

TEOFILO LINAZA, PETITIONER, VS. HONORABLE INTERMEDIATE APPELLATE COURT AND IGNACIO MALINTAD, RESPONDENTS.*G.R. No. 73741. February 28, 1990*

Ponente: PARAS, J.

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Petitioner seeks the review of the Decision of the Intermediate Appellate Court[*] (now the Court of Appeals) promulgated October 22, 1985 in AC-G.R. CV No. 04349-R declaring private respondent Ignacio Malintad the "owner of the disputed area". (p. 18, Rollo) This reversed the earlier Decision of the Regional Trial Court of Surigao del Sur dismissing private respondent's complaint for recovery of ownership and possession with damages against petitioner. The dispositive portion of the trial court's decision reads:

"WHEREFORE, for having failed to support with sufficient evidence, the plaintiff's complaint is hereby ordered dismissed and on the defendant's general prayer for this court to issue such other reliefs deemed equitable under the premises, this court renders judgment ordering the former (plaintiff) to reconvey the area in question consisting of 24,782 square meters to the defendant.

Should the defendant (sic) refuse or is unable to reconvey the area in question after the decision shall have become final and executory, the Provincial Sheriff of this court is hereby ordered to execute in behalf of the plaintiff the necessary document or documents conveying the land in question, in favor of the defendant; the expenses for the subdivision survey segregating the land in question from the area covered by Original Certificate of Title no. FF-15100 shall equally be borne by both parties. The defendant is ordered to pay the plaintiff the amount of P270.00 for the 37 coconut trees as stipulated in Exhibit "9" without pronouncement as to costs." (p. 13, Rollo)

The land in litigation is a 2.4782 hectares portion inside Lot No. F-11-06(1) 000161-A-D, located at Barangay Palo Alto, Municipality of Lingig, Province of Surigao del Sur, Philippines. It is within the area covered by Free Patent No. 4346 and is presently covered by Original Certificate of Title No. FF-15100 in the name of private respondent. Petitioner claims said portion to be a part of his land declared under Tax Declaration No. 183 containing an area of 5.5 hectares.

On November 28, 1978, private respondent Ignacio Malintad filed a complaint before the Regional Trial Court of Surigao del Sur against petitioner for recovery of ownership and possession with damages. He claimed that sometime in 1977, petitioner Teofilo Linaza forcibly and illegally occupied a portion of his land with an area of 24,782 square meters.

In his Answer with counterclaim, Teofilo Linaza alleged ownership and possession of the disputed portion since 1956 and interposed the affirmative defense that Ignacio Malintad having recognized his (Linaza's) ownership of the 5.5505 hectare coconut land covered by Tax Declaration no. 4372, in a public instrument styled 'Agreement' executed on or about November 9, 1973 and subscribed and sworn to before then Notary Public (now deceased) Eulogio Onsing, copy of which is (therein) attached as Annex 1 and incorporated as though set forth in full, Malintad is now estopped from questioning Linaza's ownership of the whole parcel or any portion thereof." (Par.

8, Answer, p. 16, Record). He then prayed for the nullification of the title and the survey on the ground of actual fraud.

After due hearing, the trial court rendered judgment on July 7, 1984 in favor of Linaza, ordering Malintad to reconvey the area in question to the former, holding that the latter "secured his Free Patent Title thru deceit and misrepresentation which misled the Bureau of Lands to believe that he was actually the owner of the whole area he applied for free patent" and that "the 'Agreement' was the law between the parties (p. 516, Record)

On appeal to the then Intermediate Appellate Court, the judgment of the trial court was reversed, the appellate court holding that Malintad was the "owner of the disputed area" and that "if ever there was fraud, it was intrinsic fraud". (p. 17, Rollo), Likewise, it found that Malintad "denied the existence of the Agreement". (p. 17, Rollo)

Hence, the present petition.

We reverse the Decision of the Intermediate Appellate Court and reinstate that of the trial court. The factual backdrop of the case supports the latter's position.

It was established that Teofilo Linaza acquired by direct sale a parcel of land with an area of 5.5 hectares located at Palo Alto, Lingig, Surigao del Sur from the daughters of Fernando Banawe, the original owner said land as shown in a private instrument, in 1956. (Exhs. '1' & '2') Linaza forthwith took possession of the land and constructed a house thereon where his family lived. The land was planted with abaca, bananas and some fruit bearing trees like jackfruit. Then he gradually planted it with coconuts. He also caused the transfer to his name of the tax declaration thereof, starting with Tax Declaration No. 4372 (Exh. '4') which was cancelled and revised later by Tax Declaration No. 462 (Exh. '5') and then by Tax Declaration No. 183 (Exh. '6') and paid religiously the real estate taxes thereon (Exhs. '10', '10-A' to '10-E').

Sometime in 1962, while Linaza was in Catael, Davao Oriental, Ignacio Malintad, taking advantage of his absence, surreptitiously caused a survey to be conducted on the northern boundary of Linaza's land but encroached on a portion of about two (2) hectares thereof. (This portion is now the area in dispute.) The survey was conducted by Mr. Sanz of the Bureau of Lands. Informed by his wife on his arrival from Catael, Linaza immediately verified the encroachment and consulted Jose Marcelo, then Municipal Mayor of Lingig. The latter advised him to file a protest against the survey of Mr. Sanz directly to the Director of Lands, Manila, which he did as shown in the copy of the letter-protest dated December 3, 1962 (Exh. 7). He received a reply from Isabelo T. del Carmen, Chief Surveys Division of the Bureau of Lands, informing him that no survey had as yet been submitted to the latter's office, for approval (Exh. '8'). Accordingly, because of his timely protest the attempt to grab a portion of his land by including it in the surreptitious survey, was frustrated.

Nonetheless, Malintad subsequently succeeded in planting some coconuts on the unplanted northern portion of his land. As a result of said encroachment, a conflict between them developed, which led to the execution of a document captioned "Agreement" (Exh. '9') on November 9, 1973, wherein it was stipulated and agreed among others, that:

- "a) Ignacio Malintad acknowledged and recognized Teofilo Linaza as the owner and possessor of the area in conflict, being a portion of the 5.5 hectare lot covered by Tax Declaration 4372;
- b) Ignacio Malintad having planted some coconuts on said conflicted area, Teofilo Linaza agreed to pay him P10.00 for every fully productive coconut tree and P5.00 for every non-productive coconut tree thus planted;
- c) In addition to the payment of said coconuts representing the cost of improvements, Teofilo Linaza agreed to allow Ignacio Malintad to harvest the matured nuts in December of that year 1973, and

d) The coconuts will be counted by the parties, after which, payment of the amounts agreed upon will be effected." (pp. 15-16, Rollo)

This "Agreement" was witnessed by PC Sgt. Abadejos and Narciso Maubay and was duly subscribed and sworn to before Notary Public Eulogio Onsing (now deceased) of Lingig, Surigao del Sur.

According to the count, 17 coconut trees were already fruit bearing, whereas 20 had not yet started to bear fruits. Linaza, however, was not able to pay the value of the coconuts because when he tendered payment in December of that year, as agreed, Malintad refused to accept the amount. This infuriated Linaza so he also disallowed Malintad from harvesting the matured nuts.

Linaza was not notified of any survey in the year 1977. He was positive that there was no such survey for had there been any, he would have protested against it as what he did in 1962 when Malintad attempted to include a portion of his land (the portion in question) in the survey conducted by Surveyor Sanz of the Bureau of Lands. He also had no knowledge whatsoever that Malintad was applying for a title and no Bureau of Lands personnel notified him and/or went to the area to conduct an investigation or inspection.

Under the foregoing established facts, reconveyance is clearly a proper remedy. "The true owner may bring an action to have the ownership or title to the land judicially settled and the Court in the exercise of its equity jurisdiction, without ordering the cancellation of the Torrens Title issued upon the patent, may direct the defendant, the registered owner to reconvey the parcel of land to the plaintiff who has been found to be the true owner thereof." (Vital vs. Anore, 90 Phil. 955) "The reconveyance is just and proper in order to terminate the intolerable anomaly that the patentee should have a torrens title for the land which they and their predecessors never possessed which has been possessed by Novo in the concept of owner." (Bustarga vs. Novo II, 129 SCRA 105)

The more recent case of Almarza vs. Arguelles is more controlling. The Court, speaking thru the Honorable Chief Justice Fernan ruled —

"Apparently, the plaintiff [private respondents] are seeking to recover the 7,300 square meters land in question because it is included in their title. They have not rebutted the defendant's [petitioner] evidence to the effect that they bought the area in dispute from its primitive owner, Romualdo Grana, in 1929 and the said sale was confirmed by the late Laura Pancrudo after World War II. Plaintiffs likewise have not disputed that the defendant and her late husband have been in continuous, public, and peaceful possession of the premises since 1929 until the filing of this case.

"It seems that the plaintiffs solely anchor their right over the disputed premises on the strength of their title over Lot 5815 which includes the area in dispute and the fact that they acquired said title in a cadastral proceedings in 1950 which was a proceeding in rem.

"On this premise, to adjudge private respondents owner of the disputed portion of Lot No. 5815 on the basis merely of its having been erroneously included in their certificate of title would indeed be 'a sad day for the law' for then. We shall be 'attaching full faith and credence to a Torrens certificate of title' 'oblivious of the demands of justice' and anchoring our decision 'solely on a narrow and literal reading of a statutory prescription, devoid of any shadow of moral right.' Furthermore, We shall be putting a premium on land-grabbing and transgressing the broader principle in human relations that no person shall unjustly enrich himself at the expense of another." (156 SCRA 724-725)

WHEREFORE, the appealed judgment of respondent appellate court is hereby REVERSED and SET ASIDE and the judgment of the trial court is hereby ordered REINSTATED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Penned by Justice Jorge R. Coquia, and concurred in by Justices Mariano A. Zosa, Floreliana Castro-Bartolome, and Bienvenido C. Ejercito.

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