

MARIO Z. TITONG, PETITIONER, VS. THE HONORABLE COURT OF APPEALS (4TH DIVISION), VICTORICO LAURIO AND ANGELES LAURIO, RESPONDENTS.*G.R. No. 111141. March 06, 1998*

Ponente: ROMERO, J.

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Like a priceless treasure coveted by many, but capable of ownership by only one, this 20,592 square-meter parcel of land located at Barrio Titong, Masbate, Masbate is claimed by two contestants in this petition for review on certiorari. Unfortunately, legal title over the property can be vested in only one of them.

The case originated from an action for quieting of title filed by petitioner Mario Titong. The Regional Trial Court of Masbate, Masbate, Branch 44[1] ruled in favor of private respondents, Victorico Laurio and Angeles Laurio, adjudging them as the true and lawful owners of the disputed land. Affirmed on appeal to the Court of Appeals, petitioner comes to us for a favorable reversal.

Petitioner alleges that he is the owner of an unregistered parcel of land with an area of 3.2800 hectares, more or less, surveyed as Lot No. 3918, and declared for taxation purposes in his name. He claims that on three separate occasions in September 1983, private respondents, with their hired laborers, forcibly entered a portion of the land containing an area of approximately two (2) hectares, and began plowing the same under pretext of ownership. Private respondents denied this allegation, and averred that the disputed property formed part of the 5.5-hectare agricultural land which they had purchased from their predecessor-in-interest,[2] Pablo Espinosa on August 10, 1981.

In his testimony, petitioner identified Espinosa as his adjoining owner[3], asserting that no controversy had sprouted between them for twenty years until the latter sold Lot No. 3479 to private respondent Victorico Laurio.[4] This was corroborated by Ignacio Villamor, who had worked on the land even before its sale to Espinosa in 1962. The boundary between the land sold to Espinosa and what remained of petitioner's property was the old Bugsayon river. When petitioner employed Bienvenido Lerit as his tenant in 1962, he instructed Lerit to change the course of the old river and direct the flow of water to the lowland at the southern portion of petitioner's property, thus converting the old river into a riceland.[5]

For his part, private respondent anchors his defense on the following facts:

He denied petitioner's claim of ownership, recounting that the area and boundaries of the disputed land remained unaltered during the series of conveyances prior to its coming into his hands. According to him, petitioner first declared the land for taxation purposes under Tax Declaration No. 2916,[6] which showed that the land had an area of 5.5 hectares and was bounded on the North by the Bugsayon River; on the East by property under the ownership of Lucio Lerit; on the South by property owner by Potenciano Zaragoza; and on the West by property owned by Agapito de la Cruz.[7] Private Respondent then alleges that, on December 21, 1960, petitioner sold this property to Concepcion Verano vda. de Cabug, after which Tax Declaration No.

5339[8] was issued in her favor. In compliance with their mutual agreement to repurchase the same, petitioner reacquired the property by way of sale[9] on August 24, 1962 and then declared it for taxation purposes in his name under Tax Declaration No. 5720.[10] However, the property remained in petitioner's hands for only four (4) days because, on August 28, 1962, he sold it to Espinosa[11] who then declared it in his name under Tax Declaration No. 12311.[12] Consequently, the property became a part of the estate of Pablo Espinosa's wife, the late Segundina Liao Espinosa. On August 10, 1981, her heirs executed an instrument denominated as "Extrajudicial Settlement of Estate with Simultaneous Sale" whereby the 5.5-hectare property under Tax Declaration No. 12311 was sold to private respondent[13] in consideration of the amount of P5,000.00. Thereafter, Tax Declaration No. 12738 was issued in the name of private respondent. In all these conveyances, the area and boundaries of the property remained exactly the same as those appearing in Tax Declaration No. 2916 under petitioner's name.

It was proved at the proceedings in the court a quo that two (2) surveys were made of the disputed property. The first survey[14] was made for petitioner, while the second was the relocation survey ordered by the lower court. As anticipated, certain discrepancies between the two surveys surfaced. Thus, contrary to petitioner's allegation in his complaint that he is the owner of only 3.2800 hectares, he was actually claiming 5.9789 hectares, the total areas of Lot Nos. 3918, 3918-A and 3606. On the other hand, Lot No. 3479 pertaining to Espinosa, was left with only an area of 4.1841 hectares instead of the 5.5 hectares sold by petitioner to him. Apprised of the discrepancy, private respondent filed a protest[15] before the Bureau of Lands against the first survey, likewise filing a case for alteration of boundaries before the municipal trial court, the proceedings of which, however, were suspended because of the instant case.[16]

Private respondent testified that petitioner is one of the four heirs of his mother, Leonida Zaragoza. In the Extrajudicial Settlement with Sale of Estate of the deceased Leonida Zaragoza,[17] the heirs adjudicated unto themselves the 3.6-hectare property of the deceased. The property involved is described in the instrument as having been declared under Tax Declaration No. 3301[18] and as bounded on the North by Victor Verano, on the East by Benigno Titong, on the South by the Bugsayon River and on the West by Benigno Titong. On September 9, 1969, Tax Declaration No. 8723 was issued to petitioner for his corresponding share in the estate.

However, instead of reflecting only .9000 hectare as his rightful share in the extrajudicial settlement[19] petitioner's share was bloated to 2.4 hectares. It therefore appeared to private respondent that petitioner encroached upon his (Laurio's) property and declared it a part of his inheritance.[20] The boundaries were likewise altered so that it was bounded on the North by Victor Verano, on the East by Benigno Titong, on the South by property owner Espinosa, and on the West by property owner Adolfo Titong.[21] Private respondent accordingly denied that petitioner had diverted the course of the Bugsayon River after he had repurchased the land from Concepcion Verano vda. de Cabug[22] because the land was immediately sold to Espinosa shortly thereafter.[23]

The lower court rendered a decision in favor of private respondents, declaring him as the true and absolute owner of the litigated property and ordering petitioner to respect private respondents' title and ownership over the property and to pay attorney's fees, litigation expenses, costs and moral damages.

Petitioner appealed to the Court of Appeals, which affirmed the decision. On motion for reconsideration, the same was denied for lack of merit. Hence, this petition for review on certiorari.

At the outset, we hold that the instant petition must be denied for the reason that the lower court should have outrightly dismissed the complaint for quieting of title. The remedy of quieting of title may be availed of under the circumstances enumerated in the Civil Code:

"ART. 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any

instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.”

Under this provision, a claimant must show that there is an instrument, record, claim, encumbrance or proceeding which constitutes or casts a cloud, doubt, question or shadow upon the owner’s title to or interest in real property.[24] The ground or reason for filing a complaint for quieting of title must therefore be “an instrument, record, claim, encumbrance or proceeding.” Under the maxim *expresio unius est exclusio alterius*, these grounds are exclusive so that other reasons outside of the purview of these reasons may not be considered valid for the same action.[25]

Had the lower court thoroughly considered the complaint filed, it would have had no other course of action under the law but to dismiss it. The complaint failed to allege that an “instrument, record, claim, encumbrance or proceeding” beclouded the plaintiff’s title over the property involved. Petitioner merely alleged that the defendants (respondents herein), together with their hired laborers and without legal justification, forcibly entered the southern portion of the land of the plaintiff and plowed the same:

He then proceeded to claim damages and attorney’s fees. He prayed that, aside from issuing a writ or preliminary injunction enjoining private respondents and their hired laborers from intruding into the land, the court should declare him “the true and absolute owner” thereof. Hence, through his allegations, what petitioner imagined as clouds cast on his title to the property were private respondents’ alleged acts of physical intrusion into his purported property. Clearly, the acts alleged may be considered grounds for an action for forcible entry but definitely not one for quieting of title.

When the issues were joined by the filing of the answer to the complaint, it would have become apparent to the court that the case was a boundary dispute. The answer alleged, among other matters, that petitioner, “in bad faith, surreptitiously, maliciously and fraudulently had the land in question included in the survey of his land which extends to the south only as far as the Bugsayon River which is the visible and natural and common boundary between the properties.”[26] Moreover, during the hearing of the case, petitioner proved that it was actually a boundary dispute by evidence showing what he considered as the boundary of his property which private respondents perceived as actually encroaching on their property. In this regard, the following pronouncements of the Court are apropos:

“x x x (T)he trial court (and likewise the respondent Court) cannot, in an action for quieting of title, order the determination of the boundaries of the claimed property, as that would be tantamount to awarding to one or some of the parties the disputed property in an action where the sole issue is limited to whether the instrument, record, claim, encumbrance or proceeding involved constitutes a cloud upon the petitioners’ interest or title in and to said property. Such determination of boundaries is appropriate in adversarial proceedings where possession or ownership may properly be considered and where evidence aliunde, other than the ‘instrument, record, claim, encumbrance or proceeding’ itself, may be introduced. An action for forcible entry, whenever warranted by the period prescribed in Rule 70, or for recovery of possession de facto, also within the prescribed period, may be availed of by the petitioners, in which proceeding the boundary dispute may be fully threshed out.”[27]

Nonetheless, even if the complaint below were to be considered as a valid one for quieting of title, still, the instant petition for review on certiorari must fail.

As a general rule, findings of fact of the Court of Appeals are binding and conclusive upon this Court. Such

factual findings shall not be disturbed normally unless the same are palpably unsupported by the evidence on record or the judgment itself is based on a misapprehension of facts.[28] Upon an examination of the records, the Court finds no evident reason to depart from the general rule.

The courts below correctly held that when petitioner “sold, ceded, transferred and conveyed” the 5.5-hectare land in favor of Pablo Espinosa, his rights of ownership and possession pertaining thereto ceased and these were transferred to the latter. In the same manner, Espinosa’s rights of ownership over the land ceased and were transferred to private respondent upon its sale to the latter. This finds justification in the Civil Code, as follows:

“ART. 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

A contract of sale may be absolute or conditional.”

In other words, a sale is a contract transferring dominion and other real rights in the thing sold.[29] In the case at bar, petitioner’s claim of ownership must of necessity fail because he has long abdicated his rights over the land when he sold it to private respondent’s predecessor-in-interest.

Petitioner’s claim that he acquired ownership over the disputed land through possession for more than twenty (20) years is likewise unmeritorious. While Art. 1134 of the Civil Code provides that “(o)wnership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years,” this provision of law must be read in conjunction with Art. 1117 of the same Code. This article states that “x x x (o)rdinary acquisitive prescription of things requires possession in good faith and with just title for the time fixed by law.” Hence, a prescriptive title to real estate is not acquired by mere possession thereof under claim of ownership for a period of ten years unless such possession was acquired *con justo titulo y buena fe* (with color of title and good faith).[30] The good faith of the possessor consists in the reasonable belief that the person from whom he received the thing was the owner thereof, and could transmit his ownership.[31] For purposes of prescription, there is just title when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights but the grantor was not the owner or could not transmit any right.[32]

Petitioners have not satisfactorily met the requirements of good faith and just title. As aptly observed by the trial court, the plaintiff’s admitted acts of converting the boundary line (Bugsayon River) into a ricefield and thereafter claiming ownership thereof were acts constituting deprivation of the rights of others and therefore “tantamount to bad faith.”[33] To allow petitioner to benefit from his own wrong would run counter to the maxim *ex dolo malo non oritur actio* (no man can be allowed to found a claim upon his own wrongdoing). Extraordinary acquisitive prescription cannot similarly vest ownership over the property upon petitioner. Art. 1137 of the Civil Code states that “(o)wnership and other real rights over immovables prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.” Petitioner’s alleged possession in 1962 up to September 1983 when private respondents entered the property in question spanned twenty-one (21) years. This period of time is short of the thirty-year requirement mandated by Art. 1137.

Petitioner basically anchors his claim over the property on the survey plan prepared upon his request,[34] the tax declaration in his name,[35] the commissioner’s report on the relocation survey,[36] and the survey plan.[37] Respondent court correctly held that these documents do not conclusively demonstrate petitioner’s title over Lot Nos. 3918-A and 3606.

A survey is the act by which the quantity of a parcel of land is ascertained and also a paper containing a statement of courses, distances, and quantity of land.[38] A survey under a proprietary title is not a conveyance. It is an instrument *sui generis* in the nature of a partition; a customary mode in which a proprietor has set off to himself in

severalty a part of the common estate.[39] Therefore, a survey, not being a conveyance, is not a mode of acquiring ownership. A fortiori, petitioner cannot found his claim on the survey plan reflecting a subdivision of land because it is not conclusive as to ownership as it may refer only to a delineation of possession.[40]

Furthermore, the plan was not verified and approved by the Bureau of Lands in accordance with Sec. 28, paragraph 5 of Act No. 2259, the Cadastral Act, as amended by Sec. 1862 of Act No. 2711. Said law ordains that private surveyors send their original field notes, computations, reports, surveys, maps and plots regarding a piece of property to the Bureau of Lands for verification and approval.[41] A survey plan not verified and approved by said Bureau is nothing more than a private writing, the due execution and authenticity of which must be proven in accordance with Sec. 20 of Rule 132 of the Rules of Court. The circumstance that the plan was admitted in evidence without any objection as to its due execution and authenticity does not signify that the courts shall give probative value therefor. To admit evidence and not to believe it subsequently are not contradictory to each other. This Court cannot alter the conclusions of the Court of Appeals on the credibility accorded to evidence presented by the parties.[42]

Similarly, petitioner's tax declaration issued under his name is not even persuasive evidence of his claimed ownership over the land in dispute. A tax declaration, by itself, is not considered conclusive evidence of ownership.[43] It is merely an indicium of a claim of ownership.[44] Because it does not by itself give title, it is of little value in proving one's ownership.[45] Moreover, the incompatibility in petitioner's tax declaration and the commissioner's report as regards the area of his claimed property is much too glaring to be ignored. Tax Declaration No. 8717 states that petitioner's property has an area of 3.2800 hectares while the totality of his claim according to the commissioned geodetic engineer's survey amounts to 4.1385 hectares. There is therefore a notable discrepancy of 8,585 square meters. On the other hand, private respondent's claimed property, as borne out by Tax Declaration No. 12738, totals 5.5 hectares, a more proximate equivalent of the 5.2433-hectare property as shown by the commissioner's report.

There is also nothing in the commissioner's report that substantiates petitioner's claim that the disputed land was inside his property. Petitioner capitalizes on the lower court's statement in its decision[46] that "as reflected in the commissioner's report dated May 23, 1984 (Exhibit 3-3-A), the area claimed is inside lot 3918 of the defendants (Exhibit 2)"[47] or the private respondents. A careful reading of the decision would show that this statement is found in the summary of defendants' (herein private respondents) evidence. Reference to Lot No. 3918 may, therefore, be attributed to mere oversight as the lower court even continues to state the defendants' assertion that the 2-hectare land is part of their 5.5-hectare property. Hence, it is not amiss to conclude that either petitioner misapprehended the lower court's decision or he is trying to contumaciously mislead or worse, deceive this Court.

With respect to the awards of moral damages of P10,000.00 and attorney's fees of P2,000.00, the Court finds no cogent reason to delete the same. Jurisprudence is replete with rulings to the effect that where fraud and bad faith have been established, the award of moral damages is in order.[48] This pronouncement finds support in Art. 2219 (10) of the Civil Code allowing the recovery of moral damages for acts enumerated in Art. 21 of the same Code. This article states that "(a)ny person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage." The moral damages are hereby increased to P30,000.00. We agree with the respondent court in holding that the award of attorney's fees is justified because petitioner filed a clearly unfounded civil action.[49]

WHEREFORE, the instant petition for review on certiorari is hereby DENIED and the questioned Decision of the Court of Appeals AFFIRMED. This Decision is immediately executory. Costs against petitioner.

SO ORDERED.

Narvasa, CJ. (Chairman), Kapunan and Purisima, JJ., concur.

[1] Penned by Judge Manuel C. Genova.

[2] Rollo, p. 17.

[3] TSN, May 8, 1995, p. 4.

[4] TSN, May 8, 1985, p. 6.

[5] TSN, February 11, 1986, pp. 4-6.

[6] Exh. 11.

[7] Exhs. 11-A & 11-B.

[8] Exh. 10.

[9] Exhs. 8 & 8-A.

[10] Exh. 7.

[11] Exhs. 6 & 6-B.

[12] Exh. 5.

[13] He is described in the instrument as “married to Nelia Averilla.”

[14] Exh. B.

[15] Exh. 15.

[16] TSN, October 26, 1989, pp. 7-11, 45-49.

[17] Exhs. 12 & 12-B.

[18] Exh. 13.

[19] Exh. 12-A.

[20] TSN, October 26, 1989, p. 35.

[21] Exh. 14-A.

[22] Exh. 8-B.

[23] Exhs. 6 & 6-B.

[24] Vda. de Aviles v. Court of Appeals, G.R. No. 95748, November 21, 1996, 264 SCRA 473, 479.

[25] Ibid., citing Lerum v. Cruz, 87 Phil. 652 (1950).

[26] Ibid., p. 11.

[27] Vda. de Aviles v. Court of Appeals, supra at p. 482.

[28] Inland Trailways, Inc. v. Court of Appeals, 325 Phil. 457, 462 (1996); Valenzuela v. Court of Appeals, 323

Phil. 374, 383 (1996); Acebedo Optical Co., Inc. v. Court of Appeals, G.R. No. 118833, November 29, 1995, 250 SCRA 409, 414.

[29] AQUINO, CIVIL CODE OF THE PHILIPPINES, Vol. 3, 1990 ed., p. 1 citing Denoga v. Insular Government, 19 Phil. 261 (1911).

[30] Santiago v. Cruz, 19 Phil. 145 (1911).

[31] Art. 1127, Civil Code.

[32] Art. 1129, *ibid*.

[33] Decision, p. 10.

[34] Exh. B.

[35] Exh. A.

[36] Record, pp. 39-40.

[37] Exh. C.

[38] 40A WORDS AND PHRASES 531citing *Miller v. Lawyers Title Ins. Corp.*, D.C.Va., 112 F.Supp. 221, 224.

[39] *Ibid.*, citing *Jennings v. Burnham*, 28 A. 1048, 56 N.J.L. 289, 291.

[40] *Heirs of George Bofill v. Court of Appeals*, G.R. No. 107930, October 7, 1994, 237 SCRA 451, 458.

[41] *Fige v. Court of Appeals*, G.R. No. 107951, June 30, 1994, 233 SCRA 586, 590.

[42] *Ledesma v. Realubin and Court of Appeals*, 118 Phil. 625, 629 (1963).

[43] *Rivera v. Court of Appeals*, 314 Phil. 57 (1995); *Republic v. IAC*, G.R. No. 74380, July 5, 1993, 224 SCRA 285, 296; *De Jesus v. Court of Appeals*, G.R. No. 57092, January 21, 1993, 217 SCRA 307, 317.

[44] *Director of Lands v. IAC*, G.R. No. 73246, March 2, 1993, 219 SCRA 339, 348.

[45] *Sapu-an v. Court of Appeals*, G.R. No. 91869, October 19, 1992, 214 SCRA 701.

[46] Decision, p. 6.

[47] Petition, p. 9.

[48] *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 109937, March 21, 1994, 231 SCRA 370, 377; *Pasibigan v. Court of Appeals*, G.R. No. 90169, April 7, 1993, 221 SCRA 202, 208; *De Guzman v. NLRC*, G.R. No. 90856, July 23, 1992, 211 SCRA 723, 731.

[49] Art. 2208 (4), Civil Code.

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