

MARGARITA F. CASTRO, PETITIONER, VS. NAPOLEON A. MONSOD, RESPONDENT.

G.R. No. 183719. February 02, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Decision[1] dated May 25, 2007 and the Resolution[2] dated July 14, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 83973.

The antecedents of the case are as follows:

Petitioner is the registered owner of a parcel of land located on Garnet Street, Manuela Homes, Pamplona, Las Piñas City, and covered by Transfer Certificate of Title (TCT) No. T-36071, with an area of one hundred thirty (130) square meters (sq.m.). Respondent, on the other hand, is the owner of the property adjoining the lot of petitioner, located on Lyra Street, Moonwalk Village, Phase 2, Las Piñas City. There is a concrete fence, more or less two (2) meters high, dividing Manuela Homes from Moonwalk Village.[3]

On February 29, 2000, respondent caused the annotation of an adverse claim against sixty-five (65) sq.m. of the property of petitioner covered by TCT No. T-36071. The adverse claim was filed without any claim of ownership over the property. Respondent was merely asserting the existing legal easement of lateral and subjacent support at the rear portion of his estate to prevent the property from collapsing, since his property is located at an elevated plateau of fifteen (15) feet, more or less, above the level of petitioner's property.[4] Respondent also filed a complaint for malicious mischief and malicious destruction before the office of the barangay chairman.[5]

In defiance, petitioner filed a complaint for damages with temporary restraining order/writ of preliminary injunction before the Regional Trial Court (RTC) of Las Piñas City. Petitioner also prayed that the Register of Deeds of Las Piñas City be ordered to cancel the annotation of the adverse claim on TCT No. T-36071.[6]

Prior to the filing of the case before the RTC, there were deposits of soil and rocks about two (2) meters away from the front door of the house of

petitioner. As such, petitioner was not able to park her vehicle at the dead-end portion of Garnet Street. When petitioner noticed a leak that caused the front portion of her house to be slippery, she hired construction workers to see where the leak was coming from. The workers had already started digging when police officers sent by respondent came and stopped the workers from finishing their job.[7]

Petitioner averred that when she bought the property from Manuela Homes in 1994, there was no annotation or existence of any easement over the property. Respondent neither asked permission nor talked to her with regard to the use of 65 sq.m. of her property as easement. Upon learning of the adverse claim, she felt disturbed and experienced sleepless nights for fear that she would not be able to sell her property. Petitioner admitted that TCT No. 36071 does not cover the open space at the dead-end portion of Garnet Street.[8]

For his part, respondent claimed that he and his family had been residing in Moonwalk Village since June 1984. Adjacent to his property is the land of petitioner in Manuela Homes. When he bought the property in 1983, the land elevation of Moonwalk Village was almost on the same level as Manuela Homes. However, sometime in 1985 and 1986, Pilar Development Corporation, the developer of Manuela Homes, bulldozed, excavated, and transferred portions of the elevated land to the lower portions of Manuela Homes. Thus, Manuela Homes became lower than Moonwalk Village.[9]

Before the said excavation, respondent personally complained to Pilar

Development Corporation and was assured that, as provided by the National Building Code, an embankment will be retained at the boundary of Manuela Homes and Moonwalk Village, which is more or less fifteen (15) feet higher than Manuela Homes.[10]

Manuela Homes retained the embankment consisting of soil and rocks. Respondent had the open space ripped with stones as reinforcement against any potential soil erosion, earthquake, and possible digging by any person.

Respondent asserted that the affidavit of adverse claim was for the annotation of the lateral and subjacent easement of his property over the property of petitioner, in view of the latter's manifest determination to remove the embankment left by the developer of Manuela Homes.

On October 11, 2004, the RTC rendered a decision,[11] the dispositive portion of which reads:

WHEREFORE, premises considered, this court hereby renders judgment: (1) ordering the cancellation of [respondent's] adverse claim at the back of Transfer Certificate of Title No. T-36071 at the expense of [respondent] Napoleon Monsod; (2) ordering the said [respondent] to pay the herein [petitioner] the amount of Php50,000.00 as moral damages; and (3) dismissing [petitioner's] claim for actual damages, attorney's fees, litigation costs and costs of suit and [respondent's] compulsory counterclaim for lack of merit.

SO ORDERED.[12]

The trial court ratiocinated that the adverse claim of respondent was non-registrable considering that the basis of his claim was an easement and not an interest adverse to the registered owner, and neither did he contest the title of petitioner. Furthermore, the adverse claim of respondent failed to comply with the requisites provided under Section 70 of Presidential Decree No. 1529.[13]

On appeal, the CA reversed the decision of the trial court in a Decision[14] dated May 25, 2007, the fallo of which reads:

WHEREFORE, premises considered, the instant appeal is GRANTED. The Decision of the Regional Trial Court, Branch 198, Las Piñas City dated October 11, 2004 is REVERSED and SET ASIDE. The Court hereby orders the retention of the annotation at the back of Transfer Certificate of Title No. T-36071, not as an adverse claim, but a recognition of the existence of a legal easement of subjacent and lateral support constituted on the lengthwise or horizontal land support/embankment area of sixty-five (65) square meters, more or less, of the property of [petitioner] Margarita Castro. The writ of preliminary injunction issued by this Court on April 18, 2006 is hereby made permanent. [Petitioner's] claim for damages is likewise DISMISSED.

SO ORDERED.[15]

The CA ruled that while respondent's adverse claim could not be sanctioned because it did not fall under the requisites for registering an adverse claim, the same might be duly annotated in the title as recognition of the existence of a legal easement of subjacent and lateral support. The purpose of the annotation was to prevent petitioner from making injurious excavations on the subject embankment as to deprive the residential house and

lot of respondent of its natural support and cause it to collapse. Respondent only asked that petitioner respect the legal easement already existing thereon.[16]

On June 15, 2007, petitioner filed a motion for reconsideration. However, the CA denied the same in a Resolution[17] dated July 14, 2008.

Hence, this petition.

The issue in this case is whether the easement of lateral and subjacent support exists on the subject adjacent properties and, if it does, whether the same may be annotated at the back of the title of the servient estate.

Article 437 of the Civil Code provides that the owner of a parcel of land is the owner of its surface and of everything under it, and he can construct thereon any works, or make any plantations and excavations which he may deem proper. However, such right of the owner is not absolute and is subject to the following limitations: (1) servitudes or easements,[18] (2) special laws,[19] (3) ordinances,[20] (4) reasonable requirements of aerial navigation,[21] and (5) rights of third persons.[22]

Respondent filed before the RTC an affidavit of adverse claim, the pertinent portions of which read:

5. That our adverse claim consists of rights of legal or compulsory easement of lateral and subjacent support (under the Civil Code) over a portion of the above-described property of owner Margarita F. Castro, that is, covering the lengthwise or horizontal land support/embankment area of sixty-five (65) square meters, more or less.

6. That said registered owner has attempted to destroy and/or remove portions of the existing lateral/subjacent land and cement supports adjoining the said two properties. In fact, a portion of the easement was already destroyed/removed, to the continuing prejudice of herein adverse claimant, and that a formal complaint against said registered owner was filed by the herein adverse claimant before the Office of the Barangay Chairman of Talon V, Las Piñas City and the same proved futile.[23]

Respondent's assertion that he has an adverse claim over the 65 sq.m. property of petitioner is misplaced since he does not have a claim over the ownership of the land. The annotation of an adverse claim over registered land under Section 70 of Presidential Decree 1529[24] requires a claim on the title of the disputed land. Annotation is done to apprise third persons that there is a controversy over the ownership of the land and to preserve and protect the right of the adverse claimant during the pendency of the controversy. It is a notice to third persons that any transaction regarding the disputed land is subject to the outcome of the dispute.[25]

In reality, what respondent is claiming is a judicial recognition of the existence of the easement of subjacent and lateral support over the 65 sq. m. portion of petitioner's property covering the land support/embankment area. His reason for the annotation is only to prevent petitioner from removing the embankment or from digging on the property for fear of soil erosion that might weaken the foundation of the rear portion of his property which is adjacent to the property of petitioner.

An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner.[26] There are two kinds of easements according to source. An easement is established either by law or by will of the owners.[27] The courts cannot impose or constitute any servitude where none existed. They can only declare its existence if in reality it exists by law or by the will of the owners. There are therefore no judicial easements.[28]

Article 684 of the Civil Code provides that no proprietor shall make such excavations upon his land as to deprive any adjacent land or building of sufficient lateral or subjacent support. An owner, by virtue of his surface right, may make excavations on his land, but his right is subject to the limitation that he shall not deprive any adjacent

land or building of sufficient lateral or subjacent support. Between two adjacent landowners, each has an absolute property right to have his land laterally supported by the soil of his neighbor, and if either, in excavating on his own premises, he so disturbs the lateral support of his neighbor's land as to cause it, or, in its natural state, by the pressure of its own weight, to fall away or slide from its position, the one so excavating is liable.[29]

In the instant case, an easement of subjacent and lateral support exists in favor of respondent. It was established that the properties of petitioner and respondent adjoin each other. The residential house and lot of respondent is located on an elevated plateau of fifteen (15) feet above the level of petitioner's property. The embankment and the riprapped stones have been in existence even before petitioner became the owner of the property. It was proven that petitioner has been making excavations and diggings on the subject embankment and, unless restrained, the continued excavation of the embankment could cause the foundation of the rear portion of the house of respondent to collapse, resulting in the destruction of a huge part of the family dwelling.[30]

We sustain the CA in declaring that a permanent injunction on the part of petitioner from making injurious excavations is necessary in order to protect the interest of respondent. However, an annotation of the existence of the subjacent and lateral support is no longer necessary. It exists whether or not it is annotated or registered in the registry of property. A judicial recognition of the same already binds the property and the owner of the same, including her successors-in-interest. Otherwise, every adjoining landowner would come to court or have the easement of subjacent and lateral support registered in order for it to be recognized and respected.

WHEREFORE, in view of the foregoing, the Decision dated May 25, 2007 and the Resolution dated July 14, 2008 of the Court of Appeals in CA-G.R. CV No. 83973 are hereby **AFFIRMED WITH MODIFICATION** that the annotation at the back of Transfer Certificate of Title No. T-36071, recognizing the existence of the legal easement of subjacent and lateral support constituted on the lengthwise or horizontal land support/embankment area of sixty-five (65) square meters, more or less, of the property of petitioner Margarita F. Castro, is hereby ordered removed.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Jose C. Reyes, Jr. and Mariflor P. Punzalan Castillo, concurring; rollo, pp. 68-79.

[2] Id. at 81-83.

[3] Id. at 69.

[4] Id. at 125.

[5] Id.

[6] Id.

[7] Id. at 127-128.

[8] Id. at 127, 134.

[9] Id. at 127-128.

[10] Id. at 128.

[11] Penned by Judge Erlinda Nicolas-Alvaro, Regional Trial Court, Branch 198, Las Piñas City; id. at 125- 134.

[12] Id. at 134.

[13] Id. at 131.

[14] Supra note 1.

[15] Id. at 78-79.

[16] Id. at 75-76.

[17] Supra note 2.

[18] CIVIL CODE, Art. 437.

[19] Id.

[20] Id.

[21] Id.

[22] CIVIL CODE, Art. 431.

[23] Rollo, p. 131.

[24] Section 70 of Presidential Decree 1529 provides:

Section 70. Adverse claim. Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Decree for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, a reference to the number of the certificate of title of the registered owner, the name of the registered owner, and a description of the land in which the right or interest is claimed.

The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. The adverse claim shall be effective for a period of thirty days from the date of registration. After the lapse of said period, the annotation of adverse claim may be canceled upon filing of a verified petition therefor by the party in interest: Provided, however, that after cancellation, no second adverse claim based on the same ground shall be registered by the same claimant.

Before the lapse of thirty days aforesaid, any party in interest may file a petition in the Court of First Instance where the land is situated for the cancellation of the adverse claim, and the court shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall render judgment as may be just and equitable. If the adverse claim is adjudged to be invalid, the registration thereof shall be ordered canceled. If, in any case, the court, after notice and hearing, shall find that the adverse claim thus registered was frivolous, it may fine the claimant in an amount not less than one thousand pesos nor more than five thousand pesos, in its discretion. Before the lapse of thirty days, the claimant may withdraw his adverse claim by filing with the Register of Deeds a sworn petition to that effect.

[25] Arrazola v. Bernas, 175 Phil. 452, 456-457 (1978).

[26] CIVIL CODE, Art. 613.

[27] CIVIL CODE, Art. 619.

[28] De Leon, Hector S., Comments and Cases on Property (5[th] ed.), p. 476.

[29] Id. at 544.

[30] Rollo, pp. 76-77.

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