

SECOND DIVISION

[CV No. 87678, March 31, 2008]

**REMEDIOS BAESA, PLAINTIFF-APPELLANT, VS. JUAN
BULALACAO*, DEFENDANT-APPELLEE.**

DECISION

Court of Appeals

This is an appeal from the *Decision*^[1] dated May 18, 2006 of the Regional Trial Court (RTC) of Iriga City, Branch 36, dismissing the *Complaint* filed by plaintiff-appellant in Civil Case No. IR-2713 for *Recovery of Possession and Ownership with Damages*.

The material facts are as follows:

On September 23, 1971, Leopoldo Baesa, husband of plaintiff-appellant Remedios Baesa, purchased from Luis B. Ceres a parcel of unregistered land situated in Baao, Camarines Sur, described as follows:

"A parcel of riceland situated at La Medalla (before San Antonio), Baao, Camarines Sur containing an area of .9050 hectare, more or less bounded on the N. by Hilario Bicenio; on the E. by Juan Bulalacao; on the S. by Vicente Barandon; on the W. by Santiago Barandon. Covered by Tax Dec. No. 3568 in the name of Placido Ceres and assessed at P560.00".^[2]

The Spouses Baesa thereafter occupied the lot in the concept of owner and declared it for taxation purposes under the name of Leopoldo Baesa^[3]. Their possession was however interrupted sometime in 1972 when a certain Isabelo Barrameda and his cohorts forcibly entered the land. In 1985, the then Court of First Instance (CFI) of Camarines Sur, Branch 7, ordered Barrameda and all persons claiming rights under him to surrender possession of the lot to the Baesas.^[4]

In the meantime, or in 1983, Baao, Camarines Sur was placed under Cadastral Survey^[5] by the Bureau of Lands. The subject lot was surveyed as Lot 4556, adjoined on the Northwest by Lot 4555 and on the Southeast by Lot 4516. Both adjoining lots were owned by defendant-appellee Juan Bulalacao. Per the survey, Lot 4556 measured 2,705 square meters only, while Lots 4555 and 4516 consisted of 3,282 square meters and 2,768 square meters, respectively.

Finding the survey results to be objectionable, Remedios Baesa filed with the Bureau of Lands a letter protest^[6] dated April 5, 1983, contending that the area of Lot 4556 was drastically reduced and that almost 4000 square meters thereof were erroneously added to the adjoining lots. She thus requested for the rectification of the discrepancy. In reply, the Chief of the Aggregate Surveys Section, Regional Land

Office No. V, Bureau of Lands, informed her that since the cadastral survey has already been approved, her protest would just serve as opposition to the issuance of a certificate of title to the owner of Lot 4555.^[7]

No other concrete action on the matter was pursued by Remedios against Juan Bulalacao until May 15, 1995 when she filed before the RTC of Iriga City Civil Case No. IR-2713 against the latter for '*Recovery of Possession and Ownership with Damages.*' In her Complaint^[8], she alleged that Bulalacao surreptitiously moved the boundaries of his land into her land from the Northwest and encroached upon her land by 5,512 square meters, and from the Southeast by 882 square meters or a total land area of 6,334 square meters; that she discovered the encroachment only in 1992; that upon verification of Bulalacao's landholdings, she discovered that the area of Lot 4555 was increased to 8,794.04 square meters, and that of Lot 4516 to 2,901 square meters; and that despite repeated demands, Bulalacao refused to return the encroached area of her land. She prayed that Bulalacao be ordered to surrender the encroached portion to her, and that the latter be ordered to pay the average harvest thereon from 1992 up to the time the land is finally returned to her.

Bulalacao denied Remedios' allegations, and averred that the disputed property on the Norwest formed part of the 6,679 square meter lot he bought from his predecessor-in-interest, Santiago Barandon way back in 1937, while that on the Southeast formed part of the 4,075 square meter lot also bought from Barandon.^[9]

During the trial, the RTC ordered the survey of the actual area occupied by the parties.^[10] By their agreement, Engr. Visitacion Oida of CENRO, Iriga City, was commissioned to conduct the survey. The Commissioner reported that Bulalacao was occupying a total area of 7,128 square meters for Lot 4555, and an area of 2,768 square meters for Lot 4516, while Remedios was occupying 2,463 square meters for Lot 4556.^[11]

In the interim, the Municipality of Baao requested for the correction of the Baao Cadastre due to some errors.^[12] The Bureau of Lands conducted another survey and a new cadastral map^[13] was approved on December 14, 1998. Under this new survey, the area of Lot 4556 was reflected as 2,481 square meters while Lot 4555 consisted of 7,325 square meters.^[14] The new survey was submitted as part of the evidence presented by Bulalacao, marked as Exhibit "5".

Other than the Commissioner's sketch map, the 1983 and the 1998 survey, other significant documentary evidence were presented by the parties, as follows:

For the plaintiff: the series of conveyances showing that the original area of Lot 4556 was 9,050 square meters^[15]; the *Bearings and Distances* for the 1983 survey showing that Lot 4555 had an area of 3,282 square meters^[16]; the series of communication between Remedios and the Bureau of Lands regarding the former's protest on the survey for Lot 4556^[17]; the *Memorandum* from the Regional Director, DENR, to the Regional Technical Director for Lands requesting that further action on the protest of Remedios be held in abeyance until the final resolution of Civil Case No. IR-2713^[18]; tax declarations for Lot 4556 under the names of the Baesas' predecessor-in-interest showing that the land had an area of 9,050 square

meters^[19]; *Field Appraisal and Assessment Sheet* in the name of Bulalacao covering Lot 4555 showing that the land has an area of 3,282 square meters^[20]; and tax declarations for Lot 4555 under the name of Bulalacao showing that the land has an area of 3,282 square meters only^[21].

For the defendant: Decision of the CFI Civil Case No. in IR-489 dated April 12, 1985 to show that the Baesas' possession of the subject lot was interrupted for thirteen (13) years^[22]; Lot Descriptions for the 1998 survey showing the areas of Lot 4555 and Lot 4556 as 7, 325 square meters and 2,481 square meters, respectively^[23]; photographs showing the row of trees and embankments separating Lot 4555 from Lot 4556^[24]; *Deed of Sale* dated October 16, 1944 between Barandon and Bulalacao covering a parcel of land situated in San Antonio, Baao, Camarines Sur (purportedly Lot 4555), with an approximate area of 6,697 square meters^[25]; *Escritura De Compra-Venta* dated August 19, 1929 covering a parcel of land situated in San Antonio, Baao, Camarines Sur (purportedly Lot 4516), with an approximate area of "43 areas y 98 centiareas"^[26]; *Field Appraisal and Assessment Sheet* in the name of Bulalacao covering Lot 4555 showing that the land an adjusted area of 7,325 square meters to conform with the 1998 survey^[27]; and the *Memorandum* dated March 10, 2004 from the CENRO, Iriga City for the Regional Executive Director, DENR, informing the latter that upon investigation, it was ascertained that Lots 4555 and 4556 were surveyed based on actual occupation by the parties.^[28]

On May 18, 2006, the court *a quo* rendered a *Decision* dismissing the *Complaint* for the plaintiff's failure to show defendant's encroachment of her property by preponderance of evidence. Said the court *a quo*:

1. The court sees no cogent reason why it should not accord faith and give efficacy to defendant's document (Exh. 13) evidencing his ownership over Lot 4555 and the area as contained therein. Admittedly, Juan Bulalacao owns only two (2) lots situated at Barrio of La Medalla, (formerly San Antonio) Municipality of Baao, Province of Camarines Sur. One is Lot 4555 acquired by defendant by purchase on October 16, 1944 and the other is Lot 4516 ownership of which is through an *Escritura de Compra Venta* executed in defendant's favor way back on March 10, 1937. The disputed document then which was presented for Lot 4555 really pertains to said lot.
2. The lot of the plaintiff as well as the lots of the defendant were not officially surveyed at the time of the purchase so that neither can know the exact area of her land/his land vis-a-vis their documents of sale.
3. The sale of the lot to herein plaintiff is for a lump sum. In the case of *Balantakbo vs. CA 249 SCRA 323*, which is in all fours in this case, the Supreme Court made a pronouncement that where land is sold for a lump sum and not so much per unit of measure or number, the boundaries of the land stated in the contract determine the effects and scope of the sale, not the area thereof. Hence, the

vendors are obligated to deliver all the lands included within the boundaries, regardless of whether the real area should be greater or smaller than that recited in the deed.

The fact that the area sold to the plaintiff in this case turned out to be very much smaller than the actual area as stated in the sale is of no moment since though it was disadvantageous to the plaintiff, the latter is entitled only to the entire Lot 4556 and not to any definite number or measure. Further, what defines a piece of land is not the area, calculated with more or less certainty mentioned in the description, but the boundaries therein laid, as enclosing the land and indicating its limits.

4. Defendant had been in peaceful, public adverse and uninterrupted possession of the entire disputed areas of Lots No. 4555 and 4516 for more than 61 and 69 years, respectively, compared to plaintiff's possession of her lot which started only in 1971 and was unfortunately even interrupted for 13 years.
5. It was only in 1983 that the true area of the plaintiff (2,705 square meters) was determined after the survey. This was also confirmed in the 1998 correction survey conducted by the Bureau of Lands. Though plaintiff filed a protest contesting the result of these surveys, this court is not in a position to declare as ineffectual said surveys since this matter should have been brought to the attention of the Bureau of Lands.
6. There is no direct evidence of encroachment. The testimony of plaintiff's witnesses namely Angeles Baesa, Salvador Brisenio and Jaime Peyra merely confirmed plaintiff's claim that defendant is in possession of more than 7,000 square meters.

The testimony of Jesus Buera that he saw defendant Juan Bulalacao actually removing the madre de cacao trees which delineates the latter's property from that of the plaintiff cannot be given much weight by this court since it would indeed be physically impossible for the defendant to single handedly uproot in 1985 madre de cacao trees which have been admittedly present already when plaintiff bought her lot in 1971.

Remedios Baesa's claim that she also saw defendant Juan Bulalacao moved the earthen embankment in 1979 cannot likewise be given credence since in that year, she was not in possession of the property coupled with the fact that had it been so, plaintiff should have filed a case against defendant for the latter's unwarranted acts."^[29]

Hence, this appeal ascribing to the court *a quo* the following errors:

"I.

THE LOWER COURT ERRED IN FAILING TO FIND THAT THE DEFENDANT APPELLEE HAS ENCROACHED UPON THE LAND OF PLAINTIFF-APPELLANT WITH AN AREA OF FIVE THOUSAND FIVE HUNDRED TWELVE (5,512) SQUARE METERS ON THE WESTERN SIDE OF THE LAND OF PLAINTIFF AND AN AREA OF EIGHT HUNDRED TWENTY TWO (822) SQUARE METERS

FROM THE SOUTHWESTERN SIDE OF HER LAND OR A TOTAL OF SIX THOUSAND THREE HUNDRED THIRTY FOUR SQUARE METERS (6,344) SQUARE METERS;

II.

THE LOWER COURT ERRED IN FAILING TO AWARD ACTUAL DAMAGES REPRESENTING THE UNREALIZED HARVESTS FROM THE LAND ENCROACHED BY THE DEFENDANT UPON HER LAND.

III.

THE LOWER COURT ERRED IN FAILING TO AWARD ATTORNEY'S FEES, EXPENSES OF LITIGATION AND MORAL DAMAGES.^[30]

The appeal has merit.

We state preliminary Our observation that while appellant alleged in her *Complaint* and reiterated in her *Brief* that appellee's Lot 4516 encroached upon her land from the Southeast by 882 square meters, there was an utter dearth of evidence on record proving such encroachment. We thus uphold the trial court's dismissal of appellant's claim of encroachment insofar as Lot 4516 is concerned. However, the same is not true with regard to Lot 4555.

It is settled that in civil cases, the law requires that the party who alleges a fact and substantially asserts the affirmative of the issue has the burden of proving it.^[31] This evidentiary rule is based on the principle that the suitor who relies upon the existence of a fact should be called upon to prove it.^[32] Corollary to this, Article 434 of the New Civil Code^[33] provides that to successfully maintain an action to recover the ownership of a real property, the person who claims a better right to it must prove two (2) things; first, the identity of the land claimed, and; second, his title thereto.^[34]

As to the first requisite, there appears to be no question that because appellant's property was not surveyed at the time that it was sold to them, it was properly identified through boundaries, as follows: "*on the N. by Hilario Bicenio; on the E. by Juan Bulalacao; on the S. by Vicente Barandon; on the W. by Santiago Barandon.*" Appellant sought to prove the second requisites, *i.e.*, her title over the disputed area, by adducing in evidence the series of conveyances, the latest of which was in her favor,^[35] covering her Lot 4556 and showing that its original area was 9,050 square meters.

The court *a quo* however rejected appellant's claim and ratiocinated that what was delivered to her after the sale was of much smaller area than that indicated on the instrument. The court *a quo* relied on the documents presented by the appellee, *i.e.*, the cadastral plan of the survey conducted in 1998 and the *Deed of Sale* dated October 16, 1944 between Barandon and Bulalacao covering a parcel of land situated in San Antonio, Baao, Camarines Sur with an approximate area of 6,697 square meters.

Appellant contends that it was error for the trial court to rely on the aforesaid