

## THIRD DIVISION

[ G.R. No. 186204, September 02, 2015 ]

**SPOUSES ROMEO T. JAVIER AND ADORINA F. JAVIER,  
PETITIONERS, VS. SPOUSES EVANGELINE PINEDA DE GUZMAN  
AND VIRGILIO DE GUZMAN, ARNEL PINEDA, EDGAR PINEDA,  
HENRY PINEDA AND REGINO RAMOS, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

This deals with the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court praying that the Decision<sup>[1]</sup> of the Court of Appeals (CA), dated September 24, 2008, and the Resolution<sup>[2]</sup> dated January 7, 2009, denying petitioner's motion for reconsideration thereof, be reversed and set aside.

The antecedent facts are as follows:

On April 8, 2005, petitioners filed with the Municipal Trial Court in Cities of Cabanatuan City (*MTCC*), a Complaint against respondents for Ejectment, pertinent portions of which contain the following allegations:

x x x x

2. Plaintiffs are the absolute owners of a parcel of land at Bakod Bayan, Cabanatuan City with an area of 740 square meters and covered by Transfer Certificate of Title No. T-113559, a copy of which is hereto attached as Annex "A" to "A-1";

3. Plaintiffs were in prior physical possession of the entire property;

4. On December 13, 2004, the above-named defendants unlawfully entered a portion of said land and arrogated unto themselves ownership thereof by enclosing the same with concrete hollow blocks (chb) fence as shown by a copy of picture herewith attached as Annex "B";

5. In the process, defendants, by using a chainsaw, even cut the old and big Java plum (duhat) tree of plaintiff on the subject land, had it sawn, and took it for their own personal purposes.

6. While the concrete hollow blocks (chb) fence was being erected, plaintiff Romeo T. Javier made a request to the Office of the City Engineer, Cabanatuan City to conduct a relocation survey so as to prove to defendants the metes and bounds of plaintiffs' property and in the said survey it appears that defendants have encroached an area of 121.5434 square meters on plaintiffs' land and 26.43 square meters on the road

right of way (Copy of Memorandum of Honorio G. Garcia, Engineer IV, Geodetic Services Division for the City Engineer of Cabanatuan City containing this information, among others, is appended hereto as Annex "C");

7. The above findings, however, and several demands made by plaintiffs and their father Gregorio Javier, to defendants for them to desist from occupying subject land were just ignored by defendants and they persisted in completing their illegal acts;

8. Referral of the matter by complainants to the Barangay officials of Bakod Bayan, Cabanatuan City similarly failed as evidenced by a Certification to that effect herewith attached as Annex "D";

9. Plaintiffs suffered and have been continuously suffering damages because of the acts of defendants as narrated above;

10. Further, the construction by defendants of the concrete hollow blocks (chb) fence is violative of the National Building Code (PD 1096) and for which defendant Eva Pineda was charged by George G. Garcia of the Cabanatuan City Engineers' Office as shown by an Affidavit- Complaint, Information for violation of PD 1096 and Warrant of Arrest attached respectively as Annexes "E", "F" to "F-1" and "G";

11. In cutting the above-mentioned old and big Java plum (duhat) tree, defendants likewise violated Section 68 of Presidential Decree No. 705, (The Revised forestry code of the Philippines) as amended by E.O. No. 277 viz.,

Section 68. Cutting, gathering and or collecting timber or other forest products without license. - Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code.... x x x. (underscoring supplied)

(Copies of Certification issued by the Community Environment and Natural Resources Office (CENRO) to the effect that defendants did not secure the necessary cutting permit from said government agency are attached as Annexes "H" and "I")

12. Defendants have no title over the adjacent lot where they are staying at the time they illegally occupied and fenced the subject portion of plaintiffs land and even up to the filing of this suit;

13. Due to the illegal acts committed by defendants, plaintiffs were deprived of the use and occupation of the land and for which they should be paid by defendants damages in the amount of no less than

P10,000.00 and for taking the Java plum (duhat) free against the will of the plaintiffs, they should likewise be ordered to pay a minimum amount of P15,000.00;

14. In order to protect their rights, plaintiffs were forced to litigate and for that purpose constrained to secure the services of counsel to whom they paid an amount of P20,000.00 for his acceptance fee and will pay P2,000.00 for every appearance in court. In filing this suit, they incurred an amount of P4,220.00 for filing fee and are likely to spend an amount of at least P15,000.00 as litigation expenses;

15. The assessed value of the 740-square-meter land of plaintiffs is P2,480.00 as proven by a copy of Tax Declaration herewith attached as Annex "J";<sup>[3]</sup>

Respondents, on the other hand, alleged in their Answer that the area they fenced in had always been in their possession as it was within the boundary of the lot they had been occupying. They maintained that the disputed area had originally been enclosed by a barbed wire fence and respondents were merely replacing the barbed wires with concrete hollow blocks, without changing or moving the boundaries. While this case was pending before the trial court, the lot occupied by respondents was titled in the name of their sister, Adoracion Pineda Ilustre. Respondents questioned the survey conducted by the Office of the City Engineer, pointing out that it was done unilaterally, without taking into consideration the boundaries of their lot as described in the Transfer Certificate of Title registered in the name of their sister. After due proceedings, the MTCC issued its Decision dated March 15, 2007, dismissing the complaint on the ground that the case involved a boundary dispute, thus, a plenary action within the competence of the Regional Trial Court is the proper remedy.

Petitioners then appealed to the Regional Trial Court (*RTC*), and in a Decision dated October 19, 2007, said court disposed as follows:

WHEREFORE, the decision appealed from is hereby reversed and set aside. Judgment is hereby rendered in favor of the plaintiffs-appellants [herein petitioners], and against the defendants-appellees, ordering the latter as follows:

1. Defendants and all persons claiming right under them to vacate the premises in question by removing the concrete fence they have constructed within the plaintiffs' lot and restore possession of the same peacefully to the plaintiffs;
2. Defendants to reimburse to plaintiffs the amount of P4,220.00 that plaintiffs paid as filing fees in the lower court plus the amount of P1,515.00 that plaintiffs paid as appeal docket fee as evidenced by the corresponding official receipts issued by the Clerk of Court of the MTCC of Cabanatuan City;
3. To refund to plaintiffs the amount of P20,000.00 for attorney's fees; and