

**J. M. TUASON & COMPANY, INC., PLAINTIFF AND APPELLEE,
THE SPOUSES RAMON VILLANUEVA AND VICTORIA FAJARDO
DEFENDANTS AND APPELLANTS.**

G. R. No. 10522. September 30, 1958

Ponente: PADILLA, J.

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PADILLA, J.:

This is an action (accion publiciana or plenaria de posesion) brought by the plaintiff corporation in the Court of First Instance of Quezon City to recover possession from the defendants who, it alleges, for more than a year before the commencement of this action, had been in unlawful possession and occupation, of 360 square meters of land in Lots Nos. 14 and 16, Block No. 235, and a part of street lot (Kitanlad street), Lot No. 2, of consolidated subdivision plan Pcs-3824, covered by transfer certificate of title No. 1267 (37686-Rizal), issued in the name of the plaintiff by the Registrar of Deeds in and for the province of Rizal, and to collect the sum of P40 as monthly rental, from the date of the illegal possession and occupation thereof until the possession of the land shall have been restored to the plaintiff (Civil No. Q-1594). In answer, the defendants deny the plaintiff's allegations; aver that their predecessors-in-interest Bias Fajardo and Pantaleon Santiago, from whom the defendant Victoria Fajardo inherited a parcel of land containing an area of five (5) hectares which comprises the land the possession of which the plaintiff seeks to recover, were the true owners thereof, their predecessors-in-interest having been in possession of the parcel of land since time immemorial; and assail the validity of plaintiff's title to the land the possession of which is sought to be recovered by the plaintiff, the land registration court that confirmed its title thereto having acted without jurisdiction. They pray for the dismissal of the complaint and costs, and such other remedy and relief as may be deemed just and equitable. By way of counterclaim, they ask that the plaintiff be ordered to pay them the sum of P2,000 as attorney's fees and expenses of litigation and P3,000 as contingent fee for the services of another attorney. The plaintiff denies the allegation of the defendant's counterclaim.

After trial, the Court found that the 360 square meters of land, the possession of which the plaintiff seeks to recover, is within the area of its tract of land described in transfer certificate of title No. 1267 (37686-Rizal), issued in the name of the plaintiff by the Registrar of Deeds in and for the province of Rizal (Exhibit A), and the area of the land sought to be recovered is traced in red pencil on the surveyor's plan (Exhibit B) and encircled in red pencil on the subdivision plan (Exhibit C); that the defendants had built two houses of strong materials on the land in question without, the plaintiff's consent; that on 14 May 1954 the plaintiff notified the defendants to remove the buildings erected thereon; and rendered—

* * * judgment in favor of the plaintiff and against the defendants, Ordering the latter to vacate the portions of land in question add restore the plaintiff to its possession; to pay the plaintiff the sum of P40.00 a month from May 14, 1954, by way of rentals of the premises in question, until plaintiff is restored to the possession thereof; and to pay the costs.

The defendants appealed to this Court. In their notice of appeal they state that they are appealing only on questions of law.

The appellants contest the probative value of the photostatic copy of transfer certificate of title No. 1267 (37686-Rizal) issued in the name of the plaintiff (Exhibit A), because it is not the original thereof, and the land described therein refers to a parcel of land located in Caloocan and San Juan, Rizal, and not in Tatalon, Quezon City, where the land claimed by them is located; of the surveyor's plan (Exhibit B), because the surveyor who prepared it was not presented as a witness to afford them the opportunity to cross-examine him, and the plan was not signed by the Director of Lands; and of subdivision plan (Exhibit C), because it has no relation to Exhibits A and B, and a subdivision plan is not proof of ownership.

The transcript of stenographic notes shows that the original of transfer certificate of title No. 1267 (37686-Rizal) issued in the name of the plaintiff (Exhibit A), was presented by the plaintiff as evidence at the trial and a photostatic copy thereof was substituted for it with the approval of the Court and without objection from the appellants (pp. 64-65, t. s. n.). The apparent flaw in the title which states that the parcel of land which comprises the land in question is situated in Caloocan and San Juan, Rizal, and not in Quezon City, is explained by the fact that at the time of its issuance on 29 May 1939, the parcel of land described therein could not be called or considered as part of Quezon City which did not then exist because it was only created on 12 October 1939.[1] Besides, it is of common knowledge and the Court takes judicial knowledge that the territory of Quezon City was carved from several municipalities of the province of Rizal among them Caloocan and San Juan, Although the surveyor who prepared the plan (Exhibit B) was not presented as a witness for the appellee, yet Magno Faustino, the surveyor who traced the description of the tract of land described in Exhibit A, made in 1946 a relocation of the monuments in the field and found that the buildings erected by the appellants were within the land of the appellee. Even if the plan (Exhibit B) was not signed by the Director of Lands, yet it is there certified that it was "checked with the blueprint plan of Psd-19258 on file in the Bureau of Lands." Hence it may be relied upon for the purpose of establishing the boundaries of the parcel of land which includes the land in question. The same may be said of the subdivision plan (Exhibit C).

The appellants claim that they paid in 1948 the tax on the land in question (Exhibit 1); that from such payment the tax on the land for previous years must be presumed to have been paid also, and from such payment and presumption they conclude that they are the owners thereof. Payment of land tax is not evidence of ownership of the parcel of land for which payment is made, especially when the parcel of land is covered by a Torrens title in the name of another. Moreover, in tax declaration No. 3453 in the name of Pantaleona Santiago, effective 1948 (Exhibit 2), the following note appears; "This parcel is a duplicate of the land included in Tax No. 764 (J. M. Tuazon);" and in tax declaration Nos. 7619 and 7756 in the name of Pantaleona Santiago, effective 1948 (Exhibits 3 & 4), the following note appears: "This parcel is a duplicate of the land included in T-764, now T-7045, of J. M. Tuazon & Co., Inc." In Exhibits 2 and 3 the following notation further appears "Cancelled by Tax No. 7756, same name, effective 1948." The person J. M. Tuazon in Exhibit 2 is the predecessor of the entities J. M. Tuazon & Co. and J. M. Tuazon & Co., Inc., appearing in Exhibits 3 and 4. These documents clearly show that the appellants are not the owners of the parcel of land they claim to be. Exhibits 6, 6-A and 6-B are a list of persons with lot number and area, which do not prove the appellants title to the parcel of land.

The appellee brought the action in the Court of First Instance of Quezon City on 3 November 1955, more than a year after the appellants had taken possession of and occupied the land without its consent. For that reason the action is not one of forcible entry under Rule 72, or accion interdictal, as claimed by the appellants, but accion publiciana for the recovery of possession of realty, a plenary action, which must be brought in the Court of First Instance.

The judgment appealed from is affirmed, with costs against the appellants.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion Reyes, J. B. L. and

Endencia, JJ., concur.

[1]Commonwealth Act No. 502.

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