LORETA SOCO-RIVERA, PLAINTIFF-APPELLEE, VS. LOURDES COLALJO BOLE AND SPOUSE, DEFENDANTS-APPELLANTS.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/feeb33b27b05/

SANTOS, J.:[3]

Before this Court is an appeal from the Order[4] dated November 6, 2011 of the Regional Trial Court, Branch 4, Panabo City, Davao del Norte (trial court), in Civil Case No. 93-62 for Recovery of Possession, Damages and Attorney's Fees.

The Antecedents

Plaintiff-appellee Loreta Soco-Rivera and her husband Francisco Rivera own a parcel of land known as Lot No. 187, Psd-340049 with an area of 92,252 square meters situated at Barangay Nanyo, Municipality of Panabo, Davao del Norte and covered by Original Certificate of Title (OCT) No. P-18322[5] registered in the name of Francisco Rivera. Defendants-appellants Lourdes Colaljo Bule and her husband, Lucrecio Bule, on the other hand, also own a parcel of land adjacent to the land of plaintiff-appellee known as Lot No. 1777-B, Psd-20436-D with an area of 118,357 square meters and covered by OCT No. P-17232[6] registered in the name of Florentino Colaljo, the father of defendant-appellant Lourdes Colaljo Bule.

On October 2, 1985, in Sp. Case No. 2811,[7] the court therein issued an Order which appointed plaintiff-appellee as the administrator of her and her husband's conjugal properties, with the authority to take possession thereof for their preservation.

On September 6, 1993, plaintiff-appellee filed a Complaint[8] for Recovery of Possession, Damages and Attorney's Fees against defendants-appellants. Plaintiff-appellee claimed that defendants-appellants, without any color of title, willfully and unlawfully intruded into a portion of her land covered by OCT No. P-18322. Based on the sketch plan[9] prepared by one Engr. Josefino M. Vedua, defendants-appellants occupied a total of 8,024 square meters of plaintiff-appellee's land. However, despite repeated demands, defendants-appellants refused to vacate the area. Plaintiff-appellee added that resort to amicably settle the case before the Office of the Barangay Captain of Barangay Nanyo, Panabo proved futile. Thus, plaintiff-appellee prayed that a judgment be rendered ordering defendants-appellants to vacate the area, and since plaintiff-appellee is continuously deprived of the right to use such area, she prayed that defendants-appellants be directed to pay her P50,000.00 as damages, P1,000.00 as rent, P20,000.00 as attorney's fees with P500.00 per court appearance of her counsel, and P20,000.00 as litigation expenses.

On October 5, 1993, defendants-appellants filed an Answer[10] which denied the material allegations of the Complaint and stated that this case is one of overlapping of boundaries of adjoining lands. Defendants-appellants contended that their OCT No. P-17232 was issued on December 14, 1964 while that of plaintiff-appellee's OCT No. P-18322 was only issued on August 8, 1966. Thus, on August 8, 1966 when OCT No. P-18322 was issued as patent to plaintiff-appellee's husband, Francisco Rivera, a portion thereof is already considered a private property because the same has already formed part of OCT No. P-17232, the patent of defendant-appellant Lourdes Colajo Bole's father, Florentino Colaljo. Since defendants-appellants' patent was issued ahead of plaintiff-appellee's,

the earlier patent prevails, the same having become indefeasible and incontrovertible after the expiration of one year from its issuance. Moreover, defendants-appellants claimed that they have already informed plaintiff-appellee that the disputed property is within their land as shown in the sketch plan[11] prepared by one Engr. Mario N. Alaba. As a counterclaim, defendants-appellants averred that plaintiff-appellee should be adjudged to pay P200,000.00 as moral damages due to her unwarranted act of filing the complaint knowing fully well that she has no valid cause of action against them, P300,000.00 as exemplary damages to set an example for other similarly situated persons not to file complaints indiscriminately and P50,000.00 as attorney's fees as defendants-appellants were constrained to engage the services of a counsel to protect their rights.

On January 20, 1994 during the pre-trial conference of the case, the trial court issued an Order[12] which appointed Engr. Rogelio Trabado (Engr. Trabado) to conduct an immediate relocation survey on the properties of the parties. The Order stated:

> During the pre-trial conference, the counsel for the plaintiff appeared together with plaintiff and the counsel for the defendants, together with the defendants also appeared.
>
> Atty. Melchor V. Quitain, counsel for the plaintiff, manifested that his client is willing for the court to issue an order for a relocation survey of the boundaries of the opposing parties who are adjacent owners. Counsel for the defendants, Atty. Faustino C. Fanlo, gave his conformity in open court that his clients are also willing for the court to order a relocation survey.
>
> Both counsel agreed that the issue in this case will rise and fall on the result of the relocation survey.
>
> With their respective suggestions on the geodetic engineer to be hired, it seems that both have their own and eventually both agreed that the court will appoint a geodetic engineer to act as commissioner coming from Panabo.
>
> The Court, with the conformity of the opposing counsel, is appointing Engr. Rogelio Trabado to conduct an immediate relocation survey on the properties subject of this case directing the two counsel(s) to submit to the court their respective titles of the opposing parties which will be the basis of the relocations survey, the date of which will be decided by the counsel(s) or by their respective clients.
>
> The commissioner, if he will accept his commissionership, must take his oath before the Clerk of Court of this court and after the relocation survey in detail, report must be submitted with the technical description of the respective titles to be submitted to the court and which result will be the basis of the decision of the court. The professional fees of the geodetic engineer will be shouldered by the opposing parties on a 50-50 basis.
>
> SO ORDERED. (Emphasis supplied)

On February 23, 1994, Engr. Trabado submitted a Commissioner's Report[13] with attached sketch plan[14] which showed that defendants-appellants encroached on plaintiff-appellee's Lot No. 187 by 2,559 square meters.

On March 2, 1994, defendants-appellants filed a Motion to Set for Hearing the Commissioner's Report.[15] Subsequently, on August 5, 1994, defendants-appellants also filed a Comment on the Commissioner's Report.16 On August 17, 1994, plaintiff-appellee filed a Comment[17] on the two pleadings filed by defendants-appellants, to which the latter filed a Reply[18] on August 23, 1994. On August 12, 1996, the trial court issued an Order[19] which found that an examination of the Commissioner's Report showed that it fell short of the directive under the trial court's Order dated January 20, 1994. Hence, the trial court set a clarificatory hearing on the Commissioner's Report.

The parties thereafter submitted their respective pleadings and counter-pleadings[20] as well as their respective formal offers of exhibits[21] and their respective oppositions[22] thereto.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

On April 14, 2000, the trial court issued an Order[23] which stated that Engr. Trabado failed to conduct a relocation survey on each of the properties of the parties on the basis of the technical descriptions appearing in their respective certificates of title as required by the Order dated January 20, 1994. The trial court found that Engr. Trabado only made a scientific determination of the property of plaintiff-appellee but not that of defendants-appellants' which rendered his findings and conclusions, as embodied in his Commissioner's Report, "incomplete", hence denied approval. Thus, Engr. Trabado was directed to fully comply with the Order dated January 20, 1994.

On December 19, 2002, Engr. Trabado submitted a "Resumption of Commissioner's Report"[24] with the latest sketch plan[25] which showed that defendants-appellants encroached upon the property of plaintiff-appellee by 2,314 square meters through a barb wire installed therein.

After several postponements[26] of the hearings of the case and even after the case was submitted to the Philippine Mediation Center for mediation[27] which subsequently failed,[28] on November 6, 2011, the trial court issued the assailed Order,[29] the dispositive portion of which reads:

> WHEREFORE, by preponderance of evidence, the Court, hereby, disposes of this long-pending case after finally finding that the plaintiff has substantiated her causes of action in her verified Complaint ordering the defendants:
>
> - to VACATE and DELIVER POSSESSION of 2,314 square meters of the property of the plaintiffs they encroached upon indicated in "Blue" color in the Sketch Plan made integral part of plaintiff's Memorandum and executed by the court-appointed Geodetic Engineer;
>
> - to REIMBURSE the plaintiff a total of P50,000.00 as and for litigation expenses, including attorney's fees;
>
> - all other claims and counterclaims are dismissed for want or insufficiency of evidence.
>
> SO ORDERED.[30]

On December 14, 2009, defendants-appellants filed a Motion for Reconsideration[31] to the assailed Order, which was, however, denied in the trial court's Order[32] dated May 9, 2012.

On July 26, 2012, defendants-appellants filed a Notice of Appeal[33] which was subsequently granted by the trial court on August 7, 2012.[34]

The Issues

In their Brief, defendants-appellants raised the following assignment of errors for the Court's consideration:

> A.
>
> That the Honorable Judge Jesus Grajeda miserably erred in his appreciation on the issue in this case when he ruled that the present case is one of encroachment and not overlapping of titles.
>
> B.
>
> That the questionable decision of Honorable then presiding judge Jesus Grajeda is factually and legally unfounded and runs counter to the jurisprudence.
>
> C.
>
> That the Honorable then presiding judge Jesus Grajeda erred in relying heavily on the validity of the second Commissioner's Report.
>
> D.

> That the award of damages and attorney's fees is factually and legally unfounded.[35]

On January 28, 2013, plaintiff-appellee filed her Appellee's Brief.[36] Per the Court's Minute Resolution[37] dated May 31, 2013, defendants-appellants failed to file a Reply Brief, hence, they are deemed to have waived the filing of the same, and the case was subsequently declared submitted for decision.

This Court's Ruling

Defendants-appellants argue that the trial court erred in taking the Commissioner's Report dated December 19, 2002 hook line and sinker as it was neither submitted to nor approved by the Department of Environment and Natural Resources (DENR). Moreover, such Commissioner's Report was never offered in evidence, thus, according to them, cannot be considered in deciding the case per Section 34,[38] Rule 132 of the Rules of Court.[39]

The argument fails to persuade.

It bears stressing that the parties in this case agreed that a relocation survey should be conducted to settle the present controversy. Both parties also agreed to a court-appointed commissioner in the person of Engr. Trabado whose findings will be the basis of the decision of the trial court. The trial court's Order dated January 20, 1994 reads:

> Atty. Melchor V. Quitain, counsel for the plaintiff, manifested that his client is willing for the court to issue an order for a relocation survey of the boundaries of the opposing parties who are adjacent owners. Counsel for the defendants, Atty. Faustino C. Fanlo, gave his conformity in open court that his clients are also willing for the court to order a relocation survey.
>
> Both counsel agreed that the issue in this case will rise and fall on the result of the relocation survey.
>
> With their respective suggestions on the geodetic engineer to be hired, it seems that both have their own and eventually both agreed that the court will appoint a geodetic engineer to act as commissioner coming from Panabo.
>
> The Court, with the conformity of the opposing counsel, is appointing Engr. Rogelio Trabado to conduct an immediate relocation survey on the properties subject of this case directing the two counsel(s) to submit to the court their respective titles of the opposing parties which will be the basis of the relocations survey, the date of which will be decided by the counsel(s) or by their respective clients.
>
> The commissioner, if he will accept his commissionership, must take his oath before the Clerk of Court of this court and after the relocation survey in detail, report must be submitted with the technical description of the respective titles to be submitted to the court and which result will be the basis of the decision of the court. (Emphasis supplied)

This being the case, defendants-appellants cannot blame the trial court in relying on the findings of Engr. Trabado as they themselves agreed to the latter's commissionership. Indeed, under the doctrine of estoppel in pais, i.e. which "arises when one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such fact."[40] Thus, defendants-appellants, by agreeing on the commissionership of Engr. Trabado, cannot be heard to challenge the Commissioner's Report which turned out to be adverse to them. In the case of Tagabi v. Tanque,[41] the Supreme Court affirmed the following conclusion of the trial court:

> In any case, it is quite clear from the text of the Order dated February 5, 1993 appointing the Commissioner that the parties agreed to abide by the results of the relocation survey which results, according to the same

> Order, "shall be made the basis of resolving the dispute between them". It is now too late in the day, so to speak, for the defendants to back out from such commitment that they had made.
>
> Having agreed to abide by the results of the relocation survey, defendants are now estopped from questioning the same. In Bulacan vs. Torcino, the Supreme Court held:
> "The Torcinos try to impugn the results of the relocation survey. We agree with the appellee that the appellants are now estopped on this issue because they themselves prayed in the stipulation of facts that the findings of the geodetic engineer would be the basis for the decision of the Court of First Instance. We see no error, much less any grave abuse of discretion, in the lower court's findings that the house of the Torcinos encroached on the lot of Victoriano Bulacan" (134 SCRA 252; 259).

Defendants are thus bound by the results of the relocation survey conducted by Geodetic Engineer Filomeno Dano, Chief of the Technical Services, DENR, Region VI, Iloilo City. (Emphasis supplied)

The Court cannot sustain the contention of defendants-appellants that the second sketch plan prepared by Engr. Trabado should be approved by the DENR[42] because this matter was not expressly provided in their agreement nor raised as an issue below. Indeed, the rule is settled that matters, theories or arguments not raised in the original proceedings cannot be considered for the first time on appeal as it would amount to trampling on the basic principles of fair play, justice and due process.[43] The Court notes that what the parties raised as regards the DENR was that embodied in the trial court's Order[44] dated March 19, 2007 in which they manifested to the trial court that the monuments found on the disputed property were placed therein by the former Bureau of Lands, now the Land Management Bureau of the DENR. This prompted the trial court to direct the DENR to conduct a verification survey therein to determine which property overlapped the other. However, on April 30, 2007, the DENR wrote a letter[45] to the trial court which stated that the properties of the parties have already been surveyed and monumented.

Furthermore, contrary to the claim of defendants-appellants, there is no need for the plaintiff-appellee to formally offer as evidence the Commissioner's Report dated December 19, 2002 simply because the same is in reality not her evidence, but it is a result of the directive of the trial court to conduct a relocation survey on the disputed property which will be the trial court's basis in deciding the case. The fact that it happened to be favorable to plaintiff-appellee does not make it her evidence which she needs to formally offer.

Defendants-appellants also asseverate that the trial court erred in finding that the issue in this case is one of encroachment and not boundary dispute or overlapping, as shown by the following circumstances: 1) plaintiff-appellee allegedly failed to present any evidence on how and when encroachment on the disputed property was committed by defendants-appellants; 2) plaintiff-appellee allegedly admitted in one pleading[46] below that there appeared two monuments which were out of place because defendants-appellants allegedly moved the same, hence, according to defendants-appellants, this is an indication that this case is one of boundary dispute; 3) as stated in the face of the complaint of plaintiff-appellee before the Office of the Barangay Captain of Barangay Nanyo, Panabo, the case is one of boundary dispute; and 4) the parties agreed to engage the services of a geodetic engineer which showed that this case is one of boundary dispute because if it was for encroachment, the same could have been shown by evidence other than resorting to a relocation survey.[47]

The Court does not agree.

The identity of a land may be established through the survey plan of the property.[48] Survey is defined as "the process by which a parcel of land is measured and its boundaries and contents ascertained; also a map, plat or statement of the result of such survey, with the courses and distances and the quantity of the land." A case of boundary dispute or encroachment depends on a reliable, if not accurate, verification survey.[49]

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

A perusal of the second sketch plan prepared by Engr. Trabado shows that the metes and bounds of plaintiff-appellee's Lot No. 187 covered by OCT No. P-18322 and defendants-appellants' Lot No. 1777-B covered by OCT No. P-17232 are clear, distinct and do not overlap each other. Thus, the trial court found the sketch plan to be a reliable basis for the resolution of this case. Besides, save from defendants-appellants' allegation that the same was not approved by the DENR, they failed to cite any reason why such sketch plan should not be considered reliable. Indeed, there is no overlapping of titles in this case, there is only encroachment.

Contrary to the contention of defendants-appellants, it is inconsequential that plaintiff-appellee's Complaint failed to allege the manner on how and when the encroachment took place because this is not necessary in an action for recovery of possession. To be sure, it is enough for an action for recovery of possession to prosper that the plaintiff allege the identity of the property, that he owns the same or that he has better right of possession thereof, that he had been deprived thereof by the defendant for more than one year and that the action is brought before the regional trial court.[50] What is important in such an action is the fact that the dispossession lasted for more than one year. In any event, this contention was not raised below and is now only raised for the first time on appeal.

Moreover, the fact that plaintiff-appellee admitted below that there appeared two monuments which were out of place is not an indication that this case is one of boundary dispute because defendants-appellants was referring to the first Commissioner's Report dated February 23, 1994 submitted by Engr. Trabado, and not to the second Commissioner's Report dated December 19, 2002 which became the basis of the issuance of the assailed Order. Neither is the fact that the parties agreed to engage the services of a geodetic engineer make the case one for overlapping of title, because whether the case is for boundary dispute or encroachment, the case can be resolved through a relocation survey.[51] For this reason, it is irrelevant that the complaint of plaintiff-appellee before the Office of the Barangay Captain is for boundary dispute as this will not negate the fact that the case could also be of encroachment because the subject matter in both cases is the same disputed property.

Defendants-appellants' next claim that the trial court's award of attorney's fees and litigation expenses in the amount of P50,000.00 should be disallowed as there is no bases for its award and the same were only stated in the dispositive portion of the assailed Order.[52]

On this score, the Court agrees with defendants-appellants.

Certainly, the rule is settled that the award of attorney's fees is the exception rather than the general rule as the same are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. As such, it is necessary for the trial court to make findings of fact and law in the text of its decision, not only in the dispositive portion, to justify the grant of such award.[53] The same is also true with litigation expenses.[54] The case of Abobon v. Abobon[55]is instructive:

> As to attorney's fees, the general rule is that such fees cannot be recovered by a successful litigant as part of the damages to be assessed against the losing party because of the policy that no premium should be placed on the right to litigate. Indeed, prior to the effectivity of the present Civil Code, such fees could be recovered only when there was a stipulation to that effect. xxx
>
> Even so, whenever attorney's fees are proper in a case, the decision rendered therein should still expressly state the factual basis and legal justification for granting them. Granting them in the dispositive portion of the judgment is not enough; a discussion of the factual basis and legal justification for them must be laid out in the body of the decision. Considering that the award of attorney's fees in favor of the respondents fell short of this requirement, the Court disallows the award for want of the factual and legal premises in the body of the decision. The requirement for express findings of fact and law has been set in order to bring the case within the exception and justify the award of the attorney's fees. Otherwise, the award is a conclusion without a premise,

its basis being improperly left to speculation and conjecture. (Emphasis supplied)

Accordingly, the trial court's award of attorney's fees and litigation expenses should be disallowed, for lack of basis.

IN VIEW OF THE FOREGOING, the appeal is hereby granted in part. The assailed Order dated November 6, 2011 of the Regional Trial Court, Branch 4, Panabo City, Davao del Norte in Civil Case No. 93-62 AFFIRMED with MODIFICATION in that the award of attorney's fees and litigation expenses are deleted.

SO ORDERED.

Lloren, J., Ch., and Contreras, JJ., concur.

---

[1] Spelled as "Bule" in the Complaint but according to defendants-appellants, it is spelled as "Bole," see records, p. 16.

[2] Namely Lucrecio Bule, see records, p. 16.

[3] The case was unloaded to the undersigned ponente pursuant to Office Order No. 03-14-JMBP dated April 1, 2014 as part of his initial caseload.

[4] Rollo, pp. 73-76.

[5] Records, p. 4.

[6] Records, p. 23.

[7] The case is entitled "In Re: Petition for Administration of Conjugal Partnership and/or for Judicial Authorization under Article 178 of the Civil Code, Loreta Soco-Rivera, petitioner" pending before the Regional Trial Court, Branch 13, Davao City.

[8] Records, pp. 1-3.

[9] Records, p. 11.

[10] Records, pp. 16-20.

[11] Records, p. 21.

[12] Records, pp. 33-34.

[13] Records, pp. 35-36.

[14] Records, p. 41.

[15] Records, p. 43.

[16] Records, pp. 47-49.

[17] Records, pp. 64-67.

[18] Records, pp. 68-69.

[19] Records, p. 80.

[20] Records, pp. 111-112; 113-114; 116-117; 118-119; 122-123; 149-151; 153-154; 161-162; 163-164; 165-166.

[21] Records, pp. 94-96; 125-129.

[22] Records, pp. 105-106; 155-157.

[23] Records, pp. 176-182.

[24] Records, pp. 186-187.

[25] Records, p. 280.

[26] Records, pp. 192; 193; 196; 197; 199; 204; 212-213; 222; 223; 226; 230; 231; 234.

[27] Records, pp. 215-216.

[28] Records, p. 218.

[29] Rollo, pp. 73-76.

[30] Rollo, p. 76.

[31] Records, pp. 265-277.

[32] Records, p. 285.

[33] Records, p. 286.

[34] Records, p. 292.

[35] Rollo, pp. 33-34.

[36] Rollo, pp. 51-66.

[37] Rollo, p. 78.

[38] SEC. 34. Offer of evidence.—The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[39] Rollo, pp. 40-43.

[40] The City of Cebu v. Spouses Dedamo, G.R. No. 142971, May 7, 2002.

[41] G.R. No. 144024, July 27, 2006.

[42] Rollo, pp. 44-46.

[43] Heirs of Dicman v. Carino, G.R. No. 146459, June 8, 2006.

[44] Records, p. 227.

[45] Records, p. 228.

[46] Reply to defendants-appellants' Supplemental Opposition to the Approval of Commissioner's Report, see records, pp. 77-78.

[47] Rollo, pp. 35-39.

[48] Notarte v. Notarte, G.R. No. 180614, August 29, 2012.

[49] Heirs of Pabaus v. Heirs of Yutiamco, G.R. No. 164356, July 27, 2011.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

[50] Dr. Serina v. Caballero, G.R. No. 127382, August 17, 2004; Spouses Valdez, Jr. v. Court of Appeals, G.R. No. 132424, May 2, 2006.

[51] Heirs of Pabaus v. Heirs of Yutiamco, G.R. No. 164356, July 27, 2011.

[52] Rollo, pp. 47-48.

[53] Benedicto v. Villaflores, G.R. No. 185020, October 6, 2010.

[54] Mercury Drug Corporation v. Baking, G.R. No. 156037, May 28, 2007.

[55] G.R. No. 155830, August 15, 2012.

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.