

TEOFILO C. VILLARICO, PETITIONER, VS. VIVENCIO SARMIENTO, SPOUSES BESSIE SARMIENTO-DEL MUNDO & BETH DEL MUNDO, ANDOK'S LITSON CORPORATION AND MARITES' CARINDERIA, RESPONDENTS.

G.R. No. 136438. November 11, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals dated December 7, 1998 in CA-G.R. CV No. 54883, affirming in toto the Decision[2] of the Regional Trial Court (RTC) of Parañaque City, Branch 259, dated November 14, 1996, in Civil Case No. 95-044.

The facts of this case, as gleaned from the findings of the Court of Appeals, are:

Teofilo C. Villarico, petitioner, is the owner of a lot in La Huerta, Parañaque City, Metro Manila with an area of sixty-six (66) square meters and covered by Transfer Certificate of Title (T.C.T.) No. 95453 issued by the Registry of Deeds, same city.

Petitioner's lot is separated from the Ninoy Aquino Avenue (highway) by a strip of land belonging to the government. As this highway was elevated by four (4) meters and therefore higher than the adjoining areas, the Department of Public Works and Highways (DPWH) constructed stairways at several portions of this strip of public land to enable the people to have access to the highway.

Sometime in 1991, Vivencio Sarmiento, his daughter Bessie Sarmiento and her husband Beth Del Mundo, respondents herein, had a building constructed on a portion of said government land. In November that same year, a part thereof was occupied by Andok's Litson Corporation and Marites' Carinderia, also impleaded as respondents.

In 1993, by means of a Deed of Exchange of Real Property, petitioner acquired a 74.30 square meter portion of the same area owned by the government. The property was registered in his name as T.C.T. No. 74430 in the Registry of Deeds of Parañaque City.

In 1995, petitioner filed with the RTC, Branch 259, Parañaque City, a complaint for accion publiciana against respondents, docketed as Civil Case No. 95-044. He alleged inter alia that respondents' structures on the government land closed his "right of way" to the Ninoy Aquino Avenue; and encroached on a portion of his lot covered by T.C.T. No. 74430.

Respondents, in their answer, specifically denied petitioner's allegations, claiming that they have been issued licenses and permits by Parañaque City to construct their buildings on the area; and that petitioner has no right over the subject property as it belongs to the government.

After trial, the RTC rendered its Decision, the dispositive portion of which reads:

“WHEREFORE, premises considered, judgment is hereby rendered:

- Declaring the defendants to have a better right of possession over the subject land except the portion thereof covered by Transfer Certificate of Title No. 74430 of the Register of Deeds of Parañaque;
- Ordering the defendants to vacate the portion of the subject premises described in Transfer Certificate of Title No. 74430 and gives its possession to plaintiff; and
- Dismissing the claim for damages of the plaintiff against the defendants, and likewise dismissing the claim for attorney’s fees of the latter against the former.

Without pronouncement as to costs.

SO ORDERED.”[3]

The trial court found that petitioner has never been in possession of any portion of the public land in question. On the contrary, the defendants are the ones who have been in actual possession of the area. According to the trial court, petitioner was not deprived of his “right of way” as he could use the Kapitan Tinoy Street as passageway to the highway.

On appeal by petitioner, the Court of Appeals issued its Decision affirming the trial court’s Decision in toto, thus:

“WHEREFORE, the judgment hereby appealed from is hereby AFFIRMED in toto, with costs against the plaintiff-appellant.

SO ORDERED.”[4]

In this petition, petitioner ascribes to the Court of Appeals the following assignments of error:

“I

THE FINDINGS OF FACT OF THE HON. COURT OF APPEALS CONTAINED A CONCLUSION WITHOUT CITATION OF SPECIFIC EVIDENCE ON WHICH THE SAME WAS BASED.

II

THE HON. COURT OF APPEALS ERRED IN CONSIDERING THAT THE ONLY ISSUE IN THIS CASE IS WHETHER OR NOT THE PLAINTIFF-APPELLANT HAS ACQUIRED A RIGHT OF WAY OVER THE LAND OF THE GOVERNMENT WHICH IS BETWEEN HIS PROPERTY AND THE NINOY AQUINO AVENUE.

III

THE HON. COURT OF APPEALS ERRED IN CONCLUDING THAT ACCION PUBLICIANA IS NOT THE PROPER REMEDY IN THE CASE AT BAR.

IV

THE HON. COURT OF APPEALS ERRED IN CONCLUDING THAT THE EXISTENCE OF THE PLAINTIFF-APPELLANT’S RIGHT OF WAY DOES NOT CARRY POSSESSION OVER THE SAME.

V

THE HON. COURT OF APPEALS ERRED IN NOT RESOLVING THE ISSUE OF WHO HAS THE BETTER RIGHT OF POSSESSION OVER THE SUBJECT LAND BETWEEN THE PLAINTIFF-APPELLANT AND THE DEFENDANT-APPELLEES.”[5]

In their comment, respondents maintain that the Court of Appeals did not err in ruling that petitioner’s action for

accion publiciana is not the proper remedy in asserting his “right of way” on a lot owned by the government.

Here, petitioner claims that respondents, by constructing their buildings on the lot in question, have deprived him of his “right of way” and his right of possession over a considerable portion of the same lot, which portion is covered by his T.C.T. No. 74430 he acquired by means of exchange of real property.

It is not disputed that the lot on which petitioner’s alleged “right of way” exists belongs to the state or property of public dominion. Property of public dominion is defined by Article 420 of the Civil Code as follows:

“ART. 420. The following things are property of public dominion:

(1) Those intended for public use such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and other of similar character.

(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.”

Public use is “use that is not confined to privileged individuals, but is open to the indefinite public.”[6] Records show that the lot on which the stairways were built is for the use of the people as passageway to the highway. Consequently, it is a property of public dominion.

Property of public dominion is outside the commerce of man and hence it: (1) cannot be alienated or leased or otherwise be the subject matter of contracts; (2) cannot be acquired by prescription against the State; (3) is not subject to attachment and execution; and (4) cannot be burdened by any voluntary easement.[7]

Considering that the lot on which the stairways were constructed is a property of public dominion, it can not be burdened by a voluntary easement of right of way in favor of herein petitioner. In fact, its use by the public is by mere tolerance of the government through the DPWH. Petitioner cannot appropriate it for himself. Verily, he can not claim any right of possession over it. This is clear from Article 530 of the Civil Code which provides:

“ART. 530. Only things and rights which are susceptible of being appropriated may be the object of possession.”

Accordingly, both the trial court and the Court of Appeals erred in ruling that respondents have better right of possession over the subject lot.

However, the trial court and the Court of Appeals found that defendants’ buildings were constructed on the portion of the same lot now covered by T.C.T. No. 74430 in petitioner’s name. Being its owner, he is entitled to its possession.

WHEREFORE, the petition is DENIED. The assailed Decision of the Court of Appeals dated December 7, 1998 in CA-G.R. CV No. 54883 is AFFIRMED with MODIFICATION in the sense that neither petitioner nor respondents have a right of possession over the disputed lot where the stairways were built as it is a property of public dominion. Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Carpio Morales, and Garcia, JJ., concur.
Corona, J., on leave.

[1] CA Rollo, pp. 81-85. Penned by Associate Justice Hector L. Hofileña (ret.) and concurred in by Associate Justices Jorge B. Imperial (now deceased) and Omar U. Amin (ret.).

[2] Id. at 45-50.

[3] Id. at 49-50.

[4] Id. at 84.

[5] Rollo at 10.

[6] US vs. Tan Piaco, 40 Phil. 853, 856 (1920).

[7] Tolentino II, Civil Code (1992 ed.), 31-32.

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