SPOUSES ELEGIO CAÑEZO AND DOLIA CAÑEZO, PETITIONERS, VS. SPOUSES APOLINARIO AND CONSORCIA L. BAUTISTA, RESPONDENTS.

G.R. No. 170189. September 01, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

G.R. No. 170189 is a petition for review[1] assailing the Decision[2] promulgated on 17 October 2005 by the Court of Appeals (appellate court) in CA-G.R. CV No. 75685. The appellate court granted the appeal filed by the Spouses Apolinario and Consorcia L. Bautista (spouses Bautista) and dismissed the complaint for the issuance of a writ of demolition with damages filed by the Spouses Elegio and Dolia Cañezo (spouses Cañezo) without prejudice to the filing of the appropriate action with the proper forum. In its Decision[3] on Civil Case No. MC-00-1069 dated 25 March 2002, Branch 213 of the Regional Trial Court of Mandaluyong City (trial court) rendered judgment in favor of the spouses Cañezo. The trial court also ordered the issuance of a writ of demolition directing the removal of the structures built by the spouses Bautista on the portion of the land belonging to the spouses Cañezo.

The Facts

The appellate court narrated the facts as follows:

> Spouses Elegio and Dolia Cañezo (hereafter appellees) are the registered owner[s] of a parcel of land with an area of One Hundred Eighty Six (186) square meters, covered by Transfer Certificate of Title (TCT) No. 32911.
>
> Spouses Apolinario and Consorcia Bautista (hereafter appellants) are the registered owners of a parcel of land, containing an area of One Hundred Eighty One (181) square meters, covered by Transfer Certificate of Title (TCT) No. 31727. Both parcels of land are located at Coronado Heights, Barangka Ibaba, Mandaluyong City and registered with the Registry of Deeds of Mandaluyong City. Appellants' lot is adjacent to that of appellees [sic].
>
> Sometime in 1995, appellees started the construction of a building on their lot. During the construction, appellees discovered that their lot was encroached upon by the structures built by appellants without appellees' knowledge and consent.
>
> The three (3) surveys conducted confirmed the fact of encroachment. However, despite oral and written demands, appellants failed and refused to remove the structures encroaching appellees' lot.
>
> Attempts were made to settle their dispute with the barangay lupon, but to no avail. Appellees initiated a complaint with the RTC for the issuance of a writ of demolition.
>
> For failure to file an Answer within the extended period granted by the court, appellants were declared in default. Appellees were allowed to present their evidence ex parte before an appointed commissioner.

> Thereafter the RTC rendered the assailed decision in the terms earlier set forth.[4]

The spouses Cañezo filed their complaint for the issuance of a writ of demolition with damages on 13 April 2000. In an Order dated 15 August 2000, the trial court declared the spouses Bautista in default for failure to answer within the reglementary period. The Public Attorney's Office, which represented the spouses Bautista at the time, filed a Motion to Admit Answer dated 15 June 2000. The trial court denied the motion in its Decision.

The Trial Court's Ruling

On 25 March 2002, the trial court promulgated its Decision in favor of the spouses Cañezo. The trial court found that the spouses Bautista built structures encroaching on the land owned by the spouses Cañezo. The spouses Bautista also refused to remove the structures and respect the boundaries as established by the various surveyors. A referral to the Barangay Lupon failed to settle the controversy amicably. The trial court thus ruled that the spouses Bautista are builders in bad faith, such that the spouses Cañezo are entitled to an issuance of a writ of demolition with damages.

The dispositive portion of the Decision reads as follows:

> IN VIEW WHEREOF, judgment is hereby rendered in favor of the plaintiffs and against the defendants. Let a writ of demolition be accordingly issued directing the removal/demolition of the structures built by the defendants upon the portion of land belonging [to] the plaintiffs at the former's expense.
>
> Further,
>
> - the defendant is ordered to pay P50,000.00 (Philippine Currency) as and by way of moral damages[; and]
>
> - [t]he defendant is hereby ordered to pay P30,000.00 as and by way of attorney's fees.
>
> SO ORDERED.[5]

The spouses Bautista filed a notice of appeal dated 29 April 2002 before the appellate court.

The Appellate Court's Ruling

On 17 October 2005, the appellate court rendered its Decision which reversed the 25 March 2002 Decision of the trial court. The appellate court ruled that since the last demand was made on 27 March 2000, or more than a year before the filing of the complaint, the spouses Cañezo should have filed a suit for recovery of possession and not for the issuance of a writ of demolition. A writ of demolition can be granted only as an effect of a final judgment or order, hence the spouses Cañezo's complaint should be dismissed. The spouses Cañezo failed to specify the assessed value of the encroached portion of their property. Because of this failure, the complaint lacked sufficient basis to constitute a cause of action. Finally, the appellate court ruled that should there be a finding of encroachment in the action for recovery of possession and that the encroachment was built in good faith, the market value of the encroached portion should be proved to determine the appropriate indemnity.

The dispositive portion of the appellate court's Decision reads as follows:

> WHEREFORE, premises considered, the instant appeal is GRANTED. The complaint filed by plaintiffs-appellees is hereby DISMISSED without prejudice to the filing of the appropriate action with the proper forum.
>
> SO ORDERED.[6]

Issues

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The spouses Cañezo enumerated the following grounds to support their Petition:

> - Whether the Honorable Court of Appeals gravely erred in granting the petition of the [spouses Bautista] and reversing the Decision of the Court a quo; [and]
>
> - Whether the Honorable Court of Appeals gravely erred in stating that the petitioners should have filed recovery of possession and not writ of demolition.[7]

The Court's Ruling

The petition has merit.

The present case, while inaccurately captioned as an action for a "Writ of Demolition with Damages" is in reality an action to recover a parcel of land or an accion reivindicatoria under Article 434 of the Civil Code. Article 434 of the Civil Code reads: "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." Accion reivindicatoria seeks the recovery of ownership and includes the jus utendi and the jus fruendi brought in the proper regional trial court. Accion reivindicatoria is an action whereby plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession.[8]

In order that an action for the recovery of title may prosper, it is indispensable, in accordance with the precedents established by the courts, that the party who prosecutes it must fully prove, not only his ownership of the thing claimed, but also the identity of the same.[9] However, although the identity of the thing that a party desires to recover must be established, if the plaintiff has already proved his right of ownership over a tract of land, and the defendant is occupying without right any part of such tract, it is not necessary for plaintiff to establish the precise location and extent of the portions occupied by the defendant within the plaintiff's property.[10]

The spouses Cañezo were able to establish their ownership of the encroached property. Aside from testimonial evidence, the spouses Cañezo were also able to present documentary and object evidence which consisted of photographs,[11] transfer certificates of title,[12] and a relocation survey plan.[13]

The relocation survey plan also corroborated Elegio Cañezo's testimony on the reason for the spouses Bautista's attitude regarding the encroached property. The relocation survey plan showed that the spouses Bautista's property encroached upon that of the spouses Cañezo by 0.97 centimeters, while the spouses Bautista's property was encroached upon by 1.01 centimeters by another landowner. Elegio Cañezo testified thus:

> Q
>
> I am showing you a survey plan of lot 13. Can you please tell us what is this survey plan?
>
> A
>
> That is the survey plan of the surveyor whom we hired sir.
>
> Q
>
> Can you please point to us where in this plan is your property indicated?
>
> A
>
> This is our property, sir.
>
> Q
>
> The witness, your Honor, is pointing to "Lot 13" indicated in the survey plan. How about the property of the

defendants?

A

The defendants' property is this, sir.

Q

The witness, your Honor, is pointing to "Lot 14" indicated in the survey plan. Now, Mr. Witness, you said that the defendants wanted you to recover that portion of your property encroached on from the property adjacent to theirs. Please illustrate to us by referring to this survey plan what the defendants meant?

A

The defendants want us to get the portion they had encroached on from "Lot 15" because, according to them, Lot 15 also encroached on their lot, sir.

Q

The witness, your Honor, is pointing to "Lot 15" indicated in the plan. What happened next?

A

We told them that this is not possible because Lot 15 is not adjacent to our property, sir.

Q

What did the defendants do?

A

The defendants still refused to remove their structure, sir.

Q

So, what happened?

A

We filed a complaint against the defendants before the Office of the Barangay Captain of Barangay Barangka, Ibaba, sir.

Q

What happened in the Barangay?

A

The Barangay council tried to settle the matter amicably between us. However, no settlement was reached, sir.

Q

While in the barangay, did you offer anything to the defendants in order to settle the case?

A

Yes, sir.

Q

What was it?

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A

We offered that if the defendants will remove the structures, we are willing to shoulder half of the expenses for the removal.

Q

What did the defendants say to this?

A

They refused our offer and insisted on their previous position that we get our portion from Lot 15, sir.

Q

What did the Barangay do after failing to settle the case?

A

The Barangay issued a Certification to File Action, sir.[14]

Given the efforts made by the spouses Cañezo to settle the present issue prior to the filing of a Complaint, the trial court was justified in ruling that the spouses Bautista were in default and in not admitting their Answer. The Complaint was not the spouses Bautista's first encounter with the present issue. Moreover, the spouses Bautista failed to file their Answer even after the expiry of the motion of extension granted to them.[15]

The testimony and the relocation survey plan both show that the spouses Bautista were aware of the encroachment upon their lot by the owner of Lot 15 and thus they made a corresponding encroachment upon the lot of the spouses Cañezo. This awareness of the two encroachments made the spouses Bautista builders in bad faith. The spouses Cañezo are entitled to the issuance of a writ of demolition in their favor and against the spouses Bautista, in accordance with Article 450 of the Civil Code.[16]

We affirm the awards made by the trial court in its Decision:

> x x x Considering the length of time when [the spouses Cañezo] were deprived of beneficial use on the subject portion of land owned by them, the [spouses Bautista] are likewise liable to pay P30,000.00 (Philippine Currency) in accordance with Article 451 of the Civil Code.
>
> With respect to the prayer for the award of P50,000.00 (Philippine Currency) as moral damages, the court decides to give due course to it in view of the fact that the [spouses Cañezo] satisfactorily proved the existence of the factual basis of the damages and its causal relation to [the spouses Bautista's] acts. There was bad faith on the part of the [spouses Bautista] when they built the structures upon the land not belonging to them. This wrongful act is the proximate cause which made the [spouses Cañezo] suffer mental anguish, sleepless nights and serious anxiety. The [spouses Cañezo] positively testified about these matters.
>
> As regards the prayer for exemplary x x x damages, no sufficient evidence were adduced which would warrant and justify this court to award the same. The prayer for attorney's fees however, is found meritorious hence, the same is hereby granted.[17]

WHEREFORE, we GRANT the petition. The Decision of the Court of Appeals in CA-G.R. CV No. 75685 promulgated on 17 October 2005 is SET ASIDE and the dispositive portion of the Decision of Branch 213, Regional Trial Court of Mandaluyong City promulgated on 25 March 2002 is AFFIRMED with MODIFICATION. A writ of demolition of the encroaching structures should be issued against and at the expense of Spouses Apolinario and Consorcia L. Bautista upon the finality of this judgment. Spouses Apolinario and Consorcia L. Bautista are further ordered to pay Spouses Elegio and Dolia Cañezo P30,000 as actual damages;

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P50,000 as moral damages; and P30,000 as attorney's fees. The interest rate of 12% per annum shall apply from the finality of judgment until the total amount awarded is fully paid.

SO ORDERED.

Nachura, Bersamin,[**] Abad, and Mendoza, JJ., concur.

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[*] "Eligio" in some parts of the Records.

[**] Designated additional member per Special Order No. 882 dated 31 August 2010.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 50-54. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Conrado M. Vasquez, Jr. and Vicente Q. Roxas, concurring.

[3] Id. at 39-41. Penned by Judge Amalia F. Dy.

[4] Id. at 51-52.

[5] Id. at 41.

[6] Id. at 54.

[7] Id. at 11.

[8] See Javier v. Veridiano II, G.R. No. 48050, 10 October 1994, 237 SCRA 565.

[9] Salacup v. Rambac, 17 Phil. 22, 23 (1910).

[10] ARTURO M. TOLENTINO, 2 COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 72 (1998). Citations omitted.

[11] Records, pp. 14-18.

[12] Id. at 9-10.

[13] Id. at 11.

[14] Id. at 68-71.

[15] Id. at 47.

[16] Article 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.

[17] Rollo, p. 40.

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