

FELIPE JUMUAD, PLAINTIFF-APPELANT, VS. HEIRS OF FELICISIMO GABULE, NAMELY: ELEISAMA GABULE-VICERA, GRETTEL GABULE,, DEFENDANTS-APPELLEES.

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BORJA, J.,:

For resolution is the motion for reconsideration filed by the defendants-appellees of the Court's Decision dated January 21, 2013 granting the appeal, thereby reversing and setting aside the Order of March 5, 2007 of the trial court.

Defendants-appellees essentially contend that the Court erred in declaring the plaintiff-appellant as the rightful owner of the subject property. The plaintiff-appellant allegedly failed to present evidence to prove that Felicisimo Gabule employed fraud in obtaining title over the subject property. Hence, the action to reconvey the title of the subject property to the plaintiff-appellant has no basis.

In its January 21, 2013 Decision, this Court has already ruled that:

[T]he Court now turns to the issue of who – between appellant and Felicisimo Gabule and/or the latter's successors-in-interest –owns the subject portion of the land.

The records do not support the lower court's conclusion that appellant had failed to establish his ownership of the subject area. Rather, the Court finds the records replete with evidence that Felicisimo Gabule acted fraudulently in including the subject area when he obtained his title to his property.

The Court notes that, in the course of the trial a quo, the Clerk of Court in charge of the cadastral records of the proceeding in which Gabule obtained his certificate of title declared that Gabule had testified in that proceeding in this manner—

Q Are you the same Felicisimo Gabule who claimed before this Court to be the owner of lot no. 2857-C, Pls-119?

A I am.

Q How did you acquire that property?

A I bought that from Disdado Aenlle [sic].

Q How big is the land covered by lot no. 2857-C?

A It's 156.25 square meters, more or less.

This area corresponds roughly to the area stipulated in deed of sale executed by Reverend Aenlle in favor of Felicisimo Gabule which is stated as "150 square meters, more or less".

On the other hand, in Felicisimo Gabule's OCT No. 1,817, it is plainly stated that the parcel of land it covered

was 337 square meters in area. That is more than double the area of the property he bought from Reverend Aenile; it is more than double the area Gabule declared in his testimony before the cadastral court.

Where did this excess area come from?

In his Survey Report, Geodetic Engineer Abelardo P. Corpuz, who was engaged by appellant “to conduct the survey of the extent of [appellant’s] alleged actual occupation over the land now titled in the name of the Defendants” pursuant to the trial court’s May 21, 1992 Order, stating under his “Findings” that –

During the relocation survey, one of the heirs of Felicisimo Gabule in the person of Mrs. Elisama Gabule and her husband, likewise Mr. Susano Jumuad representing the Plaintiff was present to witness the Actual survey.

After the computation of the datas [sic] obtain[ed] from the field the following observations were gathered.
XXX

- The lot of the Plaintiff after segregating portion 2856-A now own[ed] by Eduardo Gabule as previously mention[ed] was subdivided to 4 resultant lots marked 2856-B-1, 2856-B-2, 2856-B-3, 2856-B-4 now own[ed] by Eusebio Jumuad, Isidra Jumuad, Eulogio Bajao, and Susano Jumuad, respectively.

- The lot of the Defendant is lot 2856-B and portion of this lot which is marked 2856-B-1 (Numbering is for purpose of identification only and does not necessarily affect any final numbering that may be made by competent authority) with an area of SIXTY SEVEN (67) SQUARE METERS is the area now in question and the subject of reconveyance [in] the above-entitled case.

- Lot 2857-B-1 is being use[d] as a communal passageway more frequently use[d] by Eulogio Bajao and Susano Jumuad for their inlet and outlet as their lot has no right of way to any established city streets. XXX

- A portion of Lot 2857-B-1 adjacent to Alano Avenue (Formerly Sikatuna St.) is an Old small store allegedly own[ed] by Susano Jumuad.

- On the Southeast boundary line of Lot 2857-B-1 is an old hollowblock fence portion of which is almost to collapse due to old age. From information gathered from the surrounding vicinity this fence was contracted by the herein Plaintiff.

- Lot 2857-B-1 in its entirety is inside the title of Felicisimo Gabule the father of the herein defendants.

Stated otherwise, the Survey Report affirms that, of the excess area that found its way to Gabule’s certificate of title, sixty-seven (67) square meter came from the property belonging to appellant.

This was, in, fact, the finding of the lower court in its original Decision wherein it held that—

It was xxx undisputed that durig the Cadastral proceedings, Felicisimo Gabule offered Exhibit “1” therein, a Deed of Sale executed by Diosdado Aenile in favor of Felicisimo Gabule, of a piece of lot with an area of 150 square meters. Such lot was denominated Lot No. 2857-C. The proceedings was dated August 22, 1968.

This piece of documentary evidence has been identified by him and in affirmance thereof states that he bought

the property from Diosdado Aenile and that its area is only 156.25 square meters, more or less.

Somehow, during the relocation survey of the land from [sic] the purposes of obtaining the technical description thereof for titling, the resultant area ballooned to 337 square meters.

Obviously, a constructive fraud has been committed by the late Felicisimo Gabule.

Indeed, an implied trust was created in favor of appellant. xxx

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Patently, Lot No. 2857-B-1 was erroneously included in appellees' title. By such erroneous inclusion, appellees are deemed to hold the title of the property in trust and for the benefit of appellant. Thus, a constructive trust was created between the parties.

At this juncture, it is crucial to determine whether appellant's action for reconveyance has prescribed. xxx

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Here, the records reveal that appellant remained in actual possession of the subject property from the time he bought it from Mariano Sumile in 1934 up to the filing of the complaint on April 10, 1990. This is patent from the Survey Report rendered by Geodetic Engineer Corpuz.

Moreover, the graphical representation attached to the Survey report shows that the hollow block fence built on the southeast boundary line enclosed the property of appellant including the subject lot. This fence marked the boundary of the lot of appellant and Antonio Langga. Furthermore, Langga testified that he and appellant constructed the fence when he acquired his lot sometime in 1965. This only goes to show that appellant exercised continuous possession over the subject property.

Based on the foregoing, it can be deduced that appellant never lost possession of the subject property even after the issuance of a certificate of title in the name of appellee. Consequently, appellant could file the action for reconveyance at any time, as the action does not prescribe when the plaintiff is in possession of the land to be reconveyed, as in this case. xxx

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In the case at bench, the lower court erred palpably in finding that "there is no evidence of actual possession on the questioned area by the plaintiff". The Survey Report adverted to above is very clear on this matter. It bears reiterating a portion of that Report:

- Lot 2857-B-1 is being use[d] as a communal passageway more frequently use[d] by Eulogio Bajao and Susano Jumuad for their inlet and outlet as their lot has no right of way to any established city streets. XXX

- A portion of Lot 2857-B-1 adjacent to Alano Avenue (Formerly Sikatuna St.) is an Old small store allegedly own[ed] by Susano Jumuad.

- On the Southeast boundary line of Lot 2857-B-1 is an old hollowblock fence portion of which is almost to collapse due to old age. From information gathered from the surrounding vicinity this fence was contracted by the herein Plaintiff.

- Lot 2857-B-1 in its entirety is inside the title of Felicisimo Gabule the father of the herein defendants.

ACCORDINGLY, the motion for reconsideration is DENIED.

SO ORDERED.

[*]Francisco and Jacob, JJ., concur.

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