

SECOND DIVISION

[G.R. No. 192861, June 30, 2014]

LINDA RANA, PETITIONER, VS. TERESITA LEE WONG, SPS. SHIRLEY LEE ONG AND RUBEN ANG ONG, REPRESENTED BY THEIR ATTORNEY-IN-FACT WILSON UY, AND SPS. ROSARIO AND WILSON UY, RESPONDENTS.

[G.R. No. 192862]

SPS. ROSARIO AND WILSON UY, WILSON UY AS ATTORNEY-IN-FACT OF TERESITA LEE WONG, AND SPS. SHIRLEY LEE ONG AND RUBEN ANG ONG, PETITIONERS, VS. SPS. REYNALDO AND LINDA RANA, RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, J.:

Designated Acting Chairperson per Special Order No. 1699 dated June 13, 2014.
Designated Acting Member per Special Order No. 1712 dated June 23, 2014.
Designated Acting Member per Special Order No. 1696 dated June 13, 2014.

Assailed in these consolidated petitions for review on *certiorari*^[1] are the Decision^[2] dated July 13, 2005 and the Resolution^[3] dated June 18, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 78463 which affirmed the Decision^[4] dated December 20, 2002 of the Regional Trial Court of Cebu City, 7th Judicial Region, Branch 22 (RTC) in Civil Case Nos. CEB-20893 and CEB-21296.

The Facts

Teresita Lee Wong (Wong) and Spouses Shirley and Ruben Ang Ong (Sps. Ong) are co-owners *pro-indiviso* of a residential land situated in Peace Valley Subdivision, Lahug, Cebu City, covered by Transfer Certificate of Title (TCT) No. 139160^[5] (Wong-Ong property), abutting^[6] a 10-meter^[7] wide subdivision road (subject road).

On the opposite side of the subject road, across the Wong-Ong property, are the adjacent lots of Spouses Wilson and Rosarlo Uy (Sps. Uy) and Spouses Reynaldo and Linda Rana (Sps. Rana), respectively covered by TCT Nos. 124095^[8] (Uy property) and T-115569^[9] (Rana property). The said lots follow a rolling terrain^[10] with the Rana property standing about two (2) meters^[11] higher than and overlooking the Uy property, while the Wong-Ong property is at the same level with the subject road.^[12]

Sometime in 1997, Sps. Rana elevated and cemented a portion of the subject road

that runs between the Rana and Wong-Ong properties (subject portion) in order to level the said portion with their gate.^[13] Sps. Rana likewise backfilled a portion (subject backfilling) of the perimeter fence separating the Rana and Uy properties without erecting a retaining wall that would hold the weight of the added filling materials. The matter was referred to the Office of the Barangay Captain of Lahug^[14] as well as the Office of the Building Official of Cebu City (OBO),^[15] but to no avail.^[16]

The RTC Proceedings

On September 19, 1997, Wong, Sps. Ong, and Sps. Uy (Wong, *et al.*) filed a Complaint^[17] for Abatement of Nuisance with Damages against Sps. Rana before the RTC, docketed as **Civil Case No. CEB-20893**, seeking to: (a) declare the subject portion as a nuisance which affected the ingress and egress of Wong and Sps. Ong to their lot "in the usual and [normal] manner, such, that they now have to practically jump from the elevated road to gain access to their lot and scale the same elevation in order to get out";^[18] (b) declare the subject backfilling as a nuisance considering that it poses a clear and present danger to the life and limb of the Uy family arising from the premature weakening of Sps. Uy's perimeter fence due to the seeping of rain water from the Rana property that could cause its sudden collapse;^[19] (c) compel Sps. Rana to restore the subject portion to its original condition; (d) compel Sps. Rana to remove the backfilling materials along Sps. Uy's perimeter fence and repair the damage to the fence; and (e) pay moral and exemplar/ damages, attorney's fees, litigation expenses, and costs of suit.^[20]

In their Answer dated October 23, 1997,^[21] Sps. Rana countered that prior to the construction of their residence, there was no existing road and they merely developed the subject portion which abuts their gate in view of the rolling terrain. They claimed that Wong and Sps. Ong do not have any need for the subject portion because their property is facing an existing road, *i.e.*, Justice Street. They likewise denied having undertaken any backfilling along the boundary of the Uy property considering the natural elevation of their own property, which renders backfilling unnecessary.^[22]

After the filing of Sps. Rana's Answer, Wong, *et al.*, in turn, filed a Motion for Leave to be Allowed to Bring in Heavy Equipment^[23] for the intermediate development of the Wong-Ong property with a view to the use of the subject road as access to their lot. Notwithstanding Sps. Rana's opposition, the RTC granted Wong, *et al.*'s motion in an Order^[24] dated November 27, 1997 (November 27, 1997 Order), the dispositive portion of which reads as follows:

WHEREFORE, as prayed for, the motion is hereby GRANTED. Consequently, the plaintiffs are hereby allowed **to use heavy equipments/machineries in order to develop the area and make use of the right of way which is located between the [Wong-Ong and Rana properties]**. (Emphasis supplied)

Despite the limited tenor of the November 27, 1997 Order, Wong, *et al.*, on May 23

and 24, 1998, proceeded to level the subject portion, which, in the process, hampered Sps. Rana's ingress and egress to their residence, resulting too to the entrapment of their vehicle inside their garage.^[25] Feeling aggrieved, Sps. Rana, on June 19, 1998, filed a Supplemental Answer,^[26] praying for: (a) the restoration of the soil, boulders, grade, contour, and level of the subject portion; and (b) payment of moral damages, actual and consequential damages, and exemplary damages.

Meanwhile, on December 8, 1997, Sps. Rana filed with another branch of the same trial court a Complaint^[27] for Recovery of Property and Damages against Sps. Uy, docketed as **Civil Case No. CEB-21296**. They alleged that in October 1997, they caused a resurvey of their property which purportedly showed that Sps. Uy encroached upon an 11-square meter (sq. m.) portion along the common boundary of their properties. Their demands for rectification as well as barangay conciliation efforts were, however, ignored. Thus, they prayed that Sps. Uy be ordered to remove their fence along the common boundary and return the encroached portion, as well as to pay moral damages, attorney's fees, and litigation expenses. After the filing of Sps. Rana's complaint, Civil Case No. CEB-21296 was consolidated with Civil Case No. CEB-20893.^[28]

In response thereto, Sps. Uy filed an Answer with Counterclaim,^[29] averring that prior to putting up their fence, they caused a relocation survey of their property and were, thus, confident that their fence did not encroach upon the Rana property. In view of Sps. Rana's complaint, they then caused another relocation survey which allegedly showed, however, that while they encroached around 3 sq. m. of the Rana property, Sps. Rana intruded into 7 sq. m. of their property. Hence, they posited that they had "a bigger cause than that of [Sps. Rana] in [so] far as encroachment is concerned."^[30] Accordingly, they prayed for the dismissal of Sps. Rana's complaint with counterclaim for damages, attorney's fees, and litigation expenses.

In light of the foregoing, the RTC appointed three (3) commissioners to conduct a resurvey of the Uy and Rana properties for the purpose of determining if any encroachment occurred whatsoever.^[31]

The RTC Ruling

On December 20, 2002, the RTC rendered a Decision^[32] in the consolidated cases.

In **Civil Case No. CEB-20893**, the RTC found that: (a) Sps. Rana, without prior consultation with the subdivision owner or their neighbors, developed to their sole advantage the subject portion consisting of one-half of the width of the 10-meter subject road by introducing filling materials, and rip rapping the side of the road; (b) the said act denied Wong and Sps. Ong the use of the subject portion and affected the market value of their property; (c) Sps. Uy have no intention of using the subject portion for ingress or egress considering that they built a wall fronting the same; and (d) Wong, *et al.*'s manner of enforcing the November 27, 1997 Order caused damage and injury to Sps. Rana and amounted to bad faith. In view of these findings, the RTC declared that the parties all acted in bad faith, and, therefore, no relief can be granted to them against each other.^[33]

Separately, however, the RTC found that the backfilling done by Sps. Rana on their

property exerted pressure on the perimeter fence of the Uy property, thereby constituting a nuisance. As such, the former were directed to construct a retaining wall at their own expense.^[34]

Meanwhile, in **Civil Case No. CEB-21296**, the RTC, despite having adopted the findings of Atty. Reuel T. Pintor (Atty. Pintor) — a court-appointed commissioner who determined that Sps. Uy encroached the Rana property by 2 sq. m^[35] - dismissed both the complaint and counterclaim for damages because of the failure of both parties to substantiate their respective claims of bad faith against each other.^[36]

Dissatisfied with the RTC's verdict, the parties filed separate appeals with the CA.

The CA Ruling

On July 13, 2005, the CA rendered a Decision^[37] affirming the RTC.

With respect to **Civil Case No. CEB-20893**, the CA found that (a) Sps. Rana's act of elevating and cementing the subject portion curtailed the use and enjoyment by Wong and Sps. Ong of their properties'; (b) the undue demolition of the subject portion by Wong, *et al.* hampered Sps. Rana's ingress and egress to their residence and deprived them of the use of their vehicle which was entrapped in their garage; and (c) both parties were equally at fault in causing damage and injury to each other and, thus, are not entitled to the reliefs sought for.^[38]

On the other hand, the CA found that the backfilling done by Sps. Rana on their property requires necessary works to prevent it from jeopardizing someone's life or limb.^[39]

As for **Civil Case No. CEB-21296**, the CA sustained the dismissal of the complaint as well as the parties' respective claims for damages for lack of legal and factual bases.^[40]

The parties filed separate motions for reconsideration^[41] which were, however, denied in the Resolution^[42] dated June 18, 2010, hence, the instant petitions.

The Issues Before the Court

In **G.R. No. 192861**, petitioner Linda Rana (Linda Rana)^[43] faults the RTC in (a) not finding Wong and Sps. Uy guilty of malice and bad faith both in instituting Civil Case No. CEB-20893 and in erroneously implementing the November 27, 1997 Order, -and (b) failing or refusing to grant the reliefs initially prayed for, among others, the reconveyance of the encroached property.^[44]

On the other hand, in **G.R. No. 192862**, petitioners Wong, *et al.* fault the RTC in (a) applying the *in pari delicto* doctrine against them and failing to abate the nuisance^[45] which still continues and actually exists as Sps. Rana caused the same to be reconstructed and restored to their prejudice,^[46] and (b) not finding Sps. Rana guilty of bad faith in instituting Civil Case No. CEB-21296 and ordering them to

pay damages to petitioners Wong, *et al.*^[47]

The Court's Ruling

The petitions are partly meritorious.

As both petitions traverse the issues intersectingly, the Court deems it apt to proceed with its disquisition according to the subject matters of the cases as originally filed before the RTC.

A. Civil Case No. CEB-20893 For Abatement of Nuisance and Damages.

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."^[48]

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: (a) a public nuisance (or 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"); or (b) a private nuisance (or one "that is not included in the foregoing definition" [or, as case law puts it, one which "violates only private rights and produces damages to but one or a few persons"]^[49]).

Jurisprudence further classifies nuisances in relation to their legal susceptibility to summary abatement (that is, corrective action without prior judicial permission). In this regard, a nuisance "may either be: (a) a nuisance *per se* (or one which "affects the immediate safety of persons and property and may be summarily abated under the undefined law of necessity");^[50] or (b) a nuisance *per accidens* (or that which "depends upon certain conditions and circumstances, and its existence being a question of fact, it cannot be abated without due hearing thereon in a tribunal authorized to decide whether such a thing does in law constitute a nuisance."^[51]

It is a standing jurisprudential rule that unless a nuisance is a nuisance *per se*, it may not be summarily abated. In *Lucena Grand Central Terminal, Inc. v. Jac Liner, Inc.*,^[52] the Court, citing other cases on the matter, emphasized the need for judicial intervention when the nuisance is not a nuisance *per se*, to wit:

In *Estate of Gregoria Francisco v. Court of Appeals*, this Court held: