

THIRD DIVISION

[G.R. No. 194270, December 03, 2012]

LORETO BOTE, PETITIONER, VS. SPOUSES ROBERT VELOSO AND GLORIA VELOSO, RESPONDENTS.

DECISION

VELASCO JR., J.:

The Case

This Petition for Review on Certiorari under Rule 45 of the Rules of Court seeks to annul the May 17, 2010 Decision^[1] and October 22, 2010 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CV No. 69606 entitled *Spouses Robert Veloso and Gloria Veloso v. Loreto Bote and Carlos De Leon*. The assailed CA Decision modified the Decision dated December 8, 2000^[3] of the Regional Trial Court, Branch 273 in Marikina City (Marikina RTC) in Civil Case No. 96-282-MK entitled *Spouses Robert Veloso and Gloria Veloso v. Loreto Bote and Carlos De Leon* which dismissed the case for lack of cause of action.

The Facts

On September 21, 1951, Pedro T. Baello (Baello) and his sister, Nicanora Baello-Rodriguez (Rodriguez), filed an application for registration of their property in Caloocan City with the then Court of First Instance of Rizal consisting of 147,972 square meters. On November 2, 1953, the land was successfully registered under their names under Original Certificate of Title No. (OCT) (804) 53839.^[4] On July 27, 1971, the lot was subdivided into Lot A covering 98,648 square meters in favor of Baello and Lot B covering 49,324 square meters in favor of Rodriguez.^[5] On December 3, 1971, Baello died intestate leaving thirty two (32) surviving heirs while Rodriguez died intestate on August 22, 1975 without issue.^[6]

The subject property was included in the *Dagat-Dagatan* Project launched in 1976 by the then First Lady Imelda R. Marcos. Sometime thereafter, armed military personnel forcibly evicted the caretaker of the heirs of Baello and Rodriguez from the property, destroying the residential structure and the fishponds thereon. Thereafter, the National Housing Authority (NHA), as the government agency tasked to undertake the *Dagat-Dagatan* Project, took possession of the property preparatory to its subdivision and awarded the lots to chosen beneficiaries.

After the fall of the Marcos regime, the heirs of Baello executed, on February 23, 1987, an extrajudicial partition of their share of the property.

Then, on August 18, 1987, the NHA filed a complaint with the RTC of Caloocan City, Branch 120 (Caloocan RTC), for the expropriation of the subject land. The case was

docketed as Civil Case No. C-169.

In the meantime, Lot A of OCT (804) 53839 was subdivided and on August 7, 1989, TCTs 191069, 191070, 191071, 191072, 191073 and 191074 were issued in the name of Baello. While TCTs 191062, 191063, 191064, 191065, 191066, 191067 and 191068 were issued in the name of Rodriguez covering Lot B of OCT (804) 53839.^[7]

Thereafter, the Baello and Rodriguez heirs filed separate motions to dismiss Civil Case No. C-169 which the Caloocan RTC granted on the grounds of *res judicata* and lack of cause of action.^[8] The NHA appealed the ruling of the RTC to the CA which rendered a Decision dated August 21, 1992^[9] affirming the ruling of the trial court. The case was elevated to this Court which denied due course to the petition in a Resolution dated May 3, 1993.^[10] The Resolution attained finality in an Entry of Judgment dated July 7, 1993.^[11]

Unperturbed, on November 5, 1993, the NHA filed another complaint against the Baello and Rodriguez heirs with another RTC of Caloocan, this time for the declaration of nullity of OCT (804) 53839. The case was eventually dismissed on the grounds of estoppel and *res judicata*. The NHA appealed the case to the CA which affirmed the ruling of the trial court. On August 24, 2004, this Court denied NHA's appeal of the CA decision.^[12]

In the meantime, on August 12, 1985, one Gloria Veloso (Gloria) was awarded a residential lot at the *Dagat-Dagatan* Project for the price of PhP 37,600 as evidenced by an Individual Notice of Award dated August 12, 1985.^[13] The award was subject to the conditions that Gloria commence construction of a residential house on the property within six (6) months from the date of allocation and complete the same within one (1) year from the commencement of construction, and that she occupy the house also within one (1) year from allocation.^[14]

Thus, Gloria constructed a two (2)-storey house on the property awarded to her and resided therein until 1991. In 1995, Gloria leased the house to Loreto Bote (Bote) from October to December.^[15] On February 5, 1996, Bote executed a Promissory Note^[16] undertaking to pay Gloria Veloso and her husband Robert Veloso (spouses Veloso) the amount of eight hundred fifty thousand pesos (PhP 850,000) on or before March 31, 1996 as purchase price for property. The Promissory Note effectively assigned to the spouses Veloso, Bote's credit with a certain Carlos De Leon who indicated his conforme in the note. Bote failed to pay the purchase price indicated in the Promissory Note. Thus, the spouses Veloso, through counsel, issued a Demand Letter dated April 15, 1996^[17] demanding the payment of the purchase price of PhP 850,000. Despite such demand letter, Bote still failed to pay the purchase price.

Thus, the spouses Veloso filed a Complaint dated June 3, 1996^[18] against Bote for Sum of Money and/or Recovery of Possession of Real Property with Damages. Notably, the case was filed at the Marikina RTC, thereat docketed as Civil Case No. 96-282-MK and raffled to Branch 273.

In his Answer dated November 21, 1996,^[19] Bote alleged, as Special/Affirmative

Defenses, that the Marikina RTC had no territorial jurisdiction to try a case for recovery of possession of real property located in Caloocan City and that the subject property is not owned by the spouses Veloso but by Cynthia T. Baello (Cynthia) as shown in TCT No. 290183 covering the subject property, an alleged heir of Pedro Baello. He further alleged that he purchased the property from Cynthia as evidenced by a Contract to Sell dated May 9, 1996.^[20]

It is noteworthy that, at the Pre-Trial Conference, and as reflected in the Pre-Trial Order dated December 9, 1997,^[21] the parties agreed that the complaint would only be one for sum of money and no longer for recovery of possession of the subject property. The Pre-Trial Order reads:

STIPULATION OF FACTS

- 1) That the present action shall be treated as one for Sum of Money and not for Recovery of Possession of Lot;
- 2) That defendant Loreto Bote is the one presently occupying the house and lot; and
- 3) That plaintiffs are not the registered owners of the subject lot. (Emphasis supplied.)^[22]

Notably, during the hearing of the case, Cynthia testified before the trial court claiming to be one of the heirs of Pedro Baello.^[23] Such contention was never rebutted by the spouses Veloso.

After hearing, the RTC issued its Decision dated December 8, 2000,^[24] the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered
DISMISSING the complaint.

With Costs against the plaintiffs.

SO ORDERED.

In the Decision, the trial court ruled that the spouses Veloso failed to adduce evidence to show a rightful claim over the subject property. Further, the RTC noted that the spouses Veloso's reliance on the award made by the NHA is misplaced, the expropriation case filed by the NHA having been dismissed by the CA in a Decision dated August 21, 1992 in CA-G.R. CV No. 29042. This Court denied the petition for review on certiorari filed by the NHA from the CA Decision in a Resolution dated May 3, 1993. This Resolution, in turn, attained finality as evidenced by an Entry of Judgment dated July 7, 1993. The trial court, thus, concluded that because the NHA failed to expropriate the property, the spouses Veloso could not derive any right from the award.

Thereafter, the spouses Veloso appealed the RTC Decision to the CA. In their Appellant's Brief dated May 23, 2001,^[25] they interposed for the first time their

status as builders in good faith and are, thus, entitled to possession of the house that Gloria built.

Later, the CA issued its assailed Decision dated May 17, 2010, the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is PARTLY GRANTED. The assailed decision of the court a quo is hereby AFFIRMED WITH MODIFICATION that a proper determination of the value of the controverted residential house constructed by the plaintiff-appellant Gloria in the lot, now owned by the defendant-appellee shall be made.

In line with the doctrinal pronouncement in the cited *Pecson v. Court of Appeals*, the present case is hereby REMANDED to the court a quo for it to determine the current market value of the residential house in the aforesaid lot. For this purpose, the parties shall be allowed to adduce evidence on the current market value of the said residential house. The value so determined shall be forthwith paid by the defendant-appellee to the plaintiffs-appellants, otherwise, the latter shall be restored to the possession of the said residential house until payment of the required indemnity.

No pronouncement as to costs.

SO ORDERED.

The CA denied Bote's Motion for Reconsideration in its October 22, 2010 Resolution.

Hence, We have this petition.

The Issues

Petitioner raises the following issues in the petition:

I

Whether or not *Pecson v. CA et al.* is applicable since that case is a real action for recovery of possession of lot and apartments – while [sic] instant case is a personal action for Sum of Money.

II

Whether or not the prayer for PhP850,000.00 as full payment for house and lot – should be the controlling amount.

III

Whether or not the amount of PhP329,000.00 – paid for the lot – should be deducted from the PhP850,000.00 promissory note.