SPS. DOLORES MIRANDA PROVOST AND JEAN PROVOST, PETITIONERS, VS. THE COURT OF APPEALS AND SPS. VICTOR RAMOS AND FE A. RAMOS, RESPONDENTS.

G.R. No. 160406. June 26, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

The instant petition seeks the annulment of the Decision[1] dated February 13, 2003 of the Court of Appeals in CA-G.R. SP No. 57008 and its Resolution[2] dated August 27, 2003, denying the motion for reconsideration. The appellate court reversed the Decision[3] dated December 10, 1999 of the Regional Trial Court (RTC) of Mambajao, Camiguin, Branch 28, in Civil Case No. 573, which affirmed the Decision[4] dated February 19, 1999 of the Municipal Trial Court (MTC) of Mambajao, Camiguin in Civil Case No. 212.

The antecedent facts are as follows.

Private respondents, spouses Victor and Fe Ramos, are the owners of a parcel of land surveyed as Lot No. 12542, Case 15, Cad. 473 situated in Putingbalas, Tupsan Grande,[5] Mambajao, Camiguin. The spouses' lot was donated to them by Nicolasa Yap Vda. de Abao on October 24, 1994. Adjacent to the lot is a parcel of land surveyed as Lot No. 12543, C-15, Cad. 473 owned by petitioner Dolores Miranda Provost. She bought it from Rosario Abanil.

Sometime in May 1992, the Provosts constructed a fence separating the two lots. In 1994, the Ramoses, believing that the Provosts encroached on a portion of their lot, demanded the return of the encroached area but the latter refused. The Ramoses thus had a relocation survey and the relocation survey showed that the fence was indeed on their land.

The Provost spouses disagreed, arguing that the cadastral survey plan used had been disapproved by the DENR Regional Office for being defective and was replaced with a correction survey of Barangay Tupsan, Mambajao. Under the correction survey, Lot No. 12542 with an area of 4,402 square meters was surveyed as Lot No. 13436, Cad 473, Module 2, but with a reduced area of 3,845 square meters, and Lot No. 12543 with an area of 1,774 square meters as Lot No. 12769, Cad 473, Module 2 with an increased area of 2,634 square meters. Upon request of petitioners Provosts, another relocation survey was done using the approved cadastral survey plan. This relocation survey showed that the fence was within petitioners' property.

On December 26, 1994, the Ramos spouses filed a complaint for recovery of ownership and possession with damages and with prayer for preliminary injunction before the MTC. They alleged that the Provosts encroached on 314 square meters of their lot. The MTC dismissed the complaint and held that the Ramoses failed to prove their ownership and possession of the disputed area. On appeal, the RTC affirmed the MTC decision, stating that the claim by the Ramoses over the property sought to be recovered was based on a disapproved survey plan.

Private respondents appealed to the Court of Appeals. The appellate court reversed the RTC decision and ordered the Provosts to vacate the area, remove the fence, and pay damages, to wit:

> WHEREFORE, FOREGOING PREMISES CONSIDERED, this petition is GRANTED. The assailed Decision dated December 10, 1999 of the Regional Trial Court, Branch 28, Mambajao, Camiguin in Civil Case No. 573 entitled, "Spouses Victor Ramos, et al. vs. Jean Provost, et al." is reversed and set aside and in lieu thereof, another one is entered:
> (a) ordering respondents to vacate and surrender the encroached area of 314 square meters to the petitioners and to remove their fence;
>
> (b) to pay petitioners the following amounts:
>
> (1) the amount of P6,355.82 as actual damages;
> (2) the amount of P500.00 per annum as reasonable rentals of the encroached area;
> (3) the amount of P35,500.00 as attorney's fees plus P1,500.00 as traveling expenses every hearing;
> (4) the amount of P50,000.00 as moral damages;
> (5) the amount of P500.00 as litigation expenses and to pay the costs of suit.
>
> **SO ORDERED.[6]**

Hence, this petition for certiorari where petitioners argue:

> - That respondent Court of Appeals exceeded the limits of its jurisdiction in deciding the appeal of private respondents outside of the issue raised in the decisions of both the Municipal Trial Court and the Regional Trial Court.
>
> - The respondent Court of Appeals committed grave abuse of discretion amounting to lack of jurisdiction in insisting on the technical description of the erroneous and disapproved survey of private respondents' land as the basis for its findings that petitioners had encroached the land of respondents.
>
> - That the respondent Court of Appeals committed grave abuse of discretion amounting to lack of jurisdiction in merely denying in a cavalier manner petitioners' Motion for Reconsideration as mere refutation of its own findings, without stating the legal basis for the denial in direct violation of the provisions of the second paragraph, of Section 14, of the 19[8]7 Constitution of the Philippines, that no petition for review or motion for reconsideration of the court shall be refused due course or denied without stating the legal basis [therefor].
>
> - That there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law open to petitioners, except this petition for certiorari under Rule 65, of the 1997 Rules of Civil Procedure.[7]

At the outset, we note that this case involves an error of judgment and not of jurisdiction. Thus, a petition for certiorari under Rule 65 of the Rules of Court is not proper. Nevertheless, we shall give due course to the instant petition as one proper for review under Rule 45.

Simply, the main issue in this case is whether petitioners (Provosts) encroached on the property of private respondents (Ramos spouses).

Private respondents anchor their claim on the deed of donation and an old survey plan, while petitioners base theirs on the deed of absolute sale and the corrected survey plan.

Petitioners aver that the appellate court gravely abused its discretion when it held that they encroached upon the Ramoses' property since the frontage (points 7, 8 and 9) in the old survey plan of the Ramoses' property was the same frontage in the new survey plan and the fence was constructed at point 8 of the cadastral plan. They argue that the points of the frontage of respondents' property in the old and new survey plan are similar but with different technical descriptions on measurements and bearings, thus the location of the frontage in the two surveys cannot be identical. More so, under the approved survey plan, the fence was constructed at point 9, which is point 4 of their lot and clearly within their property. They posit that the Court of Appeals did not bother to check the

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technical descriptions and instead relied on the testimony of the engineer who conducted the relocation survey using the technical description on the disapproved survey plan. They maintain that private respondents were unable to establish the identity of their property, since they relied on a disapproved survey plan. Moreover, the contested area was previously occupied by Asterio Aboc, a tenant of Rosario Abanil.

Private respondents, on their part, state that they and their predecessors-in-interest have been in continuous and open possession as owners, as evidenced by the tax declarations and that petitioners did not deny points 7, 8 and 9 of respondents' property. They insist that the Provosts encroached on their land as the fence was constructed at point 8.

The Court of Appeals in reversing the RTC decision reasoned that the petitioners had no right to move the common boundary such that the area of the adjoining lot was reduced to 3,552 square meters. It further held that they could not validly claim ownership over the area of 2,327 square meters since they bought only 1,774 square meters, and that the correction survey plan was under protest as it would prejudice private respondents.[8]

We stress that regional trial courts have jurisdiction over complaints for recovery of ownership or accion reivindicatoria.[9] Section 8, Rule 40[10] of the Rules on Civil Procedure nonetheless allows the RTC to decide the case brought on appeal from the MTC which, even without jurisdiction over the subject matter, may decide the case on the merits. In the instant case, the MTC of Mambajao should have dismissed the complaint outright for lack of jurisdiction but since it decided the case on its merits, the RTC rendered a decision based on the findings of the MTC.

Now, on the main issue, we sustain the decision of the RTC.

Significantly, the parties do not deny that a correction survey was made in Barangay Tupsan; that the survey plan was approved on February 16, 1994; and that the area of the private respondents' property under the corrected survey plan was reduced to 3,845 square meters, while that of petitioners' was increased to 2,634 square meters.

In an action to recover under Article 434[11] of the Civil Code, the claimant must (1) establish the identity of the property sought to be recovered and (2) rely on the strength of his title and not on the weakness of defendant's claim. It is also settled rule that what defines a piece of land is not the area, calculated with more or less certainty, mentioned in the description but the boundaries therein laid down, as enclosing the land and indicating its limits.[12]

In this case, we find that private respondents failed to identify the property they seek to recover. They relied on the old survey plan, the technical descriptions of which did not indicate the accurate measurements and limits of their property. The technical descriptions under the old cadastral survey plan cannot be the basis to delineate the boundaries of the lots or determine their respective areas for the obvious reason that it was not approved. In fact, a relocation survey plan[13] of Lot No. 12542, attached to the complaint as Annex "B" and presented in evidence by the petitioners as Exhibit "1", reveals that the area of the lot is still subject to verification and final computation.

Moreover, private respondents failed to prove open, continuous and adverse possession of the disputed area. That their predecessors-in-interest possessed the land in the concept of owners since World War II based on the early tax declarations, is insufficient to delineate boundaries.[14] Also, they admitted that Asterio Aboc is the tenant of Rosario Abanil.[15] They merely claimed that a portion of the land where Aboc's house was once built, is part of their property. Such claim without further proof of title does not suffice to define the boundaries of the adjoining lots. It thus appears clearly that the contested area was part of Abanil's lot sold to petitioner Dolores Provost.

As held in Heirs of Anastacio Fabela v. Court of Appeals,[16] when the records do not show that the land subject

of the action for recovery has been exactly determined, such action cannot prosper, inasmuch as respondents' ownership rights in the land claimed do not appear satisfactorily and conclusively proven at the trial.

Considering that there is already an existing correct and approved cadastral survey plan of Barangay Tupsan, and absent any showing that the same is erroneous, that plan should be the basis to delineate the boundaries.

Additionally, however we find the RTC's award of actual damages for P10,000; attorney's fees for P10,000; and litigation expenses for P5,000, without legal and factual basis; hence, the awards must be deleted.

An award of attorney's fees and litigation expenses is proper when the court deems it just and equitable that attorney's fees and litigation expenses should be recovered, and when the civil action or proceeding is clearly unfounded and where defendant acted in gross and evident bad faith. The award of attorney's fees as damages is the exception rather than the rule. It is not to be given to the defendant every time the latter prevails. The right to litigate is of great consequence that a penalty should not be charged on those who may exercise it mistakenly unless, of course such party acted in bad faith. In this case, we could not award attorney's fees and expenses of litigation in the absence of showing of gross and evident bad faith in filing the action.[17]

WHEREFORE, the petition is GRANTED. The Decision dated February 13, 2003 of the Court of Appeals and its Resolution dated August 27, 2003 are REVERSED AND SET ASIDE. The Decision dated December 10, 1999 of the Regional Trial Court of Mambajao, Camiguin, Branch 28 is REINSTATED with the MODIFICATION that the award of actual damages, litigation expenses and attorney's fees are deleted.

No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

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[1] Rollo, pp. 86-95. Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Josefina Guevara-Salonga, and Sergio L. Pestaño concurring.

[2] Id. at 112.

[3] Id. at 47-54.

[4] Id. at 32-46.

[5] "Tupsan" and "Barangay Tupsan" in some parts of the records.

[6] Rollo, pp. 93-94.

[7] Id. at 9-10.

[8] Id. at 90-91.

[9] Sarmiento v. Court of Appeals, G.R. No. 116192, November 16, 1995, 250 SCRA 108, 117.

[10] SEC. 8. Appeal from orders dismissing case without trial; lack of jurisdiction.–If an appeal is taken from an order of the lower court dismissing the case without a trial on the merits, the Regional Trial Court may affirm or reverse it, as the case may be. In case of affirmance and the ground of dismissal is lack of jurisdiction over the subject matter, the Regional Trial Court, if it has jurisdiction thereover, shall try the case on the merits as if the case was originally filed with it. In case of reversal, the case shall be remanded for further proceedings.

If the case was tried on the merits by the lower court without jurisdiction over the subject matter, the Regional Trial Court on appeal shall not dismiss the case if it has original jurisdiction thereof, but shall decide the case in accordance with the preceding section, without prejudice to the admission of amended pleadings and additional evidence in the interest of justice.

[11] ART. 434. In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.

[12] Londres v. Court of Appeals, G.R. No. 136427, December 17, 2002, 394 SCRA 133, 147.

[13] Exhibit "B-1", records, p. 7.

[14] See Flores v. Intermediate Appellate Court, G.R. No. 74287, October 27, 1989, 178 SCRA 717, 721.

[15] TSN, September 22, 1995, p. 512.

[16] G.R. No. 142546, August 9, 2001, 362 SCRA 531, 547.

[17] Alonso v. Cebu Country Club, Inc., G.R. No. 130876, January 31, 2002, 375 SCRA 390, 409-410.

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