TENTH DIVISION

[CA-G.R. CV NO. 94754, May 22, 2014]

MACARIA A. TAGAZA, PETITIONER-APPELLANT, VS. HEIRS OF CARMEN ESCOSA, REPRESENTED BY DR. NESTOR ESCOSA, OPPOSITORS-APPELLEES.

D E C I S I O N

PERALTA, JR., E. B., J.:

Asserting superior rights over oppositors and appellant's compliance with requirements for registration of title in her name over a parcel of land, petitioner pleaded before Us[1] to reverse the disposition of the court *a quo*[2] which rejected her application for registration.

Petitioner Macaria A. Tagaza, the eldest daughter of Aurelio Acosta, was the applicant[3] for registration in her name over a parcel of land described as Lot 256-A of Cad-03-012787 at Barangay San Rafael, Zaragoza, Nueva Ecija with an area of 40,160 square meters. She primarily anchored her application on a "*Waiver of Rights*" and her alleged possession of the land for thirty years.

Petitioner's application was vehemently opposed by the heirs of Carmen Escosa who asserted that they were owners in fee simple for thirty years of the entire Lot 256 of the Zaragoza Cadastre with a total area of 71,967 square meters. Oppositors alleged that included in Lot 256 were: Lot 256-A, with an area of 40,160 square meters, which is the subject matter of petitioner's application for registration; a fishpond with an area of 13,277 square meters and covered by a Certificate of Title in their favor; and a parcel of land with an area of 19,530 square meters.[4]

For its part, the Republic interposed its opposition over the application on the assertion that petitioner and her predecessors-in-interest have not been in open, continuous, exclusive and notorious possession of the land for over thirty years, and that the muniments of title of the petitioner do not appear to be genuine while the tax payment receipts indicated the pretense of possession.[5]

During the hearing of the case, petitioner testified that the land was donated by Deogracias Abella to her father Aurelio. To reinforce petitioner's claim that Aurelio cultivated the land since 1952 and that she assumed possession of the land upon Aurelio's death, Narciso Aquino and Leovenigilda Ancheta Corpuz sat on the witness stand.

For oppositors, Dr. Nestor Escosa, Jose Diego and Bienvenido Gonzalez likewise occupied the witness stand. They primarily testified that the land was owned by Carmen Escosa, Dr. Escosa's grandmother, who passed it on to her daughter Constancia and thereafter to Constancia's daughter, Gliceria. The Escosas, who had cultivated the land with the help of farm workers, allegedly had been in open, exclusive, continuous and notorious possession of the land.

Per the Decision[6] dated January 22, 2010, the court *a quo* denied petitioner's application for registration.

Petitioner's appeal was principally moored on her asseverations that she had duly identified, through her approved survey plan, the land subject of her application and that the mass of evidence on record can lead to a favorable ruling for registration of the land in her name.[7]

Petitioner was correct in asserting superiority of her approved survey plan when juxtaposed with the unapproved survey plan of the oppositors. Concomitantly, there was merit in her postulation that the court *a quo* erred in declaring that Lot 256-A of her survey plan with an area of 40,160 square meters and the subject of her application was the same lot referred to as Lot 256-B of the oppositor's survey plan.[8] While it was true that Dr. Escosa testified on a survey plan issued in favor of oppositors and approved by Regional Technical Director Leopoldo Ulanday,[9] the plan however, cannot be properly appreciated by the court *a quo* since this had not been formally offered. As amplified in *Republic v. Bakunawa, et al*.:[10]

> *A document, or any article for that matter, is not evidence when it is simply marked for identification; it must be formally offered, and the opposing counsel given an opportunity to object to it or cross-examine the witness called upon to prove or identify it. A formal offer is necessary since judges are required to base their findings of fact and judgment only — and strictly — upon the evidence offered by the parties at the trial. To allow a party to attach any document to his pleading and then expect the court to consider it as evidence may draw unwarranted consequences. The opposing party will be deprived of his chance to examine the document and object to its admissibility. The appellate court will have difficulty reviewing documents not previously scrutinized by the court below. The pertinent provisions of the Revised Rules of Court on the inclusion on appeal of documentary evidence or exhibits in the records cannot be stretched as to include such pleadings or documents not offered at the hearing of the case.*

However, the approved survey plan of the petitioner cannot be construed as her title to the land.[11] The approved survey plan merely identifies the property preparatory to a judicial proceeding for adjudication of title.[12] What defines a piece of land is not the size or area mentioned in its description, but the boundaries therein laid down as enclosing the land and indicating its limits.[13]

Parenthetically, it must be stressed that petitioner has the onus to establish her case by preponderance of evidence:

> *'Preponderance of evidence' is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence.' Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Section 1, Rule 133 of the Revised Rules of Court provides the guidelines in determining preponderance of evidence, thus*:

> *In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.*[14]

In her testimony, petitioner asserted that the land was donated by Deogracias to Aurelio albeit there was no documentary evidence to prove the donation. According to petitioner, Deogracias, who owned several parcels of land, would ask money from Aurelio and that Deogracias would say to her father "*Iyo na ang lupa doon sa kuwan*." Every time the realty tax needed to be paid, Deogracias would ask money from Aurelio. Since 1952, Aurelio had been paying the realty tax.[15] Deogracias had no title to his property although in the papers that petitioner allegedly had in her possession, it was Aurelio who was named as the owner of the land, and Deogracias was the administrator.[16] On cross-examination, petitioner admitted that the land was not donated but was purchased ("nabili") by Aurelio from Deogracias.[17] Yet, the record did not disclose any documentary evidence to the effect that the sale actually took place.

Notwithstanding petitioner's inconsistent testimony as to how Aurelio allegedly acquired possession of the land, among the documents[18] attached to petitioner's *Application for Registration Of Title*[19] was the *Joint Affidavit (Waiver Of Rights To Lot)*[20] executed by Deogracias' children namely, Nora, Bella and Eva, all surnamed Abella, which stated that their father "is the registered claimant of a certain parcel of land, known as Lot No. 256, Cad. 387-D, situated at San Rafael, Zaragoza, Nueva Ecija, with an area of SEVENTY ONE THOUSAND NINE HUNDRED SIXTY SEVEN (71,967) SQUARE METERS, more or less" and that they were waiving their "rights, interest and participation [of] a portion of 4.0160 has. of the above parcel of land, in favor of [the] HEIRS of late AURELIO ACOSTA, named MACARIA ACOSTA TAGASA x x x." To underscore the crux of petitioner's application below, the "*Waiver of Rights*" and her alleged possession of the lot for more than thirty years served as foundations for petitioner's claim on the subject property.

Irrefragably, it was only on October 05, 1999, which was the date of execution of the *Joint Affidavit* by Deogracias' children, that petitioner can rightfully claim to have been in possession of the 4.0160 has. of land. It can be safely deduced that, previous to the waiver, the heirs of Deogracias were in open, continuous, exclusive and notorious occupation of the land for otherwise, they could not have made the waiver in favor of petitioner if they no longer have any right or interest in the land. On the one hand, petitioner expressly acknowledged this right and interest by Deogracias' children over the land as she even tried to fortify her application for registration through the waiver executed in her favor. To reiterate, the *Joint Affidavit* by Deogracias' children was one of the supporting documents to petitioner's *Application*.