

## FIRST DIVISION

[ G.R. No. 173533, December 14, 2009 ]

**VICENTE N. LUNA, JR., PETITIONER, VS. NARIO CABALES,  
OSCAR PABALAN, JEREMIAS JUARBAL AND REMEDIOS ROSIL,  
RESPONDENTS.**

### D E C I S I O N

#### **CARPIO MORALES, J.:**

After the death of the Spouses Pablo Martinez and Gregoria Acevedo, owners of a three-hectare parcel of land situated in Tandag, Surigao del Sur, their two heirs-daughters Eustaquia Martinez (Eustaquia) and Martina Martinez (Martina) partitioned the property. To Eustaquia was allotted the *southwestern* portion, and to Martina the *northwestern* portion.<sup>[1]</sup>

Since 1946, Martina declared her share of the property in her name for taxation purposes.<sup>[2]</sup> After her death, her share was adjudicated to her daughter Petronila de Dios who resided there until her death on May 7, 1959 upon which her daughter-herein respondent Maria Remedios Rosil (Remedios) took over.<sup>[3]</sup>

Meanwhile, Eustaquia got married and bore three children, namely Ciriaco, Damaso and Valentina. Ciriaco filed an application for a free patent over his mother's (Eustaquia's) share of the property as well as that of Martina's which was granted, hence, he was issued on May 9, 1968, Original Certificate of Title (TCT) No. 5028 (OCT No. 5028) covering 2.9751 hectares.<sup>[4]</sup>

It appears that in 1971, Ciriaco started gathering the coconuts planted on Martina's share of the property, drawing Martina's granddaughter-herein respondent Remedios to file a complaint for recovery of possession against Ciriaco. The complaint was dismissed, however, for failure to state a cause of action.<sup>[5]</sup>

Upon Ciriaco's death, his heirs subdivided in 1974 the entire property into eight lots and caused the cancellation of OCT No. 5028 upon which a new TCT No. T-2364 was on May 21, 1975<sup>[6]</sup> issued in their names.

Ciriaco's heirs sold to Vicente Luna, Jr. (petitioner) one of the lots, said to contain 480 sq.m., to "be taken from the northern part southward" via Deed of Absolute Sale of May 13, 1975<sup>[7]</sup> reading:

x x x x

Portion of that land covered by Property Tax Declaration No. 16971, Original Certificate of Title No. 5208, Free Patent No. 401395, issued in

the name of the deceased Ciriaco Quiñonez, father of the herein vendors. Which land according to [OCT No. 5208] contains an area of 29,751 square meters and according to Tax Declaration No. 16971 it contains an area of 37,700 square meters. **The portion of the abovementioned property which is the subject of this sale is only four hundred eighty (480) square meters.** The entire above-mentioned land is more particularly described as follows:

North : Telaje river and Ignacio Falscon  
East : Capitol road, Juanita Cañedo, Marcos Juarbal  
South : Maria Luna and Galo Suarez  
West : Miguel Dayao, Tandag river and fish pond

x x x x.

***The portion subject of this sale shall be taken from the northern part southward with a measurement of forty (40) meters in length and twelve (12) meters in width.*** This sale includes all kinds of improvements or buildings found on the land and any other existing objects. x x x x.

x x x x (italics, emphasis and underscoring supplied)

It bears recalling that the *northwestern* portion of the entire property was, following its partition, allotted to Martina.

On March 10, 1993, the heirs of Ciriaco executed an Affidavit of Confirmation of Sale stating that the actual area of the lot sold to petitioner was 557 square meters.<sup>[8]</sup> Eighteen years after the sale on May 13, 1975 of that lot now identified as Lot 3040-F (the subject lot), or on March 22, 1993, TCT No. T-5891 was issued in petitioner's name.<sup>[9]</sup> Thereafter or on July 27, 1993, petitioner declared the subject lot for taxation purposes.<sup>[10]</sup>

On October 6, 1993, petitioner, through his administrator and attorney-in-fact Antonio Martinez (Martinez), filed a complaint for recovery of possession against Pedro Belano (Belano) and herein respondents Nario Cabales (Cabales), Oscar Pabalan (Pabalan) and Jeremias Juarbal (Juarbal) before the Regional Trial Court of Surigao del Sur. More than two months later or on December 13, 1993, he amended the complaint to also implead as defendant respondent Remedios,<sup>[11]</sup> Martina's granddaughter.

Only Remedios filed an answer to the complaint. In her Answer to Amended Complaint with Counterclaim, Remedios asserted that she inherited the subject lot from her predecessors-in-interest on which she and her children were born and raised; and that Belano is her son-in-law while Cabales, Pabalan, and Juarbal are mere tenants.<sup>[12]</sup> As Counterclaim, Remedios alleged, among other things, the bases of her claim for damages and accordingly prayed for the dismissal of the complaint, award of damages and attorney's fees, and for such other reliefs and remedies as are deemed just and equitable in the premises.

By Decision<sup>[13]</sup> of September 29, 1997, the trial court rendered judgment in favor of petitioner and ordered Remedios to vacate the subject lot, holding that:

x x x x. To begin with, subject lot is registered in the name of [petitioner] and is covered by [TCT No. T-5891] (Exhibit "A"). It is a portion of a bigger parcel of land denominated as Lot No. 3040, Cad. 392-D, registered as early as July 1, 1968 in the name of Ciriaco Quiñonez who was issued [OCT No. 5028] (Exhibit "B"). x x x x. Mother Lot No. 3040, Cad. 392-D was surveyed in the name of Ciriaco Quiñonez as early as August 18, 1966, during the Cadastral Survey of lands in Tandag, Surigao del Sur. On the other hand, Lot No. 3040-F was surveyed on December 3, 1974.

x x x x

In the instant case, the Cadastral Survey was conducted in August, 1966 still. If as claimed by [respondent] she had been staying on subject land since birth, all her children were born there, and they never changed residence, in other words, they had continuously and uninterruptively [*sic*] stayed there, it is difficult to believe that she and/or her husband and children had not noticed and had no knowledge of the Cadastral Survey and, specifically, of the fact that the land she was occupying was included in the land surveyed in the name of Ciriaco Quiñonez and/or not to have filed her protest to the survey and/or laid claim over the land during investigation conducted by the Bureau of Lands of the Free Patent Application of said Ciriaco Quiñonez and/or not to have knowledge of the subdivision survey in December, 1974; but she had not, which fact supports [petitioner's] claim that [respondent] and her co-defendants occupied subject land after the same was purchased by petitioner in 1975, even if assuming that they had occupied it earlier than 1984. (underscoring supplied)

On appeal, the appellate court, by Decision<sup>[14]</sup> of March 28, 2006, *reversed and set aside* the decision of the trial court, it finding that OCT No. 5028 was procured by fraud and petitioner was not an innocent purchaser for value. Thus the appellate court expounded:

The records clearly show that the first title-holder Ciriaco Quiñones inherited the property from his mother, Eustaquia Quiñones. Eustaquia, together with her sister, Martina, inherited it from their father Pablo Martinez who was the original owner thereof. When Pablo Martinez died, Eustaquia and Martina partitioned the property equally, with the northern half as Martina's share and the southern half as Eustaquia's share. Pursuant to said partition, **Martina declared her property for tax purposes in 1946 and regularly paid the land taxes thereof.** Surprisingly, Ciriaco, Eustaquia's son, had the entire property, including Martina's share, titled in his name. There is no way for Ciriaco to be deemed innocent about the equal sharing of the property between his mother and his aunt. Neither can he claim ignorance of his aunt's family's

presence and actual possession under claim of ownership of the one-half northern portion. **In addition, that claim is documented by Martina's tax declaration.** The inclusion of his aunt's share when he caused the survey of the property was not accidental or innocent. Instead, it was deliberate and willful. Knowing that his mother's share of the property is only one half of it, then when he included his aunt's share of the property when he applied for his free patent title, the same was fraudulently done.

X X X X

**[Petitioner] cannot be considered an innocent purchaser for value** because if indeed a survey was conducted when [petitioner] bought the subject property, as [petitioner's] witnesses claim, it would be **inconceivable for him not to have seen the houses** which [respondent] and her children had built on the subject property. [Respondent's] house on the area sold should have provoked [petitioner's] curiosity. The house had been there for a long time. If [petitioner] inspected the area before the sale, as every prudent buyer is wont to do, then he could not have missed seeing [respondent's] house which had been there all along. x x x x. (emphasis and underscoring supplied)

The appellate court, noting that Remedios filed a Counterclaim, thus ordered the reconveyance of the subject lot by petitioner to respondent Remedios.

Although the initiatory complaint is denominated as one for "recovery of possession", a perusal of [respondent]'s answer shows that it interposes a counterclaim against [petitioner]. A **counterclaim** partakes of the nature of a complaint and/or cause of action against a plaintiff in a case such that the counterclaimant is the plaintiff in his counterclaim.

X X X X

While [respondent] does not specifically ask for the remedy of reconveyance but the above-quoted assertions coupled with **her prayer for "such other reliefs and remedies** prayed for as are deemed just and equitable in the premises", sufficiently empowers this Court, **acting a court of law and a court of equity, to order reconveyance** of title to [respondent] to forestall any further conflict in the future over the subject lot in question. The title of Luna, unless disabled, may eventually land in mischievous hands and start a new round of conflict in the future. To order the title to be reconveyed to [respondent] will put an effective block to such possible event.

x x x x. (emphasis and underscoring supplied)

Thus the appellate court disposed:

WHEREFORE, premises considered, the instant Appeal is GRANTED. The assailed Decision of the court a quo is REVERSED. The ownership and possession of Remedios Rosil over the Lot No. 3040-F is upheld. The Register of Deeds of Tandag, Surigao del Sur is DIRECTED to **cancel TCT No. 5891 in the name of Atty. Vicente Luna [Jr.] and in lieu thereof, to issue a new transfer certificate of title over the subject lot in the name of Remedios Rosil.** (emphasis and underscoring supplied)

His motion for reconsideration having been denied, petitioner filed the present petition for review, faulting the appellate court for rendering a decision "not in accord with law and jurisprudence."<sup>[15]</sup>

To petitioner, the Torrens title issued in his name must prevail over the verbal claim of respondent Remedios that she acquired the subject lot through inheritance. He asserts that the tax declarations and tax receipts presented by Remedios are not conclusive proof of ownership, the best evidence being the Torrens title in his name.<sup>[16]</sup>

Moreover, petitioner disputes the appellate court's findings that he was not an innocent purchaser for value; that Remedios and her children were in actual possession of the subject lot; and that no cadastral survey thereof was conducted in 1968. To petitioner, these findings are negated by Remedios' admission that she filed a case against his predecessor-in-interest Ciriaco to recover possession of the subject lot. He adds that the presumption of regularity in the performance of official functions of the surveyor who conducted the cadastral survey was never rebutted during the trial.<sup>[17]</sup>

Finally, petitioner contends that the appellate court's order for reconveyance does not lie since a decree of registration is no longer open to review or attack after the lapse of one year, even if its issuance was attended by fraud, citing Section 32 of the Property Registration Decree.<sup>[18]</sup>

Respondent failed to file her comment to the petition despite opportunities given her.<sup>[19]</sup>

The Court finds the petition bereft of merit.

The Court appreciates no cogent reasons to disturb the findings of the appellate court that respondent is the lawful possessor of the lot in question and that petitioner was not a buyer in good faith.

Remedios has established that her grandmother Martina was the owner and possessor of the *northwestern* portion of the entire property as early as 1946 as evidenced by Tax Declaration Nos. 7161, 5900 and 175.<sup>[20]</sup> These tax declarations mention the name of Eustaquia, the predecessor-in-interest of Ciriaco, as the owner and possessor of the *southern* portion of the entire property adjoining the *northwestern* portion thereof.<sup>[21]</sup> Such documentary evidence, coupled with the actual possession of Remedios, provides incontrovertible proof of possession in the concept of an owner which strengthens her *bona fide* claim of acquisition of ownership.<sup>[22]</sup>