SPECIAL TWELFTH DIVISION

[CA-G.R. CV No. 97016, February 05, 2015]

TEODULO ELANO, PETITIONER-APPELLANT, VS. SPS. JESSIE MENDIOLA AND MARJORIE MENDIOLA, RESPONDENTS-APPELLEES.

D E C I S I O N

GALAPATE-LAGUILLES, J:

In this appeal,[1] appellant Teodulo Elano assails the April 4, 2011 Decision[2] of the Regional Trial Court in Civil Case No. 70976-TG dismissing the petition for abatement of nuisance for Elano's failure to establish his case by a preponderance of evidence.

The facts are of record:

On September 27, 2006, Teodulo Elano filed a petition[3] for abatement of nuisance against the Spouses Jessie and Marjorie Mendiola before the Regional Trial Court of Pasig City. In his petition, Elano claimed that a coconut tree owned by his neighbors Spouses Mendiola encroaches on his property. During strong typhoons, the tree swings heavily to his house. This already caused cracks and fractures to the house's cement flooring.[4] Further, in September 2004, members of the "Akyat-Bahay Gang" climbed the coconut tree, entered their house and took three fighting cocks from their cage.[5] The incident was repeated in December 2005.[6] Elano also stated in his petition that the fruits of the tree pose danger to the life and limb of the members of his family, especially his grandchildren. No amicable settlement was reached at the *barangay*; thus, he was compelled to file a case against the spouses. Attached to the petition are photographs showing the exact location of the tree relative to the two houses. Likewise attached are pictures of the alleged cracks and fractures to the concrete house and a broken wooden cage where the fighting cocks were reputedly taken.

In their Answer,[7] the Spouses Mendiola claimed that Elano has no cause of action against them. There is nothing in the petition to show that they violated any of the plaintiff's rights. The coconut tree never encroached on Elano's property. Thus, the tree does not pose any danger to the house and the people in the area. Instead, the tree gave them shared shelter from direct sunlight. Moreover, the photographs that Elano attached to his petition are misleading *"as they are not the actual photographs wherein the coconut tree of the answering defendants is situated."* Appended to the spouses' Answer are pictures that supposedly better exhibit the precise location of the tree in relation to Elano's house.

The Spouses Mendiola prayed that the case be dismissed for lack of merit. By way of compulsory counterclaim,[8] the spouses asked that Elano be ordered to pay them

moral and exemplary damages, attorney's fees, and costs of suit.

After trial, the RTC, in its April 4, 2011 Decision,[9] dismissed the petition for Elano's failure to establish his case by a preponderance of evidence:

> Petitioner was not able to establish his case by preponderance of evidence. Meaning, that evidence which is of greater weight or more convincing than that which is offered in opposition to it. x x x
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> x x x
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> Except for the testimony of the petitioner and that of his wife, which are more self-serving in nature, that the subject coconut tree have [*sic*] encroached their property and endangers their family [,] particularly that of their grandchildren, the same were not proven or validated by clear and convincing evidence, such as testimonies of concerned authorities or even by a disinterested person or neighbors. Petitioner cited the incident in September 2004 where he alleged that an "akyat bahay" gained access to his property using the coconut tree in controversy. This was not validated. In fact, petitioner even admitted that he failed to report the incident to higher authorities x x x.
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> x x x
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> Even the second incident which happened on December 28, 2005, where an "akyat bahay" forced his way to open the cage of his fighting cocks. Petitioner saw the "akyat bahay", even shouted for help and called his children to run after the thief. However, the same was not validated.
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> A mere allegation is not evidence. In Trans-Pacific Industrial Supplies Inc. vs. Court of Appeals, 234 SCRA 494, It was held that a party who alleges a fact has the burden of proving it. In the instant case, Petitioner failed to do so.
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> SO ORDERED.

Unsatisfied, Elano filed this appeal arguing that the trial court erred in finding that he failed to prove that the coconut tree is a nuisance.

The appeal is meritorious.

Under Article 694 of the Civil Code, a nuisance is defined as "any act, omission, establishment, business, condition of property, or anything else which: (1) Injures or endangers the health or safety of others; or (2) Annoys or offends the senses; or (3) Shocks, defies or disregards decency or morality; or (4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) Hinders or impairs the use of property". Based on case law, however, the term "nuisance" is deemed to be "so comprehensive that it has been applied to almost all ways which have interfered with the rights of the citizens, either in person, property, the enjoyment of his property, or his comfort."[10]

Article 695 of the Civil Code classifies nuisances with respect to the object or objects that they affect. In this regard, a nuisance may either be public or private. A public nuisance is one which affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal. A private nuisance, on the other hand, as case law puts it, is one which violates only private rights and produces damage to but one or a few persons.[11]

In this case, the coconut tree is clearly a private nuisance as it endangers the safety of Elano and his family. The law is categorical. A nuisance is any act, omission, establishment, business, condition of property, or anything else that injures or endangers the health or safety of others. Anything then that *endangers* the safety of others is a nuisance. To "endanger" means to put someone or something in a situation in which it is likely to be harmed, damaged, or destroyed.[12] Thus, there need not be an actual injury or damage before something can be considered a nuisance; a potential for danger to life or property is sufficient.

Undoubtedly, the coconut tree poses a hazard to the safety of persons and the property of Elano. The photographs[13] of the tree submitted by both parties may have been taken from different angles but the fact that the tree is situated dangerously close to Elano's house cannot be denied. The coconut fruits may fall and cause an unfortunate injury or even death to people in the area. In a 1984 research conducted by Dr. Peter Barss entitled "Injuries Due to Falling Coconuts", in Papua New Guinea (where he was based), in over a period of four years, 2.5% of trauma admissions were for those injured by falling coconuts, with at least two fatalities.[14] Although we lack the same statistics, it is very plausible that people here die, or at the very least, sustain injuries, due to falling coconuts. Also, the limbs of the tree, if not the tree itself, are instruments of potential danger because they may break and fall during a storm, likewise endangering people's lives and property. This is not to mention the probability also that the tree may be used indeed by wrongdoers to climb and illegally enter Elano's house.

Aside from endangering the safety of people and property, the tree also hinders and impairs the use of the rooftop of Elano's house. The photos[15] show that the branches extend over a corner of the rooftop, an apparent encroachment on Elano's property. Clearly, the tree has become an obstruction to the latter's free use of that portion of the rooftop, thus interfering with their comfortable enjoyment thereof in its entirety.

As regards Elano's claim for damages, however, the same must be denied. For moral damages to be recovered, it must be shown that an injury was suffered by the claimant and that such injury sprang from any of the cases stated in Articles 2219[16] and 2220.[17] Moral damages is emphatically not intended to enrich a party at the expense of another. It is awarded only to enable the injured party to obtain means, diversion, or amusements that will serve to alleviate the moral sufferings he/she underwent, by reason of another's culpable action and must, perforce, be proportionate to the suffering inflicted.[18]

In the instant case, Elano has not convincingly shown that he suffered "mental