

FIRST DIVISION

[G.R. No. 161380, April 21, 2014]

**AZNAR BROTHERS REALTY COMPANY, PETITIONER, VS.
SPOUSES JOSE AND MAGDALENA YBAÑEZ, RESPONDENTS.**

D E C I S I O N

BERSAMIN, J.:

The ownership of a sizable parcel of land is the subject of this dispute between the buyer of its recognized owner and the buyer of the successors-in-interest of the recognized owner. The land has since been registered under the Torrens system in the name of the latter buyer who had meanwhile obtained a free patent on the premise that the land belonged to the public domain.

The Case

Aznar Brothers Realty Company (Aznar Brothers) is on appeal to review and undo the adverse decision promulgated on October 10, 2002,^[1] whereby the Court of Appeals (CA) affirmed the judgment rendered on March 8, 1996 by the Regional Trial Court (RTC), Branch 10, in Cebu City^[2] insofar as the RTC: (a) dismissed for lack of merit Aznar Brothers' complaint for the declaration of the nullity of the extrajudicial declaration of heirs with extrajudicial settlement of estate and deed of absolute sale, and (b) declared Lot No. 18563 as legally owned by defendants Spouses Jose and Magdalena Ybañez (Spouses Ybañez), but modified the decision of the RTC by deleting the awards of moral and exemplary damages, attorney's fees, litigation expenses and costs of suit.

Antecedents

On March 21, 1964, Casimiro Ybañez (Casimiro), with the marital consent of Maria Daclan, executed a *Deed of Absolute Sale* in favor of Aznar Brothers conveying for P2,500.00 the 17,575-square-meter unregistered agricultural land planted with 17 coconut trees situated in Banika-Bulacao, Pardo, Cebu City, and covered by Tax Declaration No. IV-00128.^[3] The Deed of Absolute Sale described the property as bounded on the North by Aznar Brothers; on the East by Angel Sabellano; on the South by Bernardo Sabellano; and on the West by Agaton Bacalso. The parties agreed to register the sale under Act No. 3344.^[4]

On February 17, 1967, Saturnino Tanuco sold to Aznar Brothers for P2,528.00 the 15,760-square-meter parcel of corn and cogon land planted with 17 coconut trees situated in Candawawan, Pardo, Cebu City, bounded on the North by Alfonso Pacaña; on the East by Tecla Cabales; on the South by Angel Abellana; and on the West by Castor Sabellano. Tax Declaration No. IV-004787 was issued for the property. The parties agreed to register the parcel of land under Act No. 3344.^[5]

In his affidavit of confirmation executed on April 11, 1967, Angel Abellana declared that during the lifetime of his daughter, Rosa, he had given to her husband, Tanuco, a parcel of land "known as Lot No. 18563" with an area of 15,760 square meters located in Pardo, Cebu City; that the land was bounded on the North by Alfonso Pacaña; on the East by Tecla Cabales; on the South by Lot No. 5316 of Angel Abellana; and on the West by Castor Sabellano; that the property assessed at P300.00 was declared under Tax Declaration No. IV-004787; and that on February 17, 1967 Tanuco had sold the parcel of land to Aznar Brothers for P4,728.00.^[6]

On July 3, 1968, Casimiro died intestate leaving as heirs his wife Maria, and their children, namely, Fabian and Adriano, both surnamed Ybañez, and Carmen Ybañez-Tagimacruz, Fe Ybañez-Alison, and Dulcisima Ybañez-Tagimacruz. On August 29, 1977, the heirs of Casimiro executed a document entitled Extrajudicial Declaration of Heirs with an *Extrajudicial Settlement of Estate of Deceased Person and Deed of Absolute Sale*, whereby they divided and adjudicated among themselves Lot No. 18563 with an area of 16,050 square meters situated in Banika, Bulacao, Pardo Cebu City. By the same document, they sold the entire lot for P1,000.00 to their co-heir, Adriano D. Ybañez (Adriano).^[7]

On June 21, 1978, Adriano sold Lot No. 18563 to Jose R. Ybañez for P60,000.00. Lot No. 18563 is described in their deed of sale as containing an area of 16,050 square meters, and was bounded on the North by the lot of Eusebia Bacalso; on the East by a lot of Aznar Brothers; on the South by a lot of Angel Abellana; and on the West by a lot of Teofila C. Leona.^[8]

On January 15, 1979, Jose R. Ybañez filed Free Patent Application No. (VII-I) 18980 in respect of the land he had bought from Adriano.^[9] In due course, on July 20, 1979, Original Certificate of Title (OCT) No. 2150 was issued to Jose R. Ybañez. The 16,050-square-meter land is particularly described in OCT No. 2150 as –

situated in the Barrio of Bulacao-Pardo, City of Cebu x x x. Bounded on the NorthEast, along lines 1-2-3 by Lot No. 1811, on the SouthEast, along lines 3-4 by Lot No. 5316; on the SouthWest, along lines 4-5-6-7-8-9-10-11 by Lot No. 18565; on the NorthWest, along line 11-12 by Lot No. 18566; along line 12-1 by Lot No. 18114, all of Cebu City.^[10]

On May 26, 1989, Aznar Brothers filed in the RTC a complaint against Jose R. Ybañez claiming absolute ownership of Lot No. 18563 by virtue of the *Deed of Absolute Sale* dated March 21, 1964 executed in its favor by Casimiro (Civil Case No. CEB-7887). Alleging that the free patent issued in favor of Jose R. Ybañez covered the same property "already adjudicated as private property," Aznar Brothers sought judgment to compel Jose R. Ybañez to surrender all the documents pertaining to the free patent for cancellation, and to order him to pay attorney's fees of P5,000.00 and litigation expenses of P3,000.00.^[11]

Jose R. Ybañez moved to dismiss the complaint of Aznar Brothers on the ground of lack of cause of action, lack of jurisdiction over the nature of the action, and estoppel by laches.^[12] After Aznar Brothers opposed,^[13] the RTC denied the motion

to dismiss.^[14] Thereafter, Jose R. Ybañez filed his answer to the complaint.

In his answer, Jose R. Ybañez reiterated the grounds of his motion to dismiss (*i.e.*, lack of cause of action, lack of jurisdiction over the nature of the action, and the bar by estoppel by laches); and prayed that Aznar Brothers be ordered to pay moral damages of P100,000.00; exemplary damages in an amount to be determined by the court; attorney's fees of P20,000.00; and litigation expenses of P5,000.00, plus costs of suit.^[15]

In its reply, Aznar Brothers averred that Jose R. Ybañez did not present "records or certification as to the ownership of the land at the time of the application for free patent xxx to prove that the land xxx is not a private land."^[16]

In the course of the case, Aznar Brothers amended its complaint to allege the sale executed on February 17, 1967 by Tanuco and confirmed by Angel Abellana on April 11, 1967.^[17]

In his amended answer, Jose R. Ybañez contended that Aznar Brothers had offered to buy the property from him, requesting him to update and prepare all the documents relevant to the sale, but Aznar Brothers later opted to claim the property as its own when the sale could not be finalized.^[18]

Aznar Brothers amended its complaint a second time to implead Jose R. Ybañez's wife Magdalena Marcos-Ybañez as defendant, averring that both defendants held "no legal right nor just title to apply for free patent over the lot in question," for the land was "no longer a public disposable agricultural land but a private residential land" that it already owned; that the issuance of OCT No. 2150 was erroneous and without factual and legal bases; that it learned about the registration of the land in the name of Jose R. Ybañez only when his agent offered to sell the land to it; that it refused the offer because it was already the owner of the land; and that consequently OCT No. 2150 should be cancelled, and Jose R. Ybañez should be ousted from the land.^[19]

Aznar Brothers sought a restraining order or a writ of preliminary injunction to prevent the Spouses Ybañez from disposing of the land. It further sought the declaration as null and void ab initio the Extrajudicial Declaration of Heirs with *Extrajudicial Settlement of Estate of Deceased Person and Deed of Absolute Sale* dated August 29, 1977, and of the *Deed of Absolute Sale* dated June 21, 1978; the cancellation of OCT No. 2150; an order directing the Register of Deeds to issue another title in its name; the ouster of the Spouses Ybañez from the property; the permanent injunction to prevent Spouses Ybañez from interfering with or disturbing its possession and ownership of Lot No. 18563; and judgment ordering the Spouses Ybañez to pay moral damages of P50,000.00, attorney's fees of P30,000.00, and litigation expenses of P20,000.00.

The Ybañez Spouses opposed the admission of the second amended complaint, claiming that the cause of action would thereby be changed from *accion publiciana* to *accion reivindicatoria*; that while Magdalena Marcos-Ybañez was thereby being impleaded, the heirs named in the *Extrajudicial Declaration of Heirs with Extrajudicial Settlement of Estate of Deceased Person and Deed of Absolute Sale*, specifically Adriano, were not being impleaded; and that the declaration of nullity of

OCT No. 2150 was a prohibited collateral attack on their title to the property.^[20]

The RTC admitted the second amended complaint, emphasizing that the original cause of action of *accion publiciana* would not be changed because the second amended complaint would incorporate additional but related causes of action, a change permitted only during the pre-trial stage.^[21]

The Ybañez Spouses then amended their answer by reiterating the allegations in their previous answers, and, in addition, pleaded that they had religiously paid the taxes on the land; that the claim of ownership of Aznar Brothers had been based only on tax declarations; that their application for free patent had been granted more than ten years prior to the filing of the complaint by Aznar Brothers, who were all too aware of the land registration case; that Aznar Brothers did not question their title within one year from its issuance; that a decree of registration being binding on the whole world, the filing of the complaint ten years after the title had been issued left the complaint without any cause of action; that the action for recovery of possession constituted a collateral attack on their title to the property; and that adverse, notorious and continuous possession of the property under a claim of ownership was ineffective against a Torrens title. They sought the dismissal of the second amended complaint for lack of cause of action, lack of jurisdiction, estoppel by laches, and lack of proper parties; and prayed for moral damages of P100,000.00; exemplary damages in such amount as the court would award in the exercise of discretion; attorney's fees of P20,000.00; and litigation expenses of P5,000.00 plus costs of suit.^[22]

Judgment of the RTC

On March 8, 1996,^[23] the RTC rendered judgment after trial, declaring that the identity of the land sold to Aznar Brothers by Casimiro and the land sold by the heirs of Casimiro to Jose R. Ybañez was "not an issue anymore" because it was "not raised as an issue" during the pre-trial conference; that the issue remaining for resolution concerned which of the conflicting claims of ownership – that of Aznar Brothers based on Tax Declaration No. GR-07-049-00694 or that of the Spouses Ybañez based on OCT No. 2150 – should prevail; that the Spouses Ybañez with their OCT No. 2150 should prevail, rendering Aznar Brothers' complaint dismissible for lack of merit; that Lot No. 18563 was "legally owned by the defendants;" and Aznar Brothers was liable to pay the Spouses Ybañez moral damages of P100,000.00, exemplary damages of P50,000.00, attorney's fees of P20,000.00, and litigation expenses of P5,000.00, plus costs of suit.

Decision of the CA

Aznar Brothers appealed to the CA, assailing the judgment of the RTC for not sustaining the sale by Casimiro in its favor of Lot No. 18563 despite the sale being registered under Act No. 3344, as amended; and for awarding moral damages, exemplary damages, attorney's fees and litigation expenses to the Spouses Ybañez.

As earlier mentioned, the CA promulgated its adverse decision on October 10, 2002,^[24] decreeing thusly:

WHEREFORE, premises considered, the Court **AFFIRMS** the appealed judgment but **DELETES** the award of attorney's fees, litigation expenses, costs of the suit, moral and exemplary damages.

SO ORDERED.

The CA denied the motion for reconsideration of Aznar Brothers.

Issues

Only Aznar Brothers has come to the Court for review, raising the following issues for consideration and resolution, to wit:

1. THE CONCLUSION OF THE HONORABLE COURT OF APPEALS THAT PETITIONER IS BARRED BY ESTOPPEL BY LACHES, IS NOT IN ACCORD WITH LAW AND/OR WITH APPLICABLE DECISIONS OF THE SUPREME COURT THEREBY COMMITTING A REVERSIBLE ERROR OF LAW WHICH IS GRAVELY PREJUDICIAL TO THE RIGHT OF THE PETITIONER OVER THE SUBJECT LOT NO. 18563. SAID CONCLUSION IS NOT SUPPORTED BY FACTS ON RECORDS (sic).
2. THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT DECLARING SUBJECT LOT AS LEGALLY OWNED BY THE RESPONDENTS DESPITE OF ITS OWN FINDING THAT: RESPONDENTS WERE BUYERS IN BAD FAITH AND THAT THEIR SELLERS WERE NOT OWNERS OF THE PROPERTY IN QUESTION AND THEREFORE, THERE WAS NOTHING THAT THEY COULD HAVE SOLD TO THE RESPONDENTS.^[25]

Ruling of the Court

The appeal is meritorious.

1.

Identity of the lot *in litis* is no longer a proper issue herein

The CA and the RTC both held that the identity of the property *in litis* was no longer an issue to be considered and determined because the parties did not raise it at the pre-trial. The Spouses Ybañez insist herein, however, that the RTC and the CA should have made such a finding nonetheless in view of the materiality of whether the land claimed by Aznar Brothers was different from Lot No. 18563, the land subject of their OCT No. 2150.

We clarify that although the Spouses Ybañez's non-appeal barred them from assigning errors for purposes of this review, they are not prevented from now insisting, if only to uphold the judgment of the CA against Aznar Brothers,^[26] that the property *in litis* was not the same as Lot No. 18563, but they would not be accorded any relief upon those reasons,^[27] even if the Court should find Aznar