

NIMFA USERO, PETITIONER, VS. COURT OF APPEALS AND SPS. HERMINIGILDO & CECILIA POLINAR, RESPONDENTS.

G.R. NO. 152115. January 26, 2005

Ponente: CORONA, J.

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CORONA, J.:

Before this Court are two consolidated petitions for review on certiorari under Rule 45 of the Rules of Court. The first petition, docketed as G.R. No. 152115, filed by Nimfa Usero, assails the September 19, 2001 decision[1] of the Court of Appeals in CA-GR SP No. 64718. The second petition, docketed as G.R. No. 155055, filed by Lutgarda R. Samela, assails the January 11, 2002 decision[2] of the Court of Appeals in CA-GR SP NO. 64181.

The undisputed facts follow.

Petitioners Lutgarda R. Samela and Nimfa Usero are the owners respectively of lots 1 and 2, Block 5, Golden Acres Subdivision, Barrio Almanza, Las Piñas City.

Private respondent spouses Polinar are the registered owners of a parcel of land at no. 18 Anahaw St., Pilar Village, Las Piñas City, behind the lots of petitioners Samela and Usero.

Situated between the lots of the parties is a low-level strip of land, with a stagnant body of water filled with floating water lilies; abutting and perpendicular to the lot of petitioner Samela, the lot of the Polinars and the low-level strip of land is the perimeter wall of Pilar Village Subdivision.

Apparently, every time a storm or heavy rains occur, the water in said strip of land rises and the strong current passing through it causes considerable damage to the house of respondent Polinars. Frustrated by their predicament, private respondent spouses, on July 30, 1998, erected a concrete wall on the bank of the low-level strip of land about three meters from their house and rip-rapped the soil on that portion of the strip of land.

Claiming ownership of the subject strip of land, petitioners Samela and Usero demanded that the spouses Apolinar stop their construction but the spouses paid no heed, believing the strip to be part of a creek. Nevertheless, for the sake of peace, the Polinars offered to pay for the land being claimed by petitioners Samela and Usero. However, the parties failed to settle their differences.

On November 9, 1998, petitioners filed separate complaints for forcible entry against the Polinars at the Metropolitan Trial Court of Las Piñas City. The case filed by petitioner Samela was docketed as Civil Case No. 5242, while that of petitioner Usero was docketed as Civil Case No. 5243.

In Civil Case No. 5242, petitioner Samela adduced in evidence a copy of her Transfer Certificate of Title, plan of consolidation, subdivision survey, the tax declaration in her name, and affidavits of petitioner Usero and a certain Justino Gamela whose property was located beside the perimeter wall of Pilar Village.

The spouses Polinar, on the other hand, presented in evidence their own TCT; a barangay certification as to the existence of the creek; a certification from the district engineer that the western portion of Pilar Village is bound

by a tributary of Talon Creek throughout its entire length; boundary and index map of Pilar Village showing that the village is surrounded by a creek and that the Polinar property is situated at the edge of said creek; and pictures of the subject strip of land filled with water lilies.

On March 22, 1999, the trial court rendered a decision in favor of petitioner Samela:

WHEREFORE, the Court hereby renders judgment ordering the defendants to vacate and remove at their expense the improvements made on the subject lot; ordering the defendants to pay the plaintiff P1,000.00 a month as reasonable compensation for the use of the portion encroached from the filing of the complaint until the same is finally vacated; and to pay plaintiff P10,000.00 as reasonable attorney's fees plus costs of suit.[3]

In a parallel development, the Metropolitan Trial Court, in Civil Case No. 5243, issued an order on February 29, 2000, directing petitioner Usero and the Polinar spouses to commission a professional geodetic engineer to conduct a relocation survey and to submit the report to the trial court.

On April 24, 2000, Mariano Flotilde, a licensed geodetic engineer, conducted a relocation survey of Usero's property covered by TCT No. T- 29545. The result of the said relocation survey, as stated in his affidavit, was as follows:

- That I executed a relocation survey of Lot 2, Block 5, (LRC) PCS-4463 covered by TCT No. T-29545 registered in the name of Nimfa O. Usero;
- That according to my survey, I found out that there is no existing creek on the boundary of the said lot;
- That based on the relocation plan surveyed by the undersigned, attached herewith, appearing is the encroachment on the above-mentioned lot by Spouses Herminigildo and Cecilia Polinar with an area of FORTY THREE (43) SQUARE METERS;
- That this affidavit was made in compliance with Court Order dated February 23, 2000 of Metropolitan Trial Court, Las Piñas City, Branch LXXIX.[4]

On August 25, 2000, the Metropolitan Trial Court decided in favor of petitioner Usero:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering them:

- a) To vacate and remove at their expense the improvement made on the subject lot;
- b) To pay the plaintiff P1,000.00 a month as reasonable compensation for the portion encroached from the time of the filing of the complaint until the same is finally vacated;
- c) To pay plaintiff P10,000.00 as reasonable attorney's fees plus costs of suit.

SO ORDERED.[5]

The Polinar spouses appealed the decisions of the two Municipal Trial Courts to the Regional Trial Court of Las Piñas, Branch 253 which heard the appeals separately.

On December 20, 2000, the Regional Trial Court, deciding Civil Case No. 5242, reversed the decision of the trial court and ordered the dismissal of the complaint. It confirmed the existence of the creek between the northwestern portion of the lot of petitioner Samela and the southwestern portion of the lot of the spouses Polinar:

Finding the existence of a creek between the respective properties of the parties, plaintiff-appellee cannot therefore lay claim of lawful ownership of that portion because the same forms part of public dominion. Consequently, she cannot legally stop the defendants-appellants from rip-rapping the bank of the creek to protect the latter's property from soil erosion thereby avoiding danger to their lives and damage to property.

Absent a lawful claim by the plaintiff-appellee over the subject portion of that lot, defendants-appellants are not duty bound to pay the former compensation for the use of the same. As a result, they may maintain the said improvements introduced thereon subject to existing laws, rules and regulations and/or ordinances appurtenant thereto.

WHEREFORE, premises considered, the Decision rendered by Branch 79 of the Metropolitan Trial Court, Las Piñas is REVERSED. Accordingly, the instant complaint is DISMISSED.

SO ORDERED.[6]

On March 16, 2001, the Regional Trial Court, in Civil Case No. 5243, also reversed the finding of the Municipal Trial Court:

From the foregoing, defendants-appellants may maintain the improvements introduced on the subject portion of the lot subject to existing laws, rules and regulations and/or ordinances pertaining thereto. Consequently, no compensation may be awarded in favor of the plaintiff-appellee.

WHEREFORE, premises considered, the above-mentioned Decision rendered by Branch 79 of the Las Piñas City Metropolitan Trial Court is REVERSED. Accordingly, the instant complaint is DISMISSED.

From the adverse decisions of the Regional Trial Court, petitioners filed their respective petitions for review on certiorari to the Court of Appeals. Petitioner Samela's case was docketed as CA-G.R. SP 64181 while that of petitioner Usero was docketed as CA-G.R. SP 64718.

Both petitions failed in the CA. Thus the instant consolidated petitions.

The pivotal issue in the case at bar is whether or not the disputed strip of land, allegedly encroached upon by the spouses Polinar, is the private property of petitioners or part of the creek and therefore part of the public domain. Clearly this an issue which calls for a review of facts already determined by the Court of Appeals.

The jurisdiction of the Court in petitions for review on certiorari under Rule 45 of the Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support by the evidence on record or the assailed judgment is based on a misapprehension of facts.[7] This is obviously not the case here.

A careful scrutiny of the records reveals that the assailed decisions are founded on sufficient evidence. That the subject strip of land is a creek is evidenced by: (1) a barangay certification that a creek exists in the disputed strip of land; (2) a certification from the Second Manila Engineering District, NCR-DPWH, that the western portion of Pilar Village where the subject strip of land is located is bounded by a tributary of Talon Creek and (3) photographs showing the abundance of water lilies in the subject strip of land. The Court of Appeals was correct: the fact that water lilies thrive in that strip of land can only mean that there is a permanent stream of water or creek there.

In contrast, petitioners failed to present proof sufficient to support their claim. Petitioners presented the TCTs of their respective lots to prove that there is no creek between their properties and that of the Polinars. However, an examination of said TCTs reveals that the descriptions thereon are incomplete. In petitioner Samela's TCT No. T-30088, there is no boundary description relative to the northwest portion of the property pertaining to the site of the creek. Likewise in TCT No. T-22329-A of the spouses Polinar, the southeast portion which pertains to the site of the creek has no described boundary. Moreover the tax declaration presented by petitioner is devoid of any entry on the "west boundary" vis-a-vis the location of the creek. All the pieces of evidence taken together, we can only conclude that the adjoining portion of these boundaries is in fact a creek and belongs to no one but the state.

Property is either of public dominion or of private ownership.[8] Concomitantly, Article 420 of the Civil Code provides:

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 others of similar character;

The phrase “others of similar character” includes a creek which is a recess or an arm of a river. It is property belonging to the public domain which is not susceptible to private ownership.[9] Being public water, a creek cannot be registered under the Torrens System in the name of any individual[10].

Accordingly, the Polinar spouses may utilize the rip-rapped portion of the creek to prevent the erosion of their property.

WHEREFORE, the consolidated petitions are hereby denied. The assailed decisions of the Court of Appeals in CA-G.R. SP 64181 and CA-G.R. SP 64718 are affirmed in toto.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Carpio-Morales, and Garcia, JJ., concur.

[1] Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices B. A. Adelfuin- De La Cruz and Edgardo P. Cruz of the former Special Fourteenth Division.

[2] Penned by Associate Justice Romeo J. Callejo Sr. (now Associate Justice of the Supreme Court) and concurred in by Associate Justices Remedios Salazar-Fernando and Josefina Guevarra-Salonga of the Twelfth Division.

[3] G.R. No. 155055, Rollo, p. 83.

[4] G.R. No. 152115, Rollo, pp. 29-30.

[5] G.R. No. 152115, Rollo, p. 30.

[6] Penned by Judge Jose F. Coibes Jr., Rollo, pp. 123-125.

[7] Magellan Capital Management Corporation v. Zosa, G.R. No. 129916, 26 March 2001, 355 SCRA 157.

[8] Article 419, Civil Code of the Philippines.

[9] Maneclang v. IAC, L-66575, 24 May 1988, 161 SCRA 469.

[10] Diego v. Court of Appeals, 102 Phil. 494 (1957).

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