

XERXES A. ABA DIAN O, PETITIONER, VS. SPOUSES JESUS AND LOLITA MARTIR, RESPONDENTS.

G.R. No. 156310. July 31, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Civil Procedure assailing the Decision[1] of the Court of Appeals (CA) dated March 14, 2002 and its Resolution[2] dated November 21, 2002 in CA-G.R. CV No. 51679. The CA affirmed the Decision of the Regional Trial Court (RTC) of Kabankalan, Negros Occidental[3] declaring respondents as the owners of the property in question.

The case stemmed from an action for quieting of title and/or recovery of possession[4] of a parcel of land filed by herein respondents against Roberto Abadiano, Faustino Montaña, and Quirico Mandaguit. Petitioner Xerxes A. Abadiano intervened in that case.

Lot No. 1318 of the Kabankalan Cadastre consists of 34,281 square meters covered by Original Certificate of Title (OCT) No. 20461 issued on November 19, 1923 in the name of the spouses Inocentes Bañares and Felician Villanueva. Before the issuance of OCT No. 20461, however, Inocentes and the heirs of Felician Villanueva (who had predeceased her husband) executed an Agreement of Partition dated June 1, 1922 over Lot No. 1318. The lot was partitioned and distributed as follows: (1) 14,976 sq m denominated as Lot No. 1318-A, in favor of Demetrio Bañares; (2) 10,125 sq m denominated as Lot No. 1318-B, in favor of Ramon and David Abadiano (grandchildren of Inocentes and Felician); and (3) 10,180 sq m denominated as Lot No. 1318-C, in favor of Amando Bañares. The partition is embodied in a Deed of Partition executed on June 1, 1922 and notarized the following day by Notary Public Jose Peralta with notarial inscriptions "Reg. No. 64, Pag. 69, Libro III." [5]

On September 30, 1939, David Abadiano, who was absent during the execution of the Agreement of Partition, executed a Deed of Confirmation acknowledging and ratifying the document of partition. [6]

OCT No. 20461 was administratively reconstituted on February 15, 1962 and in lieu thereof OCT No. RO-8211 (20461) was issued over Lot No. 1318, still in the name of Inocentes Bañares and Felicidad Villanueva. Annotated at the back of the reconstituted title were the Agreement of Partition and the Deed of Confirmation. [7]

On June 14, 1957 Demetrio Bañares sold his share of the lot to his son, Leopoldo. The same was annotated at the back of OCT No. RO-8211 (20461). [8]

Subsequently, on February 21, 1962, Leopoldo Bañares filed before the Court of First Instance (CFI) of Negros Occidental an ex-parte petition praying for: first, the confirmation of the Agreement of Partition, the Conformity executed by David Abadiano, and the Deed of Sale between him and his father; and second, the cancellation of OCT No. RO-8211 (20461) and, in lieu thereof, the issuance of a new certificate of title over the property. In an Order dated February 22, 1962, the court ordered the cancellation of OCT No. RO-8211 (20461) and the issuance of a new certificate of title in the names of Dr. Leopoldo Bañares, Amando Bañares, and Ramon and David

Abadiano. Pursuant thereto, Transfer Certificate of Title (TCT) No. T-31862 was issued by the Register of Deeds for Negros Occidental.[9]

Petitioner insists that this is still the valid and subsisting title over Lot No. 1318 and that no sale of the portion pertaining to Ramon and David Abadiano ever took place.[10]

On the other hand, respondent spouses alleged that, prior to the issuance of TCT No. T-31862, Ramon Abadiano, for himself and on behalf of David Abadiano, had already sold their rights and interests over Lot No. 1318-C [11] to Victor Garde. The sale was allegedly evidenced by a document of sale (Compra Y Venta) dated June 3, 1922 and acknowledged before Notary Public Jose Peralta and bearing notarial inscription "Doc. No. 64, Pag. No. 60, Book No. III, series of 1922." The sale was allegedly affirmed by David Abadiano in a document dated September 30, 1939.[12]

They further alleged that from the time of the sale, Victor Garde and his heirs were in continuous, public, peaceful, and uninterrupted possession and occupation in the concept of an owner of Lot No. 1318-C.[13] On December 29, 1961, the heirs of Victor Garde sold their rights and interests over Lot No. 1318-C [14] to Jose Garde, who immediately took possession thereof. Jose Garde continuously planted sugarcane on the land until he sold the property to Lolita Martir in 1979. [15]

After acquiring the property, respondent spouses continued to plant sugarcane on the land. Sometime in March 1982, after respondent Jesus Martir harvested the sugarcane he had planted on Lot No. 1318-C, defendant below Roberto Abadiano (son of Ramon) allegedly entered the property and cultivated the remaining stalks of sugarcane and refused to vacate despite demands to do so. The following year, defendants Roberto Abadiano, Faustino Montaña, and Quirico Mandaguit again harvested the sugarcane on Lot No. 1318-C.[16] Further, the defendants also entered the property and harvested the sugarcane on Lot No. 1318-B,[17] which by then had been acquired by Lolita B. Martir from her adoptive father, Amando Bañares.[18]

Thus, in April 1982, herein respondent-spouses filed the Action to Quiet Title and/or Recovery of Possession with Damages before the then CFI of Negros Occidental.

In their Answer with Counterclaim,[19] defendants denied that the subject property was ever sold by Ramon and David Abadiano, and that, consequently, defendant Roberto Abadiano had inherited the same from Ramon. They also alleged, by way of Special and Affirmative Defenses, that the subject land still belonged to the estate of Ramon and David Abadiano and was never alienated. They alleged further that the act of spouses Martir in planting sugarcane on the land was without Roberto's consent; that Roberto had demanded that the spouses Martir pay him reasonable rental for the land but that they had persistently refused to do so; and that sometime in March 1981, Roberto and the spouses Martir came to an agreement whereby the defendant continued to cultivate the remaining stalks of sugarcane left by plaintiffs and that until the harvest of said sugarcane, plaintiffs never posed any objection thereto.

Xerxes Abadiano intervened in the proceedings before the trial court alleging likewise that his predecessor Ramon Abadiano never sold their share of the property to Victor Garde.[20]

After trial, the court issued a Decision[21] dated June 23, 1995, ruling in favor of the spouses Martir, thus:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants declaring plaintiffs spouses Jesus and Lolita Martir as the true and legitimate owners of portions of Lot No. 1318 Kabankalan Cadastre denominated as Lots 1318-B and 1318-C and ordering:

(1) That the defendants Roberto Abadiano and the intervenor Xerxes Abadiano shall surrender Transfer Certificate of Title No. T-31862 to the Registrar of Deeds of Negros Occidental who is directed to partially

cancel said title and issue new Certificate of Title corresponding to Lots 1318-B and 1318-C in the names of the spouses Jesus and Lolita Martir;

(2) That the defendants shall jointly and severally pay to the plaintiffs the amount of Twenty Thousand (P20,000.00) Pesos representing the value of the sugarcanes of plaintiffs which defendants harvested and milled with SONEDCO and;

(3) To pay the costs of this suit.

SO ORDERED.[22]

The trial court rejected therein defendants' contention that the *Compra Y Venta* was null and void because the co-owner, David Abadiano, did not sign the same. It held that the Supreme Court has ruled to the effect that the sale by a co-owner of the entire property without the consent of the other co-owners was not null and void but that only the rights of the co-owner-seller are transferred, making the buyer a co-owner. The trial court also held that although the *Compra Y Venta* was not annotated either on the OCT or on the reconstituted OCT, the validity of the sale was not vitiated. The registration or annotation is required only to make the sale valid as to third persons. Thus, the trial court concluded that the *Compra Y Venta* was valid between the parties, Ramon Abadiano and Victor Garde.

The trial court also brushed aside the defendants' contention that the *Compra Y Venta* contained the same notarial inscription as the Deed of Partition. It said that assuming this to be true, this may be considered an error which did not nullify the *Compra Y Venta*; at most, the document would be non-registrable but still valid.

On the contention that the alleged confirmation executed by David Abadiano was for the Deed of Partition and not for the *Compra Y Venta*, the trial court agreed. It, however, interpreted the same to mean that David Abadiano must not have authorized his brother to sell his share in Lot No. 1318-C. The effect was that David Abadiano continued to be one of the registered owners of the property and his heirs stepped into his shoes upon his death.

However, the trial court found that the plaintiffs' (respondents') claim that they and their predecessors-in-interest have been in possession of the property for more than sixty (60) years was duly established. In contrast, the court found that defendants and intervenor, and their deceased parents, had not been in possession of their share in the property. It held that the defendants and intervenor were guilty of laches for failing to avail of the many opportunities for them to bring an action to establish their right over Lot No. 1318-C.

Defendants appealed to the CA. However, the same was summarily dismissed in a Resolution dated February 11, 1997 due to defendants' failure to pay the required docket fee within the period set. Nonetheless, the records were retained for the appeal of Xerxes Abadiano, intervenor in the trial court.

On March 14, 2002, the CA rendered a Decision affirming the Decision of the RTC in toto.[23]

Xerxes Abadiano now comes before this Court raising the following arguments:

A

THE HONORABLE COURT OF APPEALS ERRED, BASED ON ITS MISAPPREHENSION AND/OR OMISSION OF THE FACTS, IN DISREGARDING THE PRIMORDIAL ISSUE OF WHETHER OR NOT THE DEED OF SALE ("COMPRA Y VENTA") IS A SPURIOUS DOCUMENT

B

THE HONORABLE COURT OF APPEALS ERRED IN FINDING PETITIONER GUILTY OF LACHES OVER REGISTERED LAND[24]

The Petition is impressed with merit. We believe the trial court and the CA erred in ruling for the respondents.

Accordingly, we reverse the assailed Decision and Resolution.

It is well settled that the findings of fact of the trial court, especially when affirmed by the CA, are accorded the highest degree of respect, and generally will not be disturbed on appeal. Such findings are binding and conclusive on the Court. Further, it is not the Court's function under Rule 45 of the 1997 Revised Rules of Civil Procedure to review, examine and evaluate or weigh the probative value of the evidence presented. The jurisdiction of the Court in a petition for review under Rule 45 is limited to reviewing only errors of law. Unless the case falls under the recognized exceptions, the rule shall not be disturbed.[25]

However, this Court has consistently recognized the following exceptions: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[26]

In the present case, we find that the trial court based its judgment on a misapprehension of facts, as well as on the supposed absence of evidence which is contradicted by the records.

In appreciating the alleged Compra Y Venta presented by respondents, the trial court concluded that "[t]he parties have no quarrel on the existence of a Deed of Sale of a portion of Lot No. 1318 executed by Ramon Abadiano for himself and as representative of David Abadiano, dated June 3, [1922] in favor of Victor Garde." [27]

The trial court erred in its conclusion.

Borne very clearly by the records is the defendants' repudiation of the existence of the sale in their Answer with Counterclaim. They stated:

2. That defendants admit plaintiffs' allegation in paragraph 4 that there has been no particular designation of lot number (sic) for each of the co-owner (sic) of Lot No. 1318 but specifically deny under oath the other allegations thereof the truth being that the property referred to here as Lot No. 1318 remains undivided to this day that the owners thereof as shown by the TCT No. 31862 co-own the same pro-indiviso;

3. That defendants have no knowledge sufficient to form a belief as to the truth of the allegations in paragraph 5 [28] and therefore specifically deny the same under oath the truth being that Ramon Abadiano and David Abadiano had not sold the land at bar to anyone and that consequently, defendant Roberto Abadiano had inherited the same from the former; x x x. [29] (emphasis supplied).

Likewise, petitioner specifically denied the allegations in paragraph 5 of the Complaint. He alleged that the lot "had never been sold or alienated and the same still remains intact as the property of the Intervenor and his co-owners by operation of law." [30]

This was testified to by Roberto Abadiano during the trial, thus:

Q:

During the lifetime of your father, do you know if your father has ever sold to any party his share on Lot No. 1318?

A: He has not sold his share.[31]

These statements were enough to impugn the due execution of the document. While it is true that this Court had previously ruled that mere denials would not have sufficed to impeach the document, in this case, there was an effective specific denial as contemplated by law in accordance with our ruling that -

defendant must declare under oath that he did not sign the document or that it is otherwise false or fabricated. Neither does the statement of the answer to the effect that the instrument was procured by fraudulent representation raise any issue as to its genuineness or due execution. On the contrary such a plea is an admission both of the genuineness and due execution thereof, since it seeks to avoid the instrument upon a ground not affecting either. [32]

It was error then for the RTC to have brushed aside this issue and then make so sweeping a conclusion in the face of such opposition. In light of this challenge to the very existence of the Compra Y Venta, the trial court should have first resolved the issue of the document's authenticity and due execution before deciding on its validity. Unfortunately, the CA did not even discuss this issue.

We are cognizant, however, that it is now too late in the day to remand the case to the trial court for the determination of the purported Compra Y Venta's authenticity and due execution. Thus, we will resolve this very issue here and now in order to put an end to this protracted litigation.

There is no denying that TCT No. 31862 is still the subsisting title over the parcel of land in dispute. It is also a fact that the purported Compra Y Venta was not annotated on TCT No. 31862 until April 1982, shortly before the complaint was commenced, even though the deed was allegedly executed in 1922.

Considering that the action is one for quieting of title and respondents anchored their claim to the property on the disputed Compra Y Venta, we find it necessary to repeat that it was incumbent upon the trial court to have resolved first the issue of the document's due execution and authenticity, before determining its validity.

Rule 130, Section 3 of the Revised Rules of Court reads:

Original document must be produced; exceptions. - When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

- (a) When the original has been lost or destroyed, or cannot be produced in court without bad faith on the part of the offeror;
- (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole;
- (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

Respondents attached only a photocopy of the Compra Y Venta to their complaint. According to respondent Lolita Martir, the original of said document was in the office of the Register of Deeds. They allegedly tried to obtain a copy from that office but their request was refused. No other evidence but these bare assertions, however, was presented to prove that the original is indeed in the custody of the Register of Deeds or that respondents' due and diligent search for the same was unsuccessful.

The Rule states that when the original document is unavailable, has been lost or destroyed, or cannot be produced

in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.[33]

In the case at bar, respondents failed to establish that the offer in evidence of the document was made in accordance with any of the exceptions allowed under the abovequoted rule, and yet, the trial court accepted the document as genuine and proceeded to determine its validity based on such assumption.

The trial court likewise brushed aside the apparent defect that the document presented contained the same notarial inscription as the Agreement on Partition. Indeed, the Deed of Partition and the Compra Y Venta, though executed on different days, were notarized on the same day, and both documents contained the signatures of the same witnesses and the same notarial inscription.

This notwithstanding, the court concluded, "Assuming this to be true, same could be considered an error which did not nullify, (sic) the Deed of Sale or Compra Y Venta. At most, the document would be a non-registrable, but valid document." [34]

We stress that a notarial document is evidence of the facts in the clear unequivocal manner therein expressed and has in its favor the presumption of regularity.[35]

In this case, while it is true that the error in the notarial inscription would not have invalidated the sale - if indeed it took place - the same error would have meant that the document cannot be treated as a notarial document and thus, not entitled to the presumption of regularity. The document would be taken out of the realm of public documents whose genuineness and due execution need not be proved.[36]

Accordingly, respondents not having proven the due execution and genuineness of the purported Compra Y Venta, the weight of evidence preponderates in favor of petitioner.

Next, we determine if petitioner is guilty of laches. On this issue, we rule in the negative.

Under the Property Registration Decree,[37] no title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession.[38] Indefeasibility and imprescriptibility are the cornerstones of land registration proceedings. Barring any mistake or use of fraud in the procurement of the title, owners may rest secure on their ownership and possession once their title is registered under the protective mantle of the Torrens system.[39]

Nonetheless, even if a Torrens title is indefeasible and imprescriptible,[40] the registered landowner may lose his right to recover the possession of his registered property by reason of laches.[41]

Laches has been defined as neglect or omission to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity. It is a delay in the assertion of a right which works disadvantage to another because of the inequity founded on some change in the condition or relations of the property or parties. It is based on public policy which, for the peace of society, ordains that relief will be denied to a stale demand which otherwise could be a valid claim.[42]

The four basic elements of laches are: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant or the suit is not held to be barred.[43]

The reason for the rule is not simply the lapse of time during which the neglect to enforce the right has existed, but the changes of condition which may have arisen during the period in which there has been neglect. In other words, where a court finds that the position of the parties will change, that equitable relief cannot be afforded without doing injustice, or that the intervening rights of third persons may be destroyed or seriously impaired, it will not exert its equitable powers in order to save one from the consequences of his own neglect.[44]

Though laches applies even to imprescriptible actions, its elements must be proved positively. Laches is evidentiary in nature and cannot be established by mere allegations in the pleadings.[45]

Based on the foregoing, we hold that petitioner is not guilty of laches. The evidence on record does not support such finding.

Petitioner had reasonable ground to believe that the property, being still in the name of his predecessor in interest, continued to be theirs, especially considering that the annotation of the purported sale was done only in 1982. According to petitioner, his father had told him that his (the father's) inheritance was in the possession of their uncle, Amando Bañares who knew likewise that the property was theirs.

Thus, Roberto Abadiano testified:

Q:

Before Amando Bañares died, did you know that your father is a part owner of Lot No. 1318?

A:

Yes, Sir.

Q:

And did you not complain to Amando Bañares that your father is a part owner of that lot?

A:

No, Sir. We did not complain because he was our grandfather and when he dies, the property will go back to us.[46]

And herein petitioner testified:

Atty. Garaygay -

Q:

Before the war who was occupying this lot which you claimed belonging (sic) to your father?

A:

The uncle of my father, Amando Bañares, Sir.

Q:

As a matter of fact, before and after the war and during the lifetime of Amando Bañares, he was the one in possession of Lot No. 1318?

A:

Yes, sir.

Q:

What was the condition of the lot under the possession of the lot under the possession of Amando Bañares - was it under lease?

A:

As far as I can remember, my father told me that his inheritance was with Amando Bañares, his uncle.[47]

From the testimonies of petitioner and the defendants during trial, it would appear that they were unaware of any of respondents' actions in relation to the property until the death of their grandfather, Amando Bañares. When they did find out that respondents were occupying the land, they immediately took action to occupy what they believed was still rightfully theirs.

On this point, petitioner testified, thus:

Q:

When did you initiate the move to claim Lot No. 1318-B as your inheritance from your late father?

A:

It was shortly after the death of Amando Bañares.

Q:

Who were these, who initiated the move to claim Lot No. 1318-B?

A:

I advised my brothers here in Kabankalan to take action to possess the land which was then occupied before by our (sic) great uncle, Amando Bañares.

Q:

When was that, in what year, because we do not know when did your uncle (sic) die?

A:

It was after the death of Amando Bañares sometime in 1973 or 1974.

Q:

Why did it take you that long before you initiated the move to claim the inheritance?

A:

Considering that relatives were involved and the fact we understand that our late parents revered our uncle so, we cautiously tried to take action shortly after his death, so as not to antagonize our relatives.

Q:

What did you do in order to claim your inheritance?

A:

Now, after learning that it was being farmed by Lolita Martir, I advised my brothers here in Kabankalan to go to Bacolod City to seek the intercession of the Philippine Constabulary Commander in order to thresh out the matter in a way that there will be no hostility or adverse reaction.

Q:

What other reactions did you take, if any?

A:

Well, I told my brother that they have a confrontation in the Office of the PACLAP known as the Presidential Action Commission on Land Problems.

Q:

Besides that confrontation at the PACLAP, what other action did you personally take as an heir of Lot No. 1318-B?

A:

After that confrontation, I advised my brothers to occupy the land in question to farm it because it belongs to us.

Q:

With respect to the Transfer Certificate of Title, what action, if any, did you undertake?

A:

Well, we drew out a Declaration of Heirship and Adjudication and after it was approved by the Court, it was annotated at the back of the Transfer Certificate of Title No. T-31862 and we were given a co-owner's copy of the said title by the Register of Deeds.

x x x x

Q:

Mr. Witness, when did you and your co-owners executed (sic) this Declaration of Heirship and Adjudication over Lot 1318-B?

A:

That was on July 17, 1976.

Q:

Was that before or after the plaintiffs have filed this present case?

A:

That was almost 6 or 7 years before this present case was filed. [48]

On the other hand, Roberto Abadiano testified:

Atty. Garaygay -

Q:

Now, according to you, your father is the co-owner of Lot No. 1318. Prior to the death of your father, who was in possession of Lot No. 1318?

Witness -

A:

What I know is it was Amando Bañares.

Q:

You mean to say that when your father was still alive, it was Amando Bañares who was in possession of Lot No. 1318?

A:

Yes, sir.

Q:

And until when did you know that Amando Bañares has been in possession of Lot No. 1318?

A:

Up to 1976 when he died.

Q:

After his death in 1976, who was in possession of the said lot?

A:

I made a verification in the Office of the Register of Deeds, and when I went to the said lot, it was vacant.

Q:

When was that?

A:

In 1976-1977, and I have it planted in 1978.[49]

That petitioner and his co-heirs waited until the death of Amando Bañares to try and occupy the land is understandable. They had to be careful about the actions they took, lest they sow dissent within the family. Furthermore, they knew that their parents revered Amando.[50]

The Court has recognized that this reaction cannot be characterized as such delay as would amount to laches, thus:

in determining whether a delay in seeking to enforce a right constitutes laches, the existence of a confidential relationship between the parties is an important circumstance for consideration, a delay under such circumstances not being so strictly regarded as where the parties are strangers to each other. The doctrine of laches is not strictly applied between near relatives, and the fact that parties are connected by ties of blood or marriage tends to excuse an otherwise unreasonable delay.[51]

In addition, several other factors militate against the finding of laches on the part of the petitioner.

When the Original Certificate of Title was reconstituted on February 15, 1962, no annotation therein was made of the Compra Y Venta or of the Deed of Sale between Ramon Abadiano and Victor Garde. Only the Agreement of Partition, the Confirmation by David Abadiano, and the sale from Demetrio to Leopoldo Bañares were annotated therein.[52] Neither does the Deed of Sale of Demetrio's share in favor of Leopoldo, executed in 1957, mention that the property belonged to anyone other than the parties to the Deed of Partition. [53]

Likewise, Transfer Certificate of Title No. T-31862, which was issued in 1962 pursuant to an Order of the Kabankalan CFI, was issued in the names of Leopoldo Bañares, Amando Bañares, and Ramon and David Abadiano. Even at the time of the issuance of said TCT, there was no annotation of the alleged sale to Victor Garde, which according to respondents took place in 1922.

If respondents' contention were true, the TCT should not have been issued in April 1962 in the name of Ramon and David Abadiano, but in the name of Victor Garde or Jose Garde - who by then had supposedly acquired the property by virtue of the Declaration of Heirship and Deed of Sale executed on December 29, 1961.[54] As it is, neither respondents nor any of their predecessors in interest participated in any of the proceedings for the issuance of the OCT, the reconstituted OCT, or the TCT. The petitioner's testimony on the matter is revealing:

Q: Based on your investigation, did you find records of the proceedings of the reconstitution of title of Lot 1318 or any evidence as to the participation of the plaintiffs in this Reconstitution Petition?

A: Based on the existing records, they did not participate.

Q: How about in the Reconstitution of Original Certificate of Title No. (sic) did the plaintiffs participate therein?

A: They did not also.

Q: How about in the issuance of the new Transfer Certificate of Title, did the plaintiffs participate therein?

A: No, sir.[55]

Again, the TCT bears out the fact that the purported Compra Y Venta to Victor Garde was annotated thereon only on April 23, 1982. On the other hand, several entries made in 1981 evince that petitioner and his co- heirs took steps after Amando's death to assert their rights over the property.[56]

In 1976, the heirs of David Abadiano executed a Special Power of Attorney in favor of Roberto Abadiano giving the latter authority to act, sue, and/or represent them in any suit or action for recovery of possession or of whatever kind or nature.[57] For their part, the heirs of Ramon Abadiano executed a Declaration of Heirship and Adjudication over the part of Lot No. 1318 pertaining to their predecessor.[58]

Ranged against these positive steps, respondents only have their bare assertions to support their claim that they indeed had possession of the land through their predecessors in interest, which are insufficient to overcome the testimony that it was Amando Bañares - and not Victor Garde - who had possession of the property during the former's lifetime, or that after Amando's death, the lot remained unoccupied.

In sum, we find that petitioner is not guilty of such neglect or inaction as would bar his claim to the property in

question. In contrast, it is most telling that respondents, who are claiming to have been in possession of the property by virtue of an alleged duly constituted sale for almost 60 years, have themselves failed within that long period to have the same property transferred in their name or even only to have the sale annotated on the title of the property.

Finally, we come to the issue of damages. Petitioner prays that respondents be made to pay actual damages of not less than P30,000.00 plus rentals on the property from the time of the latter's occupation, moral damages amounting to P100,000.00, and exemplary damages, as well as attorney's fees.

The record shows that petitioner testified on the prevailing rate of rentals on the subject property from the time of Amando Bañares' death in 1976 until the time of the trial. According to petitioner, the rental rate from 1976 until 1985 was P3,000.00 per hectare, while from 1985 until the time of his testimony in 1994, the rental rate was P5,000.00 per hectare. We thus rule that the actual damages that may be awarded shall be based only on these rates.[59]

Considering, however, that petitioner's co-heirs (defendants Roberto Abadiano, et al.) were able to enter the property and harvest the sugarcane therein in 1981 and, thereafter, the land remained unoccupied, the rent must be reckoned only from the time respondents actually occupied the land until March 1981.

The claims for moral damages must be anchored on a definite showing that the claiming party actually experienced emotional and mental sufferings.[60] In this case, we find that petitioner's testimony that he suffered from sleepless nights from worrying about this case and considering the great distance he had to travel from his home in Tacloban to see the case through are enough bases to award him moral damages. With the award of moral damages, exemplary damages are likewise in order.[61]

Attorney's fees are recoverable when exemplary damages are awarded, or when the court deems it just and equitable. The grant of attorney's fees depends on the circumstances of each case and lies within the discretion of the court. [62] Given the circumstances of this case, we grant the prayer for attorney's fees.

WHEREFORE, the foregoing premises considered, the Petition is GRANTED. The Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 51679 are reversed and set aside. A new one is entered:

(1) reversing the Decision of the Regional Trial Court of Kabankalan, Negros Occidental in Civil Case No. 1331;

(2) declaring the heirs of Ramon and David Abadiano as the lawful owners of Lot No. 1318-B, a portion of Lot No. 1318 covered by Transfer Certificate of Title No. T-31862, Kabankalan Cadastre, Negros Occidental; and

(3) ordering respondents to pay petitioner and his co-heirs rentals at the rate of P3,000.00 per hectare per year, from the time of actual occupation of the land in 1976 until March 1981, moral damages in the amount of P100,00.00, exemplary damages in the amount of P30,000.00, and attorney's fees in the amount of P10,000.00.

SO ORDERED.

Ynares-Santiago, Austria-Maritnez, Chico-Nazario, and Reyes, JJ., concur.

[1] Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Salvador J. Valdez, Jr. and Juan Q. Enriquez, Jr., concurring; rollo, pp. 20-32.

[2] Id. at 40.

[3] Penned by Judge Rodolfo S. Layumas, rollo, pp. 41-60.

[4] Civil Case No. 207 (1331).

[5] Rollo, pp. 4-5.

[6] Id. at 5.

[7] Id. at 6.

[8] Records, p. 122.

[9] Order of the Court of First Instance of Negros Occidental, id. at 130-131.

[10] Rollo, p. 6.

[11] Respondents mistakenly identified the subject property as Lot No. 1318-C when in fact they were referring to Lot No. 1318-B. Respondents admitted the mistake in their Answer to Intervenor's Answer in Intervention with Counterclaim. (Records, p. 139.)

[12] Complaint, records, pp. 2-3.

[13] Supra note 11.

[14] Id.

[15] Id. at 4.

[16] Id.

[17] Referring to Lot No. 1318-C.

[18] Records, pp. 4-5.

[19] Answer with Counterclaim, records, pp. 29-32.

[20] Motion for Intervention, id. at 100-102.

[21] Rollo, pp. 40-60.

[22] Id. at 59-60.

[23] Id. at 32.

[24] Id. at 10.

[25] Bulos, Jr. v. Yasuma, G.R. No. 164159, July 17, 2007, 527 SCRA 727, 737. (Citations omitted).

[26] Citibank, N.A. v. Sabeniano, G.R. No. 156132, October 12, 2006, 504 SCRA 378, 409, citing Sps. Sta. Maria v. Court of Appeals, 349 Phil. 275, 282-283 (1998).

[27] Rollo, p. 48.

[28] Paragraph 5 reads: "That prior to the issuance of TCT No. T-31862, of Lot No. 1318, Ramon Abadiano for himself and in behalf of David Abadiano had already sold and conveyed their rights and interest in and over the said portion of lot (sic) No. 1318, herein referred to as Lot No. 1318-C, in favor of Victor Garde as evidenced by a document of sale dated June 3, 1922, which was duly acknowledged and ratified before Mr. Jose Peralta, Notary Public, appearing as Doc. No. 64, Page No. 60, Book No. III, series of 1922, of the latter's Notarial Register, a xerox copy of said deed of sale is hereto attached as Annex `B,' and made part hereof. This document of sale was later on affirmed by David Abadiano, in a document dated September 30, 1939, and acknowledged on the same

date before Mr. Jose Peralta, Notary Public, appearing as Doc. No. 128, Page No. 100, Libro XI, of the latter's Notarial Register, a xerox copy of which is hereto attached as Annex 'C,' and made part hereof." (Complaint, records, pp. 2-3).

[29] Answer with Counterclaim, records, p. 29.

[30] Answer in Intervention, id. at 115.

[31] TSN, September 14, 1989, p. 8.

[32] *The Consolidated Bank and Trust Company v. Del Monte Motor Works, et al.*, G.R. No. 143338, July 29, 2005, 465 SCRA 117, 130, citing *Permanent Savings and Loan Bank v. Mariano Velarde*, 439 SCRA 1 (2004).

[33] Rule 130, Sec. 5.

[34] Rollo, p. 52.

[35] *Bautista v. Court of Appeals*, 479 Phil. 787, 795 (2004), citing *Fernandez v. Fernandez*, 363 SCRA 811, 829 (2001).

[36] See *Tigno, et al. v. Spouses Aquino, et al.*, G.R. No. 129416, November 25, 2004, 444 SCRA 61.

[37] Section 47, Presidential Decree (PD) No. 1529.

[38] Sec. 47, id.

[39] *Herce v. Municipality of Cabuyao, et al.*, G.R. No. 166645, November 11, 2005, 474 SCRA 797, 807, citing *Tichangco v. Enriquez*, 433 SCRA 324, 333-334 (2004).

[40] *Isabela Colleges, Inc. v. The Heirs of Tolentino-Rivera*, 397 Phil. 955, 969 (2000), citing *Reyes v. Court of Appeals*, 258 SCRA 651 (1996); *Dimayuga v. Court of Appeals*, 129 SCRA 110 (1984).

[41] Id., citing *Catholic Bishop of Balanga v. Court of Appeals*, 264 SCRA 181 (1996); *De la Calzada-Cierras v. Court of Appeals*, 212 SCRA 390 (1992); *Claverias v. Quingco*, 207 SCRA 66 (1992); *Marcelino v. Court of Appeals*, 210 SCRA 444 (1992); *Republic v. Court of Appeals*, 204 SCRA 160 (1991); *Tambot v. Court of Appeals*, 181 SCRA 202 (1990); *Bergado v. Court of Appeals*, 173 SCRA 497 (1989); *Golloy v. Court of Appeals*, 173 SCRA 26 (1989); *Lola v. Court of Appeals*, 145 SCRA 439 (1986); *Miguel v. Catalino*, 26 SCRA 234 (1968); *Mejia de Lucas v. Gamponia*, 100 Phil. 277 (1956).

[42] *De Vera-Cruz, et al. v. Miguel*, G.R. No. 144103, August 31, 2005, 468 SCRA 506, 518.

[43] *Heirs of Dumaliang, et al. v. Serban, et al.*, G.R. No. 155133, February 21, 2007, 516 SCRA 343, 352, citing *Felix Gochan and Sons Realty Corporation v. Heirs of Baba*, G.R. No. 138945, August 19, 2003, 409 SCRA 306; see also *Miguel v. Catalino* 135 Phil. 229 (1968) and *Claverias v. Quingco* G.R. No. 77744, 6 March 1992, 207 SCRA 66; *Go Chi Gun, et al. v. Co Cho, et al.*, 96 Phil. 622, 637 (1954), citing 19 Am. Jur., 343-344.

[44] *Vda. de Cabrera, et al. v. Court of Appeals*, 335 Phil. 19, 34 (1997), citing *Mejia de Lucas v. Gampona*, 100 Phil. 277 (1956).

[45] *Department of Education v. Oñate*, G.R. No. 161758, June 8, 2007, 524 SCRA 200, 216, citing *Felix Gochan and Sons Realty Corporation v. Heirs of Baba*, supra note 43.

[46] TSN, November 23, 1989, p. 5.

[47] Id. at 6.

[48] TSN, July 14, 1994, pp. 40-43.

[49] TSN, November 23, 1989, p. 4.

[50] Rollo, p. 13.

[51] Pilapil, et al. v. Heirs of Briones, et al., G.R. No. 150175, March 10, 2006, 484 SCRA 308, 316-317, citing Gallardo v. Intermediate Appellate Court, 155 SCRA 248 (1987); Sotto v. Teves, et al., 175 Phil 343, 371.

[52] Exhibit "1," folder of exhibits for intervenor, p. 2.

[53] Exhibit "1-C-1," id. at 17.

[54] Records, pp. 15-17.

[55] TSN, July 14, 1994, p. 34.

[56] Exhibits "2," "2-A," "2-B," "2-C," "2-D," "2-E," and "2-F," folder of exhibits for intervenor, p. 21.

[57] Exhibit "2-B-1," folder of exhibits for intervenor, pp. 26-27.

[58] Exhibit "2-C-1," id. at 28-29.

[59] TSN, July 14, 1994, p. 46.

[60] Trinidad v. Acapulco G.R. No. 147477, June 27, 2006, 493 SCRA 179, 193, citing Quezon City Government v. Dacara, 460 SCRA 243 (2005).

[61] CIVIL CODE, Art. 2208.

[62] Pilipinas Shell Petroleum Corporation v. John Bordman Limited of Iloilo, Inc., G.R. No. 159831, October 14, 2005 473 SCRA 151, 175. (Citations omitted).

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