

REMEDIOS FERRER-LOPEZ, ASSISTED BY HER HUSBAND, ENGR. JUAN LOPEZ, ANTONIO V. FERRER, TRINIDAD FERRER--DUMAUAL, AND ROSARIO FERRER--GUTIERREZ, ALL HEIRS OF THE LATE DOMINGA VELAS...

G.R. No. 50420. May 29, 1987

Ponente: PARAS, J.

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PARAS, J.:

Petitioners are seeking 1) the reversal of the decision of the respondent Court of Appeals[1] dated December 29, 1978, 2) the dismissal of the private respondents' complaint in the case below 3) the reconveyance to the petitioners of 2.6486 hectares or 26,486 sq. m. covered by O.C.T. #13505, Register of Deeds of Pangasinan which lot is at present in the name of private respondents and 4) the re-survey of subject lot actually purchased from Damasa Catalan by private respondents based on the actual "pilapil" and coconut trees boundaries as shown in the after ocular inspection report of the trial court's duly appointed commissioner and that of his rectified sketch.

Petitioners are the children of the late Dominga Velasco who inherited Lot 12509 of the Cadastral Survey of Malasiqui, Pangasinan. Petitioners contend that the area of said property was originally 54 hectares but 10 hectares were sold by their mother so that what they inherited by way of testamentary succession are the remaining 44 hectares. Petitioners maintain that private respondents are encroaching on the portion of the land which belongs to them, that what the father of private respondents bought from Damasa Catalan in 1935 was the adjoining western portion of the land with only a total of 25,704 sq. m. or 2.5704 hectares and not a total area of 52,908 sq. m. as applied for by respondents in the registration of the land in 1957. Petitioners allege that at the time of the Bureau of Lands Cadastral Survey in the year 1935 and 1936, Ramon Puzon was then representing (2) two conflicting interests; namely, as overseer of Dominga Velasco over her 54-hectare land and as overseer of his children in the land bought by them from Damasa Catalan. Petitioners surmise that Ramon Puzon pointed to the surveyor the boundary between the lot bought by his children, and that of Dominga Velasco as well as the places where the monuments would be placed. They contend that the ocular inspection report and sketch of the Court's Commissioner clearly and patently show the intentional deviation of the boundary line from the barrio road to the lower portion going towards the North which is more than one kilometer in length and that the deviation is definitely against the land of Dominga Velasco from whom the petitioners inherited. Petitioners claim that private respondents were never in actual possession of the land in question and it was only sometime in February 1967 or a total of more than 32 years that private respondents first attempted to claim ownership over the alleged encroached portion of more than 2 1/2 hectares, which portion is part and parcel of the 44 hectares owned by Dominga Velasco. Petitioners maintain that they have been in successive, continuous, public, peaceful and uninterrupted possession of said 44 hectares including the questioned portion of more than 2 1/2 hectares, in the concept of absolute owners, with just and valid title to the exclusion of all other persons for more than 60 years and up to the commencement of the litigation.

On October 16, 1967, private respondents filed the complaint in the Court below docketed as Civil Case No.

D--2089 of the Court of First Instance of Pangasinan against petitioner herein and anchored their claim principally on the allegation that - "sometime in 1965 defendants and her tenants entered, encroached and took possession of a portion of around 2 1/2 hectares more or less on the southwestern part of the afore-described parcel of land, cultivating and/or tenanting, the same since then up to the present under the claim of void and ineffective title or ownership." (p. 3, Record on Appeal).

Private respondents maintain that the total area of petitioners' land is only 518,113 sq. m. or 51.8113 hectares; that when the Cadastral Survey of Lot 12509 was made, petitioners' mother was still living and that she herself caused the subdivision of Cadastral Lot 12509, into Lots 12509-A, 12509-B, 12509-C, 12509-D, 12509-E and 12509-F and thereafter obtained in the same cadastral proceeding, original certificates of titles (Exhs. G, G-1, G-2, G-3, & G-4) which she delivered in 1960 to the petitioners in whose names the lot was registered, to wit:

Exhibit No.

OCT

Registered Owner

Lot No.

Area

G-4

12513

Pedro Melecio &

Azucena Ungson

12509-A &)

12509-B

100,005 sq.m.

G-3

12512

Remedios Ferrer

12509-C

100,054 sq.m.

G-2

12511

Trinidad Ferrer

12509-D

100,081 sq.m.

G-1

12510

Rosario Ferrer

12509-E

100,021 sq.m.

G

12509

Antonio Ferrer

12509-F

117,952 sq.m.

TOTAL –

518,113 sq.m.

In answer to the allegation of petitioners in their Statement of Facts that the property of respondents was only 2 1/2 hectares pointing to the entry in the nota-rial register of Mariano Caranto (Exh. 1), respondents stated that petitioners misconstrued the entries therein. Respondents claim that what was sold to respondents under Entry No. 185 was 1/2 of the land with an area of 26,704 sq. m. and what was sold under Entry No. 816 was the other half, with an area of 26,704 sq.m. or a total area of 53,408 sq.m. or 5.3408 hectares. Petitioners' allegation that respondents' late father represented two (2) conflicting interests when he acted as overseer of the landholding of the petitioners and acted as administrator of the property acquired from Damasa Catalan is a brazen lie and an attempt to blacken the memory of their father as there is a total lack of evidence whatsoever of any conflict of interests. As to the claim of an "intentional deviation of the boundary line from the barrio road" respondents allege that there is nothing in the reports and sketches to prove such claim. Respondents also maintain that aside from the aforementioned facts petitioners failed to include in their Statement of Facts, the following facts established by the evidence:

"1) The subject matter of the present litigation is a portion of that certain parcel of land situated in the Bo. Gatang, Malasiqui Pangasinan, more particularly described as follows:

'A parcel of land (Lot No. 12510 of the Cadastral Survey of Malasiqui, Cadastral Case No. 92, L.R.C. Cad. Record No. 1860), situated in the Bo. of Gatang, Malasiqui, Pangasinan, Bounded on the NE, by Lot Nos. 12511 and 13911; on the S. by Road; on the SW by Lot No. 12509; and on the NW by the Balas Creek, x x x

contain-ing an area of Fifty Two Thousand Nine Hundred and Eight (52,908) sq. m. more or less.'

"2) That as a consequence of the cadastral pro-ceeding over the parcel of land in litigation, Lot. No. 12510 of the Cadastral Survey of Malasiqui, was brought under the operation of the land Registration Law, the corresponding decree was entered on December 3, 1956, and Original Certificate of Title No. 13505 (Exhibit A) was issued to the private respondents on January 5, 1957.

"3) That the adjoining parcel of land, Lot 12509 of the Cadastral Survey of Malasiqui, with an area of 518,113 square meters has also been the object of the same cadastral proceeding. Said Lot 12509 originally belonged to petitioners' mother, the late Dominga Velasco Vda. de Ferrer. Before the cadastral hearing, Lot. No. 12509 was subdivided into five (5) lots, and the corresponding decrees were issued, and Original Certificates of Title Nos. 12509, 12510, 12511, 12512, 12513 were issued for the said subdivided lots in August, 1956 (Exhs. G, G-1, G-2, G-3, and G-4), MUCH EARLIER THAN THE DATE of issuance of the decree of registration of Lot. No. 12510.

"4.) That in 1965, private respondents informed the original defendants, now petitioners Juan Lopez and Remedios Ferrer-Lopez, who own Lot 12509-C which adjoins respondents' Lot 12510, that they encroached upon the respondents' Lot No. 12510. They agreed to a relocation survey with the understanding that any portion that may be found to be encroached upon by the petitioners will be returned to private respondents.

"5) After the relocation, however, petitioners refused to give back possession over the portion of Lot 12510, encroached upon, so the private respondents sued the petitioners Remedios Ferrer-Lopez, together with her husband, Juan Lopez. In the answer of the original defendants, petitioners herein, Remedios Ferrer-Lopez and Juan Lopez, made reference to the other petitioners as additional defendants, and in an urgent ex-parte motion, moved that the other petitioners be impleaded as additional defendants." (pp. 7-9, Brief for the Respondents, p. 120, Rollo).

After trial, the Court a quo decided in favor of the plaintiffs (private respondents herein) the dispositive portion of the decision reading as follows:

"WHEREFORE, the court hereby renders judgment in favor of the plaintiffs and against the defendants ordering said defendants:

(a) to vacate the portion of about 2-1/2 hectares on the southwest-tern portion of Lot 12510 of the Malasiqui Cadastre covered by original certification of title No. 13505 of the Registry of Deeds for the province of Pangasinan, which portion is indicated by the shaded area in red ink in the sketch plan marked Exh. F;

(b) to pay plaintiffs attorney's fees in the sum of P300.00 and the costs.

SO ORDERED." (p. 107, Record on Appeal).

Defendants (petitioners herein) appealed to the Court of Appeals which rendered judgment affirming in toto the assailed decision of the trial court and denied the motion for reconsideration of the same. Hence this appeal by certiorari by defendants-appellants assigning the following errors:

I

The respondent Court of Appeals erred in not considering, much less applying the provisions of Rule 26 of the Revised Rules of Court.

II

The respondent court overlooked and failed to consider the vital and proven fact that private respondents were never in possession of the more than 2-1/2 hectares of agricultural land in question.

III

The respondent court overlooked and failed to consider the actual and physical boundary of the petitioners' and private respondents' real landholding which adjoins, as determined by the trial court's duly appointed commissioner in an ocular inspection of the questioned premises.

IV

The respondent court erred in applying in the instant case the ruling on "implied trust".

Petitioners' contentions are devoid of merit.

The records show that the pre-trial proceedings were held on (4) four different dates, to wit: March 18, 1968, July 15, 1968 and September 30, 1968 and finally on December 9, 1968.

The request for Admission was made on June 4, 1968 when the pre-trial was already in progress. The need of the petitioners to repeat the request for the admission of the same matters during the continuation of the pre-trial on September 30 and December 9, 1968 belied their allegations that the matters contained in their request for admission were already impliedly admitted in accordance with Rule 26 of the Revised Rules of Court. Moreover, during the trial in the court a quo, petitioners thru counsel attempted to introduce evidence on the same matters or objects of the Request for Admission. The conduct therefore of the petitioners during the pre-trial and trial proper negates their resort to such procedural technicality in accordance with Rule 26 of the Rules of Court.

We now come to petitioners' documentary evidence:

(1) Exhibit 1 is a photostat of a notarial register showing the acknowledgment of certain deeds of sale (Entries Nos. 185 and 186) YET they do not show the contents of said Deeds of Sale; hence, they cannot be regarded as evidence of said contents;

(2) Exhibit 2 is a verified copy of the minutes of the court proceedings on November 27, 1953 (re Cadastral Lot No. 15510). Said minutes show that private respondents did not present any Deed of Sale, YET this does not indicate that there had been loss of all the copies of said Deed of Sale. Neither is this non-production proof that petitioners are the true owners of the disputed portion.

(3) Exhibit 3 is a tax declaration (No. 43111) of the property involved and is, in the name of Dominga Velasco, the predecessor in interest of the petitioners, but as is well-known, said tax declaration is not conclusive evidence of ownership. Besides, it is not proof of the area covered by said portion.

(4) Exhibits 4, 5 and 6 are realty tax payment receipts of the lot referred to in the aforementioned Tax Declaration, but again, it is evident that said receipts cannot in any sense be conclusive of ownership.

Against this array of "proofs", We have Original Certificate of Title No. 13505 in the name of the private respondents. This Certificate of Title indicates true and legal ownership by them over the disputed premises.

Petitioners also bewail the fact that the respondent Court did not bother to require the trial court to elevate to the appellate court two important documents, namely "the court's duly appointed Commissioner's Report together with the sketch duly approved by both parties which shows vividly the physical and actual boundaries of the lots

in controversy." The ocular inspection had been ordered by the trial court upon motion of petitioners thru counsel. (Pets.' Brief, pp. 4-5).

Such contentions hold no water. If indeed these reports and sketches were not part of the records elevated to the Court of Appeals, the petitioners have nobody to blame for their negligence but themselves. The petitioners should have included such "missing" reports and sketches in the Record on Appeal, or they could have asked for the transmittal of said reports and sketches to the appellate court. Moreover, in relation to said sketches, worth mentioning is the testimony of Engineer Miguel Mamaril who conducted the relocation survey upon request of his "compadre", petitioner Juan Lopez. There is no better evidence of the boundary line between the two lots than the earth dikes where the cadastral monuments were located as undisputably established by petitioners' own witness, Engineer Mamaril and as reflected in Exhibit F.

Capitalizing on the fact that the late Ramon Puzon, father of private respondents, was the overseer of the land of Dominga Velasco, and the administrator of private respondents' land, petitioners advance the claim that Ramon Puzon pointed to the boundary and places where the monuments of the Bureau of Lands would be placed during the Cadastral Survey of the said land of private respondents and that of Dominga Velasco which adjoin each other. We cannot surmise however why petitioners forgot to explain why their mother, who was still alive when the cadastral survey was made, never questioned the area of 51.8 hectares and instead she even proceeded to subdivide the land, without any protest or objection as to the area, among the petitioners and their spouses Pedro Melencio and Azucena Ungson, (Exh. G., G-1, G-2, G-3 & G-4) with the technical assistance of Geodetic Engineer Miguel Mamaril and in the process giving to her daughters 10 hectares each, to her son 11.8 hectares, and to the spouses Pedro Melencio and Azucena Ungson 10 hectares, and thereafter causing the issuance of OCTs in their names with a total area less than what the petitioners claim. Thus, petitioners' mother acknowledged by her own acts, the title and possession of private respondents over Lot 12510. Petitioners did not also explain why they accepted the subdivision of Lot 12509 with an area of 51.8 hectares and accepted their corresponding OCTs without any objection or protest as to the area of the whole, or of their respective shares. Finally, petitioners failed to explain why petitioner Remedios Ferrer-Lopez who was given only an area of ten (10) hectares which adjoins the private respondent's lot, should now enlarge her landholding to 12 1/2 hectares thru an encroachment on the land of the respondents.

Petitioners, to substantiate their claim of possession over the disputed land even prior to 1967, presented as their witnesses Jose Raceles and Maximo Candelaria. Their testimonies have no or scant probative value as the former failed to identify the portion of the land he was tilling and the latter was a biased witness as he has been the overseer of petitioners, since the death of Ramon Puzon in 1950 and a former tenant of the land in controversy. It is interesting to note that he was evicted as a tenant therefrom barely one agricultural year after the purchase thereof by the private respondents.

This case having been elevated to Us for appellate review on both legal and factual issues, We now tackle the legal points raised.

The doctrine of implied trust asserted by petitioners finds no application in the case at bar, because there are no proven facts to this effect. While an implied trust (of real or personal property) does not require the formalities of an express trust over realty (which as mandated by the law cannot be proved by oral evidence under Art. 1443 of the Civil Code, still there must be proof that the trustor wanted to grant one party only the beneficial ownership of a parcel of land, although said beneficiary may have legal title in himself. Implied trusts are exemplified in Arts. 1447-1456 of the Civil Code. Private respondents have been in possession of Lot. No. 12510 as owners since its purchase in 1935 thru their late father Ramon Puzon. Ramon Puzon was the overseer of petitioners' mother over another lot (Lot No. 12509) and not over the lot in question (Lot No. 12510). It is therefore obvious that there

could not have been any possible conflict of interest in the role of private respondents' father. And even if indeed he had been the overseer of both lots, there was also no such conflict of interest. Both lots had their own marked and natural boundaries; both had their own separate registered titles of ownership; dominion over each was exercised by two separate groups of owners.

Petitioners' claim of acquisitive prescription is unavailing against the conclusive and indefeasible character of OCT 13505 covering Lot No. 12510 in the name of private respondents even if the latter are not in actual possession of the premises. It is an elemental rule that the decree of re-registration bars all claims or rights, which arose or may have existed prior to the decree of registration.

In summary therefore, the evidence of the petitioners is grossly inadequate to overcome the respondents' conclusive and indefeasible title and right of ownership and possession. We respect the findings of the trial court that the controversial piece of land was well within the titled property of the private respondents as We find no vital facts which have been overlooked or misappreciated.

WHEREFORE, the petitioners' appeal by certiorari is hereby **DISMISSED** and the appealed decision is hereby **AFFIRMED**.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

Padilla, J., no part; petitioner's counsel was at one time an Assistant Attorney in my law office.

[1] PENNED by Justice Porfirio V. Sison (ponente) with Justices Mariano Serrano & Jorge R. Coquia, concurring.

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