

THIRD DIVISION

[G.R. NO. 152115, January 26, 2005]

**NIMFA USERO, PETITIONER, VS. COURT OF APPEALS AND SPS.
HERMINIGILDO & CECILIA POLINAR, RESPONDENTS.**

[G.R. NO. 155055. JANUARY 26, 2005]

**LUTGARDA R. SAMELA, PETITIONER, VS. COURT OF APPEALS
AND SPS. HERMINIGILDO & CECILIA POLINAR, RESPONDENTS.**

D E C I S I O N

CORONA, J.:

Before this Court are two consolidated petitions for review on certiorari under Rule 45 of the Rules of Court. The first petition, docketed as G.R. No. 152115, filed by Nimfa Usero, assails the September 19, 2001 decision^[1] of the Court of Appeals in CA-GR SP No. 64718. The second petition, docketed as G.R. No. 155055, filed by Lutgarda R. Samela, assails the January 11, 2002 decision^[2] of the Court of Appeals in CA-GR SP NO. 64181.

The undisputed facts follow.

Petitioners Lutgarda R. Samela and Nimfa Usero are the owners respectively of lots 1 and 2, Block 5, Golden Acres Subdivision, Barrio Almanza, Las Piñas City.

Private respondent spouses Polinar are the registered owners of a parcel of land at no. 18 Anahaw St., Pilar Village, Las Piñas City, behind the lots of petitioners Samela and Usero.

Situated between the lots of the parties is a low-level strip of land, with a stagnant body of water filled with floating water lilies; abutting and perpendicular to the lot of petitioner Samela, the lot of the Polinars and the low-level strip of land is the perimeter wall of Pilar Village Subdivision.

Apparently, every time a storm or heavy rains occur, the water in said strip of land rises and the strong current passing through it causes considerable damage to the house of respondent Polinars. Frustrated by their predicament, private respondent spouses, on July 30, 1998, erected a concrete wall on the bank of the low-level strip of land about three meters from their house and rip-rapped the soil on that portion of the strip of land.

Claiming ownership of the subject strip of land, petitioners Samela and Usero demanded that the spouses Apolinar stop their construction but the spouses paid no heed, believing the strip to be part of a creek. Nevertheless, for the sake of peace, the Polinars offered to pay for the land being claimed by petitioners Samela and

Usero. However, the parties failed to settle their differences.

On November 9, 1998, petitioners filed separate complaints for forcible entry against the Polinars at the Metropolitan Trial Court of Las Piñas City. The case filed by petitioner Samela was docketed as Civil Case No. 5242, while that of petitioner Usero was docketed as Civil Case No. 5243.

In Civil Case No. 5242, petitioner Samela adduced in evidence a copy of her Transfer Certificate of Title, plan of consolidation, subdivision survey, the tax declaration in her name, and affidavits of petitioner Usero and a certain Justino Gamela whose property was located beside the perimeter wall of Pilar Village.

The spouses Polinar, on the other hand, presented in evidence their own TCT; a barangay certification as to the existence of the creek; a certification from the district engineer that the western portion of Pilar Village is bound by a tributary of Talon Creek throughout its entire length; boundary and index map of Pilar Village showing that the village is surrounded by a creek and that the Polinar property is situated at the edge of said creek; and pictures of the subject strip of land filled with water lilies.

On March 22, 1999, the trial court rendered a decision in favor of petitioner Samela:

WHEREFORE, the Court hereby renders judgment ordering the defendants to vacate and remove at their expense the improvements made on the subject lot; ordering the defendants to pay the plaintiff P1,000.00 a month as reasonable compensation for the use of the portion encroached from the filing of the complaint until the same is finally vacated; and to pay plaintiff P10,000.00 as reasonable attorney's fees plus costs of suit.^[3]

In a parallel development, the Metropolitan Trial Court, in Civil Case No. 5243, issued an order on February 29, 2000, directing petitioner Usero and the Polinar spouses to commission a professional geodetic engineer to conduct a relocation survey and to submit the report to the trial court.

On April 24, 2000, Mariano Flotilde, a licensed geodetic engineer, conducted a relocation survey of Usero's property covered by TCT No. T- 29545. The result of the said relocation survey, as stated in his affidavit, was as follows:

1. That I executed a relocation survey of Lot 2, Block 5, (LRC) PCS-4463 covered by TCT No. T-29545 registered in the name of Nimfa O. Usero;
2. That according to my survey, I found out that there is no existing creek on the boundary of the said lot;
3. That based on the relocation plan surveyed by the undersigned, attached herewith, appearing is the encroachment on the above-mentioned lot by Spouses Herminigildo and Cecilia Polinar with an area of FORTY THREE (43) SQUARE METERS;

4. That this affidavit was made in compliance with Court Order dated February 23, 2000 of Metropolitan Trial Court, Las Piñas City, Branch LXXIX.^[4]

On August 25, 2000, the Metropolitan Trial Court decided in favor of petitioner Usero:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering them:

- a) To vacate and remove at their expense the improvement made on the subject lot;
- b) To pay the plaintiff P1,000.00 a month as reasonable compensation for the portion encroached from the time of the filing of the complaint until the same is finally vacated;
- c) To pay plaintiff P10,000.00 as reasonable attorney's fees plus costs of suit.

SO ORDERED.^[5]

The Polinar spouses appealed the decisions of the two Municipal Trial Courts to the Regional Trial Court of Las Piñas, Branch 253 which heard the appeals separately.

On December 20, 2000, the Regional Trial Court, deciding Civil Case No. 5242, reversed the decision of the trial court and ordered the dismissal of the complaint. It confirmed the existence of the creek between the northwestern portion of the lot of petitioner Samela and the southwestern portion of the lot of the spouses Polinar:

Finding the existence of a creek between the respective properties of the parties, plaintiff-appellee cannot therefore lay claim of lawful ownership of that portion because the same forms part of public dominion. Consequently, she cannot legally stop the defendants-appellants from rip-rapping the bank of the creek to protect the latter's property from soil erosion thereby avoiding danger to their lives and damage to property.

Absent a lawful claim by the plaintiff-appellee over the subject portion of that lot, defendants-appellants are not duty bound to pay the former compensation for the use of the same. As a result, they may maintain the said improvements introduced thereon subject to existing laws, rules and regulations and/or ordinances appurtenant thereto.

WHEREFORE, premises considered, the Decision rendered by Branch 79 of the Metropolitan Trial Court, Las Piñas is REVERSED. Accordingly, the instant complaint is DISMISSED.

SO ORDERED.^[6]

On March 16, 2001, the Regional Trial Court, in Civil Case No. 5243, also reversed the finding of the Municipal Trial Court: