

ENRIQUE KHO AND JOSEFINA KHO, PETITIONERS, VS. THE HON. COURT OF APPEALS, ROQUE GO, ALIAS GO KHE, AND NATIVIDAD OPENA, RESPONDENTS.*G.R. No. 53630. September 30, 1992*

Ponente: ROMERO, J.

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Challenged in this petition for review on certiorari is the decision of the respondent Court of Appeals holding that the complaint filed by petitioners be dismissed for failure to implead an indispensable party.

On April 23, 1973, petitioners Enrique Kho and Josefina Kho filed a complaint for recovery of possession and ownership of a parcel of land with ejectment[1] against private respondents Roque Go alias Gho Khe and Natividad Opena. The complaint alleged that petitioners are the registered owners of Lot 313-B containing an area of one hundred ninety five (195) square meters situated in Butuan City and covered by Transfer Certificate of Title No. RT--5024. Sometime in 1972, private respondent Roque Go was ordered by the government authorities to vacate a portion of the sidewalk facing the city street and to demolish his building located just beside petitioners' property. Later, without securing any building permit, he constructed a building of wooden materials which encroached upon the property of petitioners. Despite demand, he refused to demolish the building and even leased the same to private respondent Natividad Opena.

Private respondents, in their answer,[2] averred that, in 1932, Asuncion Torralba and Cesario Cultura were declared co-owners pro indiviso of Lot 313 in Cadastral Case No. 10, G.L.R.O. Record No. 1236. Lot 313 was divided equally, each having an area of one hundred sixty eight (168) square meters. By their agreement, the eastern half of the lot (Lot 313-A) became the share of Cesario Cultura while the western half (Lot 313-B) was the share of Asuncion Torralba. On June 14, 1934, Cesario Cultura sold his share by pacto de retro sale to Go Kanga, uncle of Roque Go. On even date, Go Kanga took actual physical possession of the lot. When Cesario Cultura failed to repurchase the property within the stipulated one-year period, Go Kanga became the absolute owner of Lot 313-A. Upon his death, the lot was inherited by his only brother Go Loco, father of Roque Go. Roque Go and his brother Go Kiong, in turn, inherited the property from their father upon his death. On March 15, 1938, Cesario Cultura sold to Go Kiong and Roque Go whatever right he might have over Lot 313-A as evidenced by a Deed of Sale which was recorded in the Office of the Register of Deeds on January 30, 1964. On October 18, 1948, Go Kiong and Roque Go sold the same parcel of land to Isidro (or Isidoro) Ato but remained in possession of the property as lessees. They maintained that the building constructed on a 26 sq. meter portion is within Lot 313-A and that petitioners' title over the said portion is null and void.

On August 20, 1974, the trial court[3] ruled in favor of petitioners. It made the following findings of fact:

"x x x x x x x x

First. TCT No. RT-5024 of the Registry of Deeds for the City of Butuan (Exh. B) shows that Lot 313-B, which is a portion of Lot 313 of the Butuan Townsite, contains 'an area of ONE HUNDRED NINETY FOUR

SQUARE METERS (194),* registered in the names of ENRIQUE KHO married to Josefina Con-ui,' said Enrique Kho and Josefina Con-ui being the plaintiffs in this case.

Second. While it is true that said Lot 313, of which Lots 313-A and 313-B are portions, has a total area of 336 sq. m., as shown by the subdivision plan (Exh. 3), the petition for reconstitution of Lots 313 (Exhs. 7 and 7-H), and OCT No. RO-125 (N.A.) of the Registry of Deeds for the City of Butuan (Exh. 11), it does not necessarily mean that Lots 313-A and 313-B have equal areas. The decision of this Court, Branch II, dated 30 October 1969, thru then Judge Manuel Lopez Enage; which is one of the defendants' evidence (Exh. 10), begins outright with the statement that the case is 'for the recovery of a parcel of land covered by T.C.T. No. RT-872 (Lot 313-A of Subdivision plan Psd--56971, being a portion of Lot No. 313 of the Cadastral Survey of Butuan, containing an area of 141 square meters, more or less.' Hence, the area of Lot 313-A (141 sq. m.) and the area of Lot 313-B (194 sq. m.) and up to 335 sq. m., which approximates 336 sq. m.

Third. Since the plaintiffs' TCT No. RT-5024 was issued on 30 May 1969 (Exh. B); the defendants' documentary evidence consisting of --

Exh. 1, the pacto de retro sale executed by Cesario Cultura in favor of Go Kanga on 14 June 1934;

Exh. 2, the Deed of Sale executed by Cesario Cultura in favor of Go Kiong and Go Keh (sic) on 15 March 1938; and

Exh. 4, the Deed of Absolute Sale executed by Go Kiong and Go Keh (sic) in favor of Isidoro Ato over 'a parcel of land known as the EASTERN HALF PORTION of the entire parcel of land designated as Lot No. 313' on 18 October 1948;

is of no consequence for the purposes of the case at bar, considering that said documents were executed long before 30 May 1969, the date of issuance of said TCT No. RT-5024. One of the cardinal features of the Torrens system is indefeasibility of title. Thus, a person dealing with registered land is not required to go behind the register to determine the condition of the property; he is only charged with notice of the burdens on the property which are noted on the face of the certificate of title, and to require him to do more is to defeat one of the primary objects of the Torrens system. While the Land Registration Act was never designed to serve as a shield for fraud, it cannot be pretended that the plaintiffs acted in fraud of the defendants, considering that their TCT No. R0-5024 'is a transfer from Transfer Certificate of Title No. RT--721, which is cancelled by virtue hereof.' At any rate, the defendant Roque Go alias Go Khe is a mere lessee of Lot 313-A, and defendant Opena is a mere lessee of defendant Go's building on said lot, so that they do not have the capacity to question directly, much (sic) less collaterally, the validity and/or contents of plaintiffs' TCT No. RT-5024.

Fourth. The plaintiffs have proven that defendant Roque Go alias Go Khe has encroached upon their land to the extent of 26 sq. m. by constructing a building thereon, as shown by the testimony of surveyor Tito Domingo and his relocation plan (Exhs. D, D-1 and D-2).

Fifth. The plaintiffs have shown that they demanded that defendant Roque Go alias Go Khe 'demolish the aforementioned building and vacate the premises,' as shown by the letter of their counsel dated 24 January 1973, and that defendant Natividad Opena likewise 'vacate the premises you are presently occupying,' as shown by the letter of the same counsel to her on the same date (Exh. F), but that defendant Go did not answer while defendant Opena answered by letter to plaintiffs' counsel dated 9 February 1973, stating therein among other things that 'Only the Court could order me to vacate the place where I am now occupying' (Exh. I).

x x x x x x x x."[4]

and the dispositive portion says:

"WHEREFORE, the Court hereby renders judgment in favor of the plaintiffs and against the defendants, as follows:

1. Ordering the defendants to deliver to the plaintiffs the ownership and/or possession of the disputed twenty-six (26) square meters that form part of Lot 313-B;
2. Ordering defendant Roque Go to remove his building out of said twenty-six-square-meter-portion of Lot 313-B or demolish said building if necessary;
3. Ordering defendant Natividad Opena to vacate the premises, without prejudice to whatever rights she may have as against co-defendant Roque Go alias Go Khe;
4. Ordering defendant Roque Go alias Go Khe to pay the plaintiffs moral damages in the sum of TWO THOUSAND PESOS (P2,000) and attorney's fees and expenses of litigation in the sum of THREE THOUSAND PESOS (P3,000);
5. Ordering defendant Roque Go alias Go Khe to pay the costs of this suit; and
6. Dismissing the defendant's counterclaims.

SO ORDERED."[5]

Private respondent Roque Go appealed to the Court of Appeals. The appellate court[6] reversed the findings of the lower court and ordered the dismissal of the complaint and the counterclaim on the ground that petitioners failed to implead Isidro Ato as a party defendant. It opined that being the owner of Lot 313-A, he is an indispensable party to the case without whom no final judgment can issue affecting ownership and possession.[7]

Hence, this petition which raises the sole issue of whether or not Isidro Ato is an indispensable party whose non-inclusion would result in the dismissal of this case.

Petitioners insist that Isidro Ato is not an indispensable party to the suit. They admit that Lots 313-A and 313-B were originally parts of Lot 313 with an area of 336 sq. meters as shown by OCT No. RO-125.[8] Said title was cancelled by TCT No. RT-462[9] in the name of Urso C. Busa with 196 sq. meter share and Asuncion Torralba with 140 sq. meter share. This title was later cancelled by TCT No. RT-585[10] in the name of Urso C. Busa with 196 sq. meter share and Cesario Cultura with 140 sq. meter share. It was later subdivided into Lot 313-A with an area of 141 sq. meters covered by TCT No. 720 in the name of Cesario Cultura[11] and Lot 313-B with an area of 195 sq. meters covered by TCT No. RT-721 in the name of Urso C. Busa.[12] At the time of the filing of the complaint until the parties rested their respective cases, the existing title to Lot 313-A was TCT No. RT-827 in the name of Martina H. Cultura.[13] The name of Isidro Ato does not appear in any of the titles that covered Lot 313-A.

Furthermore, the whole area of Lot 313-A has been taken by the government for the expansion of Juan Luna Street: 27 sq. meters in 1953, 76 sq. meters in 1963 and 38 sq. meters for the sidewalk, making a total of 141 sq. meters. Even private respondent Roque Go acknowledged this fact in his testimony.[14] Since the whole area of Lot 313-A has been expropriated by the government, Isidro Ato did not have any existing interest in Lot 313-A nor in the proceeding in the lower court. This, coupled with respondents' failure to prove that the area of Lot 313-A is indeed 168 sq. meters, shows no reason to include Isidro Ato as a party defendant.

On the other hand, private respondents maintain that the 26 sq. meter area in question is part of Lot 313-A which contains an area of 168 sq. meters and is in the name of Isidro Ato. They allege that by virtue of the decision of the then Court of First Instance of Agusan, 15th Judicial Region, Branch 11, dated October 30, 1969 in Civil Case No. 841, wherein Isidro Ato was an intervenor, TCT No. RT-827 in the name of Martina Cultura was cancelled and intervenor Isidro Ato was declared the owner of the 141 sq. meter area covered by the aforementioned TCT. This area, including the 26 sq. meter area in question, constitutes Lot 313-A. Since Isidro Ato has been declared the absolute owner of Lot 313-A, he is therefore an indispensable party to the present suit.

The contention of private respondents is untenable.

Both parties agree that Lots 313-A and 313-B were originally parts of Lot 313 with an area of 336 sq. meters. Petitioners acquired their title to Lot 313-B by purchase from Urso C. Busa by virtue of which TCT No. RT-721 in the name of the latter was cancelled and TCT No. RT-5024[15] was issued in the name of petitioners. When the parties bought the property, the TCT showed that the area of the property is 195 sq. meters and was free from any encumbrance. A torrens title is generally a conclusive evidence of ownership of the land referred to therein.[16] Furthermore, every person dealing with registered land may safely rely on the correctness of the Certificate of Title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property.[17]

Private respondents' allegation that Lot 313-A contains 168 sq. meters since Lot 313 was divided equally between Asuncion Torralba and Cesario Cultura is not substantiated by the evidence on record. The different TCTs over Lot 313-A consistently showed that said lot contains 141 sq. meters.

While it is true that Carmen Ato Vda. de Go, daughter of Isidro Ato and a witness for the defense, testified that in 1949, Asuncion Torralba conveyed to her under a pacto de retro sale and subsequently in absolute sale, 87 sq. meters of her share of Lot 313 while 81 sq. meters were sold to Fidel Azote, which were both acquired later by Urso Busa with a total area of 168 sq. meters,[18] such declaration of Carmen Ato Vda. de Go is belied by the evidence on record. The annotation on the judicially reconstituted title of Lot 313, OCT No. RO-125, shows that what Asuncion Torralba conveyed unto Carmen Ato is 115 sq. meters, not 87 sq. meters as claimed by her, and the same 115 sq. meters were later sold to Urso Busa, making the total share of Urso Busa 196 sq. meters, as shown in the TCT subsequently issued in his name. As found by the trial court, the subdivision of Lot 313 does not necessarily mean that said lots have equal areas.

In the final analysis, since a total of 141 sq. meters has been expropriated by the government for the expansion of Juan Luna Street, Isidro Ato no longer had any interest in the property that had to be protected. Thus, he cannot be an indispensable party because he is not one with such an interest in the controversy that a final decree would necessarily affect his rights, such that the courts cannot proceed without his presence.[19]

WHEREFORE, PREMISES CONSIDERED, the petition is hereby GRANTED, the decision of respondent Court of Appeals is REVERSED and SET ASIDE and the decision of the trial court dated August 20, 1974 is REINSTATED.

SO ORDERED.

Bidin, Davide, Jr., and Melo, JJ., concur.
Gutierrez, Jr., J., (Chairman), on official leave.

[1] Annex "A" of Petition; Rollo, pp. 11-17.

[2] Annex "B" of Petition; Rollo, pp. 18-33.

[3] Judge Vicente B. Echavez, Jr., CFI of Agusan Del Norte and Butuan City, 15th Judicial District, Branch II.

* TCT No. RT-5024 states that it contains an area of ONE HUNDRED NINETY FIVE SQUARE METERS although it is numerically written as 194. In this decision, the written words shall prevail over the figures.

[4] Annex "D" of Petition; Rollo, pp. 61-63.

[5] Ibid, pp. 64-65.

- [6] Justice Ambrosio M. Geraldez, ponente with Justices Emilio A. Gancayco and Porfirio V. Sison, concurring.
- [7] Annex "E" of Petition; Rollo, pp. 66-72.
- [8] Annex "A" of Reply; Rollo, p. 215.
- [9] Annex "B" of Reply; Rollo, p. 216.
- [10] Annex "C" of Reply; Rollo, p. 217.
- [11] Annex "D" of Reply; Rollo, p. 218.
- [12] Annex "E" of Reply; Rollo, p. 219.
- [13] Annex "F" of Reply; Rollo, p. 220.
- [14] TSN, Hearing of February 19, 1974, pp. 23-25.
- [15] Annex "G" of Reply; Rollo, p. 221.
- [16] Ching v. Court of Appeals, G.R. No. 59731, January 11, 1990, 181 SCRA 9, citing Section 49, Act 496.
- [17] Santos v. Court of Appeals, G.R. No. 90380, September 13, 1990, 189 SCRA 550.
- [18] TSN, Hearing of February 21, 1974, pp. 7-8.
- [19] Co v. Court of Appeals, G.R. Nos. 86597 and 86614, January 23, 1991, 193 SCRA 198.

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