

CONCEPCION PELAEZ VDA. DE TAN, JORGE P. TAN, JR., GREGORIO P. TAN, EDUARDO P. TAN, MANUEL P. TAN, CONCEPCION TAN AQUINO AND BENJAMIN P. TAN, PETITIONERS, VS. INTERMEDIATE APPELL...

G.R. No. 65532. August 31, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for review on certiorari assailing the judgment[1] rendered by the then Intermediate Appellate Court dismissing herein petitioners' special civil action for injunction, prohibition and certiorari which prays for the annulment of two orders[2] rendered by the respondent Judge in Civil Case No. 2175-0.

The undisputed facts of the case are as follows:

Gregorio Yrastorza is the registered owner of four (4) adjacent parcels of land located at Ormoc City, described as follows:

"First lot: Known as Lot No. 1 of the Consolidation and Subdivision Cad. Lots 31 and 32 of Ormoc Cadastre, covered by TCT No. 2899, with an area of 463 sq. m.;[3]

"Second lot: Known as Lot No. 3 of the Consolidation and Subdivision Plan of Cad. Lots 31 and 32 of Ormoc cadastre, covered by TCT No. 2901, with an area of 279 sq. m.;

"Third lot: Known as Lot No. 4 of the Consolidation and Subdivision Plan of Cad. lots 31 and 32 of Ormoc Cadastre, containing an area of 200 sq. m., covered with TCT No. 2902 (Annex B-Petition, G.R. No. 65532 and Annex 2, G.R. No. 63725);

"Fourth Lot: A parcel of land (Lot I of the Subdivision Plan, (LRC) Psd-177251, being a portion of the land described on plan Msi--V-27302, L.R.C. record No. M.S. Patent), situated in the Poblacion, City of Ormoc, island of Leyte, containing an area of 856 sq. m., covered with TCT No. 12547 (Annex 5 Respondent's Comment, G.R. No. 63725)."

On February 13, 1982, Gregorio Yrastorza sold the above-described first, second and third lots to Atty. Jorge P. Tan, the late husband of petitioner Concepcion Pelaez Vda. de Tan and father of the other petitioners, as evidenced by a Deed of Absolute Sale.[4] The subject matter of the instant appeal pertains only to the first lot to wit:

"FIRST LOT: Known as Lot No. ONE (1) of the Consolidation and Subdivision Plan of Cad. Lots 31 and 32 of Ormoc Cadastre; Bounded on the North, by Lot No. 4 of the Consolidation and Subdivision Plan of Dac. Lots 31 and 32 of Ormoc Cadastre, measuring on this side 16.47 meters; on the East, by Lot No. 23 of the Ormoc Cadastral Survey, measuring 39 meters on this side; on the south, by Dr. Gregorio C. Yrastorza, measuring 17.84 meters on this side; and by the West, by Lot No. 2 (Seaside Hotel) and the Lot No. 3 (Seaside Theatre) of the Consolidation and Subdivision Plan of Cad. 31 and 32 of Ormoc Cadastre, measuring 39 meters on this side; containing an area of SIX HUNDRED SEVENTY-SEVEN (677) square meters, more or

less, and covered by TRANSFER CERTIFICATE OF TITLE NO. TWO THOUSAND EIGHT HUNDRED NINETY-NINE (TCT-2899)."[5]

The aforementioned technical description of the first lot, which appears in the Deed of Absolute Sale, is incorrect. The true and correct technical description of the first lot can be found in T.C.T. No. 2899 and T.C.T. No. 4020, which cancelled the former title. The description of the lot as found in both titles are as follows:

"Bounded on the SE., along 1-2, by Lot 23, Ormoc Cad., on the SW., along line 2-3, by Public Land; on the NW., along line 3-4, by Lot 2 and along line 4-5, by Lot 3, both of the Consolidation and Subdivision Plan. Beginning at a point marked "1" on plan, being S. 84, deg. 52'W., 66.45 m. from B.L.L.M. 2, Ormoc Cad.

thence S. 17 Deg. 53' W., 26 m. to point 2;

thence N. 72 deg. 19'W., 17.84 m. to point 3;

thence N. 20 deg. 50'E., 12.97.m. to point 4;

thence N. 20 deg. 59'E., 13.87 m. to point 5;

thence S. 73 deg. 57'E., 16.47 m. to point of beginning; containing an area of FOUR HUNDRED SIXTY THREE (463) square meters."[6]

The improvements on Lot I of Consolidated lots 31 and 32 of Transfer Certificate of Title No. 2899[7] consist of the Metro Theatre, which partly occupies the entire area of 463 square meters, while a portion of the stage of said theatre occupies an area of 116.26 square meters and another area of 85.74 square meters, or a total of 214 square meters of the adjacent lot I, Psd.-177251 registered in the name of Gregorio Yrastorza[8] and which was later sold to herein private respondents Larrazabals as evidenced by TCT No. 17360.[9]

By virtue of the Deed of Absolute Sale[10] executed by Gregorio Yrastorza in favor of Atty. Jorge P. Tan, the Transfer Certificate of Title No. 2899 in the name of Gregorio Yrastorza married to Adelina Alonso was cancelled.[11]

Consequently, a new Transfer Certificate of Title No. 4020[12] was issued in the names of vendees Jorge Tan married to Concepcion Pelaez, embodying the true and correct technical description of Lot I of Consolidated lots 31 and 32, containing an area of 463 square meters.

Petitioners filed a Notice of Adverse Claim[13] which was inscribed on Transfer Certificate of Title No. 12547 registered in the name of Gregorio Yrastorza covering the adjacent Lot I, Psd 177251 with an area of 856 square meters which was later sold to respondents Larrazabals as evidenced by TCT No. 17360.[14]

The aforesaid Adverse Claim was lifted and cancelled[15] by the Acting Register of Deeds, Arturo Suarez for the reason that the adverse claim does not affect Lot I of Transfer Certificate of Title No. 12547.

Private respondents filed a complaint for Recovery of Ownership and Possession with petition for Issuance of Writ of Preliminary Mandatory Injunction for the recovery of the 214 square meters occupied by the stage of the Metro Theatre with Branch XII, Regional Trial Court of Ormoc City.[16]

Respondent judge on March 30, 1983 granted the Petition for Issuance of Preliminary Mandatory Injunction based on the following conclusion:

"By comparing the area of 677 square meters as stated in the deed of sale between Gregorio Yrastorza as vendor and defendants as vendees, the area covered by TCT No. 2899 which was later cancelled by TCT NO. 4020 with an area of 463 sq. m., there would appear a difference of 214 sq. m., and that from this difference of 214 sq. m., there could be no other logical conclusion for this Court to arrive at but to hold that such difference

caused by the Deed of Sale was purely a clerical error and that what was sold under the circumstances is that area of 463 sq. m., covered by TCT No. 2899 and cancelled by TCT No. 4020.

"Without going into the merits of the case so as to determine whether or not the defendant's occupation of said portion was made in bad or good faith, what actually was bought by the defendants from Gregorio Yrastorza was only that lot which consisted of 463 sq. m., as described in TCT No. 2899 registered in the names of Gregorio Yrastorza and Adelina Alonso, which was cancelled by TCT No. 4020 now in the names of the defendants. It cannot be said that plaintiffs should be deprived of their ownership over the 214 sq. m., because that area is definitely within the portion of the land acquired by the plaintiffs as described in TCT No. 17360, registered in their names. The registered titles of each of the parties are imprescriptible. Consequently, under the circumstances, plaintiffs' right over such portion of 214 sq. m., is clearly established. Considering that there is an extreme urgency for the plaintiffs to enter the premises in question, further that the building or improvement of the defendants is a dilapidated structure, as per Certification of the City Planning and Development Office, Ormoc City and the Annual Inspection Report of the Office of the Building Official Ormoc City, the continuation by the defendants of their acts of intrusion would doubtlessly cause upon the plaintiff's inconvenience, prejudice, grave injury and irreparable damage. Upon these weighty considerations, this Court is constrained to grant the plaintiffs their Petition for the issuance of a Writ of Preliminary Mandatory Injunction, authorizing them to enter into possession over the area of 214 sq. m., as described in the Relocated Plan (Annex 1-1) of Annex I."

Not satisfied with the decision of the lower court, petitioner brought the matter to this Court in a Petition for Injunction, Mandamus and Certiorari but the case was referred to the then Intermediate Appellate Court for the purpose of determining a question of fact of whether the parties in this case are the registered owners of their respective parcels of land namely: for petitioners Tan, Lot 1 of the Consolidation and Subdivision of Cad. Lots 31 and 32 of the Ormoc Cadastre covered by T.C.T. No. 4020 and with an area of 463 square meters originally registered in the name of Gregorio Yrastorza under T.C.T. No. 2899; for private respondents Larrazabals, Lot No. 1 of Subdivision Plan, Psd-177251 containing an area of 856 square meters as described in Transfer Certificate of Title No. 17360 and which parcel of land was originally registered in the name of Gregorio Yrastorza under T.C.T. No. 12547.

The appellate court in a decision promulgated on August 30, 1983 dismissed the petition, stating as follows:

"From this TCT-2899 it is clear that the First Lot covers only 463 sq. m. and not 677 sq. m. as maintained by petitioners. Indeed, after the sale, petitioners had TCT 2899 cancelled and replaced by TCT 4020. Again, TCT 4020 speaks of 463, sq. m. of land only. They then paid real property tax on this 463 sq. m. of land. In fine, We cannot see how respondent judge could have committed grave abuse of discretion in initially recognizing the right of the private respondents over the disputed 214 sq. m. of lot for the purpose of issuing a writ of preliminary injunction."[17]

There is no question as to the right of petitioners over the 463 square meters lot described in T.C.T. No. 4020 and in the same manner so is private respondents' right over Lot No. 1 of Psd-177251 covering 856 square meters as evidenced by T.C.T. No. 17360.[18]

Indeed, there must have been a mistake committed in drafting the Deed of Sale executed by Gregorio C. Yrastorza in favor of Atty. Jorge Tan when he sold Lot No. One (1) of the Consolidation and Subdivision of Cad. Lots 31 and 32 of Ormoc Cadastre; x x containing an area of Six Hundred Seventy-Seven (677) square meters, more or less, and covered by Transfer Certificate of Title No. Two Thousand Eight Hundred Ninety-Nine (TCT-2899)[19]

Since what Gregorio Yrastorza sold to Atty. Jorge Tan is Lot 1 covered by TCT No. 2899 with an area of 463 square meters only, it follows that he could not have sold an area more than what is stated in the title. Consequently, when TCT No. 2899 was cancelled and TCT NO. 4020 was issued in the name of the vendor,

Jorge S. Tan, it is only for a 463 square meters property, no more, no less.

What really defines a piece of land is not the area mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits.[20]

In the instant case, the identity of the land is Lot 1 of the Consolidated Lots 31 and 32 and the boundaries are sufficiently and certainly describe in Transfer Certificate of Title No. 4020 and speaks of no other area but 463 square meters.

At any rate, it is settled that titled property cannot be attacked collaterally. It can only be altered, modified or cancelled in a direct proceeding in accordance with law.[21]

The foregoing facts and circumstances clearly show that private respondents are entitled to the Writ sought for because of a clear right over the property in question and that urgency, expediency and necessity require immediate possession while the petitioners on the other hand, are more than amply secured by a bond of P100,000.00 as required by the lower court.

WHEREFORE, finding no reversible error in the Orders appealed from, the same is hereby **AFFIRMED**. Petition is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.
Melo, J., no part.

[1] Penned by Justice Reynato S. Puno, concurred by Justice Nestor Alampay and Justice Carolina Griño-Aquino, Rollo, pp. 41-53.

[2] (1) The Order dated March 30, 1983, together with the writ of preliminary mandatory injunction issued by virtue of the said order, authorizing private respondents to take possession of a portion of a parcel of urban land and to demolish part of petitioners' in the possession of petitioners for over twenty years now pursuant to a deed of sale executed in favor of petitioners' predecessor by respondent Adelina Larrazabal's father; and

(2) A subsequent Order dated April 13, 1983 denying petitioners' motion for reconsideration and directing the implementation of the aforesaid writ of preliminary mandatory injunction unless stopped by a restraining order.

[3] Rollo, p. 114.

[4] Rollo, p. 54.

[5] Ibid.

[6] Rollo, p. 114.

[7] Ibid.

[8] Rollo, p. 116.

[9] Rollo, p. 117.

[10] Rollo, p. 113.

[11] Rollo, p. 115.

[12] Rollo, p. 115.

[13] Rollo, p. 116.

[14] Rollo, p. 117.

[15] Rollo, p. 116.

[16] Records, p. 20.

[17] Rollo, p. 48.

[18] Rollo, p. 117.

[19] Deed of Absolute Sale of February 1962, Rollo, p. 113.

[20] Dichoso vs. Court of Appeals, G.R. No. 55613, 192 SCRA 169, (1990); Erico vs. Chigas, No. L-28064, 98 SCRA 575, (1980).

[21] Natalia Realty Corporation vs. Vallez, G.R. Nos. 78290-94, 173 SCRA 534, (1989).

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