

HEIRS OF JACINTO GADINGAN, NAMELY: JUAN, FERDIE, BERNARDINO AND PATRICIA, ALL SURNAMED MABBORANG Y GADINGAN, PLAINTIFFS-APPELLEES, VS. JUAN TORRENTE, EUGENIO TORRENTE, MARIO AGUS...

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is an appeal from the Decision[1] of the Regional Trial Court (RTC), Branch 24, Echague Isabela, dated October 20, 2010 in Civil Case No. 24-0598 which granted the complaint for recovery of possession, damages and injunction.

The antecedent facts based on the record are as follows:

The late Jacinto Gadingan filed homestead application no. 135971 with the Land Management Bureau (LMB) of the Department of Natural Resources (DENR) over Lot Nos. 5068, 5070 and 5071 situated in Malitao Echague, Isabela, with an aggregate area of 194,350 square meters, more or less. During the pendency of the application, Jacinto Gadingan died and he was substituted by his son-in-law, Francisco Balayan, and by his grandchild, Antonio Balayan.

Pending approval of the application, Francisco Balayan sold one (1) hectare-portion of the property to Juan Torrente[2] and four (4) hectares to Leonardo Agustin.[3] Antonio Balayan, on the other hand, sold, portion of Lot 5068 to Eugenio Torrente.[4] The application of Antonio Balayan was subsequently granted and Original Certificate of Title (OCT) No. P-39939 covering 42,653 square meters or 4.2653 hectare lot was issued in his name.[5]

The other heirs of Jacinto Gadingan, represented by Domingo Mabborang, filed their protest to the substitution and transfer of homestead rights of Jacinto Gadingan to Francisco Balayan, which was docketed as B.L. Claim No. 2441.[6] On November 27, 1987, the LMB issued an Order revoking or disapproving the proposed transfer of homestead rights of Jacinto Gadingan to Francisco Balayan, and giving due course to homestead application no. 135931 (B-51733) of Jacinto Gadingan, represented by Domingo Mabborang. The Order attained finality and a writ of execution was issued, requiring Francisco Balayan, his children namely, Jose and Antonio Balayan, and “tenants” Juan Torrente, Eugenio Torrente, Leonardo Agustin, Maria Agustin and Isidro Guiab to surrender the possession of the property to plaintiffs-appellees.[7] On July 11, 1989, Antonio Magdattu of the LMB issued a certificate of delivery of possession, placing Domingo Mabborang in possession of the property. The certificate was duly signed by Eugenio Torrente and Leonardo Agustin.[8] On July 15, 1992, Original Certificate of Title (OCT) No. P-57413 was issued in the name of Heirs of Jacinto Gadingan represented by Domingo Mabborang.[9]

On January 1, 2003, plaintiffs-appellees Heirs of Gadingan namely Juan, Freddie, Bernardino and Patricia, all surnamed Mabborang (plaintiffs-appellees) filed a complaint for recovery of possession, damages and injunction[10] against Juan Torrente, Eugenio Torrente, Mario Agustin, Victor Agustin, Isidro Guiab, Maria Agustin and Eleutria Vda. De Guiab (defendants) with the RTC of Isabela, docketed as Civil Case No. 24-0598.

Plaintiffs-appellees prayed for accounting and delivery of the fruits of the land from 1988 up to the time that possession of the property shall have been restored to them, as well as the issuance of a writ of preliminary injunction to restrain defendants-appellants from alienating and selling the subject property.

Defendants Maria Agustin, Juan Torrente and Eugenio Torrente were duly served with summonses and copies of the complaint, while summons intended for Victor Agustin was served on Imelda Agustin. Summonses intended for Mario Agustin and for Isidro Guiab and Eleuteria Guiab were returned unserved for reasons that Mario Agustin was not a resident of Rumang-ay, Echague, Isabela, while Isidro and Eleuteria Guiab already died.[11] The trial court, nevertheless, did not order the deletion or substitution of Isidro and Eleuteria Guiab, as parties nor ordered the plaintiffs to provide the court with the correct address of Mario Agustin.

Only Juan and Eugenio Torrente answered the complaint alleging that they have been in actual and continuous possession of the subject property at the time of the filing of the complaint; that they purchased it from the original owners Francisco Balayan, Antonio Balayan and Adoracion Dumon, (Balayans) and that they religiously paid the real property taxes thereon. Defendants-appellants Juan and Eugenio Torrente asked for counterclaim of moral and exemplary damages, as well as attorney's fees.[12]

Maria Agustin and Victor Agustin who did not file an answer, on the other hand, was never declared in default and trial proceeded against all the defendants.

During the pre-trial conference, the parties agreed on the conduct of relocation survey of the property subject of the case, and commissioned the DENR of Isabela to conduct the survey.[13]

On October 10, 2004, plaintiffs-appellees filed a manifestation and motion[14] stating that Cornelio Agustin (son of Leonardo Agustin), not Victor Agustin has interest over the property; that the Cornelio Agustin succeeded in obtaining Katibayan ng Orihinal naTitulo Blg. P-79550 over 20,002 square meter-portion of the property covered by OCT No. P-57413, hence, they prayed that Cornelio Agustin be impleaded as defendant. However, the motion was not acted upon by the trial court.

On January 24, 2005, plaintiffs-appellees filed a motion to implead indispensable party,[15] reiterating their earlier plea to include Cornelio Agustin as defendant, but the motion was not resolved by the trial court. Hence, on June 6, 2005, plaintiffs-appellees filed a motion to admit amended complaint[16] to implead spouses Cornelio and Dolores Agustin, as defendants. On July 11, 2005, the trial court issued an Order[17] granting plaintiffs-appellees' motion to admit.

In the amended answer, defendants-appellants, Juan Torrente, Eugenio Torrente, Cornelio Agustin and Dolores Agustin (defendants-appellants), reiterated the averments in the answer to the original complaint and insisted that they own the respective portions of the property in their possession, and prayed for the dismissal of the complaint, and for the payment of damages.[18]

During trial, plaintiffs-appellees presented Juan Mabborang, Freddie Mabborang and Mr. Antonio Z. Maddatu of the DENR, and offered the following pieces of documentary evidence: (i) OCT No. P-567413; (ii) tax declarations in the name Jacinto Gadingan; (iii) death certificate of Maria Gadingan, the daughter of Jacinto Gadingan and wife of Domingo Mabborang; (iv) order of execution of the LMB; and (v) the certificate of delivery of possession.[19]

Defendants-appellants Eugenio Torrente, Juan Torrente and Cornelio Agustin testified and also offered the following: (i) Special Power of Attorney executed in favor of their counsel; (ii) Katibayan ng Orihinal naTitulo Blg. P-79550 in the name of Cornelio Agustin; (iii) tax declarations in the name of Juan Torrente and of Eugenio Torrente and the corresponding tax receipts; (iv) affidavits of Antonio Balayan and of Francisco Balayan; (v)

consolidation subdivision plan for Jose Balayan and the sketch plan; and (vi) Original Certificate of Title No. P-39939.[20] As rebuttal evidence, plaintiffs-appellees submitted a sketch plan prepared by Geodetic Engineer Rogelio Olivete and the surveyor's report.[21]

On October 20, 2010, the RTC rendered the assailed decision[22] in favor of plaintiffs-appellees. The former recognized the existence of co-ownership between plaintiffs-appellees and the Balayans, predecessors in interest of defendants-appellants, upon finding that the Balayans are also the grandchildren of Jacinto Gadingan. The RTC sustained plaintiffs-appellees' personality to file the instant complaint, and their ownership of the subject property covered by OCT No. P-57413. The trial court considered the tax declarations submitted by defendants-appellants insufficient proof of ownership and declared void the sale executed by Francisco Balayan in favor of defendants-appellants, including the certificate of title subsequently issued in the name of Cornelio Agustin and Dolores Agustin. The trial court ordered defendants-appellants to vacate the property, and held Juan Torrente and Eugenio Torrente liable for the payment of actual damages amounting to P50,000.00, and attorney's fees of P30,000.00 to plaintiffs-appellees.

Defendants-appellants filed a motion for reconsideration,[23] but the same was denied on December 15, 2010.[24]

Hence, this appeal. Defendants-appellants assigned the following errors to the trial court, to wit:

1. THE HONORABLE REGIONAL TRIAL COURT A QUO ("RTC A QUO" FOR BREVITY) ERRED IN SO HOLDING THAT THE PLAINTIFFS-APPELLEES ("PLAINTIFFS" FOR BREVITY) WHO ARE CO-OWNERS AND CO-HEIRS OF THE BALAYANS HAVE THE RIGHT TO FILE THE INSTANT CASE ON THEIR OWN WITHOUT INCLUDING OR IMPLEADING THE LATTER (BALAYANS) WHO ARE INDISPENSABLE PARTIES EITHER A CO-PLAINTIFFS OR IF THEY REFUSED TO LITIGATE, AS DEFENDANTS IN THE NATURE OF AN UNWILLING CO-PLAINTIFFS IN ORDER THAT THAT (sic) COMPLETE RELIEF MAY BE HAD AND TO AVOID MULTIPLICITY OF SUIT;

2. THE HONORABLE RTC A QUO ERRED IN SO HOLDING THAT THE PLAINTIFFS ARE ENTITLED TO THE POSSESSION OF THE SUBJECT LOT/S AS AGAINST DEFENDANTS-APPELLANTS ("DEFENDANTS" FOR BREVITY) BASED ON ITS FINDING THAT THE PLAINTIFFS ARE CO-OWNERS OF THE SUBJECT LOTS BEING AMONG THE HEIRS OF JACINTO GADINGAN DESPITE OF (sic) ITS FINDINGS THAT THE PLAINTIFFS WERE NEVER IN POSSESSION OF THE SUBJECT LOT/S AND THEREFORE CANNOT APPLY FOR GOVERNMENT GRANT FOR LACK OF ACTUAL POSSESSION THEREOF;

3. THE HONORABLE RTC A QUO ERRED IN SO HOLDING THAT THE LOT/S POSSESSED AND OCCUPIED BY THE DEFENDANTS ARE THE LOT/S COVERED BY THE TITLE OF THE HEIRS OF JACINTO GADINGAN REPRESENTED BY DOMINGO MABBORANG AND AS A CONSEQUENCE THEREOF THE HONORABLE COURT ERRED IN HOLDING THAT THE PLAINTIFFS HAD A SUPERIOR RIGHT TO THE POSSESSION OF SUCH LOTS;

4. ASSUMING THAT THE HONORABLE COURT WAS CORRECT IN SO HOLDING THAT THE SUBJECT LOT/S IS/ARE COVERED BY THE SAID TITLE OF THE HEIRS OF JACINTO GADINGAN, THE PLAINTIFFS CANNOT RECOVER POSSESSION OF THE SAID LOT FROM THE DEFENDANTS

BECAUSE DEFENDANTS BOUGHT THE LOT/S FROM THE BALAYANS, NOT ONLY FROM FRANCISCO BALAYAN BUT ALSO FROM FRANCISCO'S SONS, JOSE AND ANTONIO BALAYAN, SO THAT (DEFENDANTS) STEPPED INTO THE SHOES OF THE SAID BALAYANS AND EVENTUALLY BECAME CO-OWNERS OF THE UNDIVIDED EQUAL SHARES OF THE BALAYANS; AND

5. THE HONORABLE COURT ERRED IN AWARDING DAMAGES AND ATTORNEY'S FEES AGAINST DEFENDANTS JUAN AND EUGENIO TORRENTE CONSIDERING THE FOREGOING AND IN VIEW OF THE FACT ALSO THAT THEY ARE BUYERS IN GOOD FAITH; AND BESIDES ACCORDING TO ITS FACTUAL FINDINGS, THE PROBLEM OR CONTROVERSY WAS CAUSED BY FRANCISCO BALAYAN AND THAT THE DEFENDANTS HEREIN WERE IN FACT THE ONES VICTIMIZED.[25]

Defendants-appellants argue that as co-owners of the subject property, the Balayans are indispensable parties to this case; hence, they must be impleaded as parties; and that the joinder of indispensable parties is compulsory and their non-joinder rendered all the subsequent actions of the court null and void.

Section 7, Rule 3 of the Revised Rules of Court defines indispensable parties as parties-in-interest without whom there can be no final determination of an action and who, for this reason, must be joined either as plaintiffs or as defendants. Jurisprudence further holds that a party is indispensable, not only if he has an interest in the subject matter of the controversy, but also if his interest is such that a final decree cannot be made without affecting this interest or without placing the controversy in a situation where the final determination may be wholly inconsistent with equity and good conscience. He is a person whose absence disallows the court from making an effective, complete, or equitable determination of the controversy between or among the contending parties.[26]

In suits to recover properties, all co-owners are real parties in interest. However, pursuant to Article 487 of the Civil Code and relevant jurisprudence, any one of them may bring an action, any kind of action for the recovery of co-owned properties. Therefore only one of the co-owners, namely the co-owner who filed the suit for the recovery of the co-owned property, is an indispensable party thereto. The other co-owners are not indispensable parties. They are not even necessary parties, for a complete relief can be afforded in the suit even without their participation, since the suit is presumed to have been filed for the benefit of all co-owners.[27] Defendants-appellants cannot, therefore, seek the dismissal of action on ground of failure to implead indispensable party.

Anent the issue on the validity of OCT No. P-57413, defendants-appellants point out that the possession of Jacinto Gadingan had been interrupted upon his death, and the latter's heirs, as found by the trial court, never continued the possession of their predecessor-in-interest, hence, the grant of the homestead patent and the issuance of the corresponding certificate of title in the name of the heirs was void, and cannot be made as basis of plaintiffs-appellees' action for recovery of possession.

The foregoing argument cannot be allowed for being a collateral attack on OCT No. P-57413. Plaintiffs-appellees' title can only be challenged in a direct action, for it is well settled that a certificate of title cannot be subject to collateral attack and can be altered, modified or cancelled only in a direct proceeding in accordance with law. Having obtained a valid title over the subject lot, respondent is entitled to protection against indirect attacks against his title.[28] The trial court correctly sustained the validity of OCT No. P-57413.

Anent the next issue on whether plaintiffs-appellees have superior right to possess the property, defendants-appellants point out that plaintiffs-appellees' title covers Lots Nos. 20055, 20063 and 20065, Cad 210,

while the lots occupied by defendants-appellants are Lot Nos. 5068, 5070 and 5071; that not being the owner of the property, the heirs cannot seek recovery of the property; and that even assuming that the lots that they are occupying are covered by OCT No. P-57413, the action to recover the property cannot prosper because the Balayans, who are co-owners, can validly sell their undivided share in the property.

This contention of defendants-appellants is impressed with merit.

Records show that Eugenio Torrente acquired the property owned by Antonio Balayan[29] with an area of 42,653 square meters or 4.2653 hectares, covered by OCT No. P-39939.[30] The surveyor's report,[31] the sketch showing the relationship of OCT No. P57413, OCT No. P-79550 and OCT No. 39939, and the consolidation plan of Lots 2055-2063 and 2065 CAD-210 for Domingo Mabborang[32] established that Lot 10-CCS E-2-02-000023-D with an area of 42,653 square meters is not included in OCT No. P-57413, hence, plaintiffs-appellees cannot claim entitlement to its possession. Therefore, the trial court erred in sustaining plaintiffs-appellees' right of possession over Lot 10-CCS E-2-02-000023-D now owned by Eugenio Torrente.

Anent the plaintiffs-appellees' claim over the lot covered by OCT No. P-57413, as shown by the trial court, this property is co-owned by the Balayans and plaintiffs-appellees. The rights of a co-owner of a certain property are clearly specified in Article 493 of the Civil Code, viz.:

Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

Thus, every co-owner has absolute ownership of his undivided interest in the co-owned property and is free to alienate, assign or mortgage his interest except as to purely personal rights. While a co-owner has the right to freely sell and dispose of his undivided interest, nevertheless, as a co-owner, he cannot alienate the shares of his other co-owners — *nemo dat qui non habet*. [33]

In this case, plaintiffs-appellees never questioned the sale by the Balayans of their respective shares to defendants-appellants. Therefore, the right of the Balayans as co-owner-seller are transferred to herein defendants-appellants as buyers, thereby making the latter co-owners of the property. The proper action in cases like this is not the nullification of the sale or the recovery of possession of the thing owned in common from the third person who substituted the co-owner or co-owners, but the division of the common property as if it continued to remain in the possession of the co-owners who sold the same. Thus, it is settled that the appropriate recourse of co-owners in cases where their consent were not secured in a sale of undivided shares of the co-owners is an action for partition. Neither recovery of possession nor restitution can be granted since the defendant buyers are legitimate proprietors and possessors in joint ownership of the common property claimed.[34]

Indisputably, the 19.4350 hectares or 194,350-square meter property of Jacinto Gadingan should be divided among his children Luisa Gadingan Balayan and Maria Gadingan Mabborang, who each inherited 9.7175 hectares or 97,175 square-meters pro-indiviso. Upon the death of Luisa and Maria, their respective shares in the lot passed on to their children – 97, 175 square-meters to the Balayans (Francisco Balayan, Antonio Balayan and Adoracion Dumon), and the remaining 97,175 square meters to plaintiffs-appellees (Juan, Ferdie, Bernardino and Patricia, all surnamed Mabborang). Thus, the conveyances executed by the Balayans in favor of defendants-appellants are valid insofar as they involve the share of the Balayans concerning 9.7175 hectares or 97,175 square meters of the

subject property. Therefore, the trial court erred in granting the complaint for recovery of possession.

Consequently, plaintiffs-appellees are not entitled to be awarded attorney's fees. Attorney's fees may be awarded only when a party is compelled to litigate or to incur expenses to protect his interest by reason of an unjustified act of the other party, as when the defendant acted in gross and evident bad faith in refusing the plaintiff's plainly valid, just and demandable claim.[35] In this case, defendants-appellants have the right not to surrender the possession of the property because the former, just like plaintiffs-appellees, are co-owners of the property and have the right to possess the same.

WHEREFORE, the appeal is GRANTED. The decision of the Regional Trial Court, Branch 24, Echague Isabela dated October 20, 2010 in Civil Case No. 24-0598 is REVERSED and SET ASIDE. The sale by Francisco Balayan, Antonio Balayan and Adoracion Dumon of their shares in the property covered by OCT No. P-57513 in favor of defendants-appellants is declared valid insofar as it involves 9.7175 hectares or 97,175 square meters of their undivided share in the co-ownership over the subject property. The complaint for recovery of possession, damages and injunction in the aforementioned civil case filed by plaintiffs-appellees is dismissed.

SO ORDERED.

Lampas Peralta, (Chairman), and Acosta, JJ., concur.

[1] Record, pp. 398-412.

[2]Exhbit "10-A", separate envelope of exhibits, p. 38.

[3] Exhibit "10-B", id. at 39.

[4] See Exhibit "10", id. at 37.

[5] Exhibit "14", id. at 64.

[6] See Writ of Execution, Exhibit "E", record, p. 162.

[7] See Writ of Execution, Exhibit "E", supra note 3.

[8] Id.

[9] Exhibit "F", record, p. 164.

[10] Id. at

[11] Id. at 13.

[12] Id. at 22-26.

[13] Id,at 107

[14] Id. at 121-122.

[15] Id. at 128-129.

[16] Id. at 150-151

[17] Id. at 168.

[18] Id. at 171-175.

- [19] See Offer of Documentary Evidence, id. at 250-252.
- [20] See Formal Offer of Documentary Evidence, id. at 348-349.
- [21] See Formal Offer of Plaintiff's Rebuttal Evidence with Motion for Reconsideration, Id. at 380-381
- [22] Supra note1.
- [23] Id. at 413-419.
- [24] Order dated December 15, 2010, rollo, pp. 426-427.
- [25] Rollo, pp. 29, 31.
- [26] Marmo v. Anacay, G.R. No. 182585, November 27, 2009.
- [27] Marmo v. Anacay, G.R. No. 182585, id, citing Carandang v. Heirs of De Guzman, G.R. No. 160347, November 29, 2006.
- [28] Antonio v. Balanon-Anicete, G.R. Nos. 150820-21. April 30, 2003.
- [29] Exhibit "10", separate envelope of exhibits, p. 37.
- [30] Exhibit "14", Id. at 64
- [31] Exhibit "A-1", record, p. 383.
- [32] Id. at 385,
- [33] Acabal v. Acabal, G.R. No. G.R. No. 148376. March 31, 2005.
- [34] See Telesforo v. Court of Appeals, G.R. No. 122249, January 29, 2004; Casilao v. Court of Appeals, G.R. No. G.R. No. 78178. April 15, 1988.
- [35] Spouses Chung v. Ulanday Construction, Inc., G.R. No. 156038, October 11, 2010.

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