyor the amount of P200.00; otherwise, the parties shall pay proportionately for said services, in relation to the extent of the trespass one party has made to the other, or proportionally; it is further ordered that the party-depositor that has not trespassed, may immediately withdraw his deposit without pronouncement as to costs."

Subsequently, a relocation and survey was conducted and after the submission by Surveyor Porfirio Ayuyao and Commissioner Iluminado Dumagsa of their report indicating therein that petitioners were occupying or encroaching the portion of Lot No. 10266 belonging to respondents with an area of 5.3686 hectares, the lower court issued an order on January 15, 1963 approving the aforesaid report and directing petitioners to pay exclusively the surveyor the amount of P200.00, and that upon their failure to do so, the decision as well as the order of the court would be executed. [1]

On February 18, 1963, petitioner filed a motion to reconsider the above-mentioned order on the ground that the relocation was made without notice to the adjoining owners so that they were unable to testify as to who between the parties were in possession of the portion in controversy, and that the commissioner having failed to submit his report in a formal hearing as provided by the Rules of Court, there is need for the court to order the commissioner to make another relocation of the premises and to submit his report at a formal hearing. This motion was denied by the court a quo in an order issued on February 22, 1963.

On February 23, 1963, petitioners, by registered mail, filed their notice of appeal and motion for extension of time to file a record on appeal and appeal bond, but this motion was likewise denied by the lower court in its order of March 1, 1963 on the ground that the same was filed out of time, or after the order of January 15, 1963 had already become final and executory. Their subsequent motions to reconsider the said order of January 15, 1963 having been denied by orders of the lower court of March 1 and 6, 1963, petitioners interposed the present petition for certiorari to set aside the orders of the lower court of March 1 and 6, 1963 and mandamus to order the lower court to give course to their appeal.

This Court gave course to the petition, but did not issue the writ of preliminary injunction prayed for by the petitioners. When this case was called for hearing on October 18, 1963 nobody appeared for any of the parties.

On September 14, 1964, or during the pendency of the instant petition before this Court, petitioners, in their own behalf, with conformity of counsel for the respondents, filed a manifestation with the lower court, in Civil Case 546-0, alleging that having already sold their Lot No. 10103 and having made up their minds to transfer their residence to Mindanao, they were giving up their claim or interest in the portion of Lot No. 10266, subject of the present litigation, and that they would desist forever from entering said premises and molesting the lawful owners, respondents herein. On September 28, 1964, the petitioners wrote a letter to their counsel advising said counsel that they were terminating his services because they were no longer interested in the further prosecution of this case. On the basis of the manifestation made by the petitioners in Civil Case No. 546-0 in the court below and the letter of the petitioners to their counsel, herein adverted to, on September 29, 1963 counsel for the respondents

filed a manifestation before this Court, attaching duplicate original copies of said petitioners' manifestation (in the court below) and letter to their counsel, and prayed for such action as may be proper in the premises. On October 21, 1963, the counsel for the petitioners withdrew his appearance for the petitioners. On October 22, 1964, the petitioners, in their own behalf, filed before this Tribunal a motion to dismiss the instant petition on the ground that they are no longer interested in the further prosecution of this case, and confirming the manifestation that they had made in the court below.

It appearing that petitioners have signified their lack of interest to further prosecute this case, and had thereby filed a motion to dismiss their petition, the instant petition has become academic, and We hereby dismiss the same, without pronouncement as to costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Makalintal, Bengzon, J.P., Sanchez, and Ruiz Castro, JJ., concur.

[1] Page 14, records.

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