

## SECOND DIVISION

[ G.R. No. 136422, July 07, 2004 ]

**BAYANI ALON AND SEVERINA, REDILLA-VILLAMIL FOR HERSELF, AND REPRESENTING THE HEIRS OF NORBERTO VILLAMIL, PETITIONERS, VS. THE HON. COURT OF APPEALS AND JUANITO AGRAVIO ON HIS BEHALF AND ATTORNEY-IN-FACT OF EDUARDO LASERNA, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

This is a petition for review on *certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 43838 dismissing the petition for certiorari of petitioners Bayani Alon and the Spouses Norberto and Severina Redilla-Villamil.

#### The Antecedents

The Spouses Angel Aguilar and Encarnacion Agravio, were the owners of a parcel of land located in Sta. Rosa, Laguna, identified as Lot No. 2162 of the Sta. Rosa Estate Subdivision, covered by Transfer Certificate of Title (TCT) No. T-7029 issued on January 12, 1954. The property was subdivided into two lots, Lot 2162-A and Lot 2162-B. Lot 2162-A was sold to the F.A. Amador & Sons, Inc., to which TCT No. 11545 covering the property was issued on March 19, 1970.<sup>[2]</sup> Lot 828, which abutted Lot 2162-B on the southeast, was subdivided into Lots 828-A and Lot 828-B. The petitioners Bayani Alon, the Spouses Norberto Villamil and Severina Redilla, acquired Lot 828-A of Psd 41152, for which they were issued TCT No. 36405 by the Register of Deeds on January 16, 1974.<sup>[3]</sup> On September 14, 1989, respondent Juanito Agravio, the nephew of Encarnacion, and his wife, respondent Josephine T. Borres, purchased Lot 2162-B and were issued TCT No. 196085.<sup>[4]</sup> The Spouses Agravio constructed a house thereon. Subsequently, they sold Lot 2162-B and the improvements thereon to Eduardo Laserna.

On March 25, 1990, the petitioners, through counsel, wrote respondent Juanito Agravio informing the latter that his house was encroaching on a portion of their property, Lot 828-A, and demanded that he vacate the premises.<sup>[5]</sup> Respondent Juanito Agravio, through counsel, replied that his house was within the perimeter of his property, Lot 2162-B, covered by TCT 196085.<sup>[6]</sup> The matter was referred to the *barangay lupon*, but no amicable settlement was forged by the parties.

On November 8, 1990, respondent Agravio filed a complaint against the petitioners Alon and Sps. Villamil in the Regional Trial Court of Biñan, Laguna, docketed as Civil Case No. B-3431, for the relocation of Lots 2162-B and 828-A with damages. Respondent Agravio alleged therein that the petitioners' houses were constructed on a portion of his property, and despite demands, the latter refused to remove their

property.<sup>[7]</sup>

Respondent Agravio, thereafter, filed an amended complaint, alleging that he had sold the property to Eduardo Laserna, who made a partial payment thereon, but refused to pay the balance of the purchase price until after the property and Lot 828-A were relocated, and the petitioners evicted therefrom; hence, respondent Agravio retained ownership and possession of the property.

In their answer to the complaint, the petitioners asserted that Lot 2162-B claimed by respondent Agravio was a road lot.

The parties agreed to have the two lots relocated by a government surveyor, and thereafter, to abide and be bound by the official report of the said surveyor.<sup>[8]</sup> The parties further agreed that in order to abbreviate the proceedings, the parties would just submit their affidavits and those of their witnesses, on the basis of which the adverse party would conduct his cross-examination of the affiants. In compliance with the Order of the trial court dated July 15, 1991, the Regional Director of the Land Management Bureau, Region IV, designated Engr. Andres L. Valencia to conduct a relocation survey of the lots, in the presence of the parties and their respective counsels. Engr. Valencia conducted a survey on August 29, 1991 and on September 2, 1991 in the presence of the counsel for the petitioners.

In the meantime, the petitioners' counsel withdrew and Atty. Leodegario A.L. Barayang, Sr. entered his appearance as new counsel.

On September 14, 1991, Engr. Valencia submitted his report, viz:

2. From these data we gathered, we found out that lot numbers 826, 827, 2162 and 940 adjoin each other based from the stated adjoining lots and descriptions of lines as per title.
3. That on September 2, 1991, we conducted the survey proper and we were able to relocate line 2-3 of Lot 828-A (LRC) Psd-41152 in the presence of Atty. Agapito Carait, the counsel of Bayani Alon, wherein corner 3 was marked by G.I. nail at concrete fence. Corner 2 of same lot which lies one meter from the concrete fence along the road towards the road was instead marked by G.I. nail at the intersection of line 3-2 to the said concrete fence to serve as witness.
4. That the concrete fence along line 4-1 at lot 828-A (LRC) Psd-41152 had been accepted as the boundary at lot 828-A and lot 828-B (LRC) Psd-41152.
5. That Juanito Agravio is amenable to the points we have set who is (sic) also present during our survey.
6. Common point used was corner 4 at lot 828-A (LRC) Psd-41152 which checks to corners 2 & 3 of lot 2, Block 6, (LRC) Psd-158389.

<sup>[9]</sup>

Appended to the Report was a Special/Sketch Plan showing the location of the two lots.

Respondent Agravio presented Engr. Valencia for direct and cross-examination, while the petitioners' counsel cross-examined him during the hearing of May 26, 1993. However, in a Position Paper with Manifestation filed on July 28, 1993, the petitioners prayed that they be given a chance to adduce testimonial and documentary evidence to controvert the report and testimony of Engr. Valencia.<sup>[10]</sup> On October 11, 1995, Engr. Valencia was present for additional cross-examination by the counsel of the petitioners, but the said counsel failed to appear. The court then issued an order declaring the petitioners as having waived their right to further cross-examine Engr. Valencia.<sup>[11]</sup>

On January 11, 1996, the court rendered a summary judgment, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants as follows:

1. Ordering the defendants, their heirs and successors-in-interests to recognize the ownership and possession of plaintiff over Lot No. 2162-B, together with the improvements thereon, containing an area of 247 square meters, located at Barangay Tagapo, Sta. Rosa, Laguna, and covered by TCT No. T-196085;
2. Ordering the defendants, their heirs and successors-in-interests to vacate the premises being encroached by the houses erected by them on a portion of Lot No. 2162-B and to remove or demolish the said house or portion of defendant Bayani Alon's house which encroaches on a portion of Lot No. 2162-B;
3. Ordering the defendants or their legal heirs to pay the plaintiff the amount of P25,000.00 as actual damages and litigation expenses and the amount of P20,000.00 as and by way of attorney's fees plus the costs of this suit.

SO ORDERED.<sup>[12]</sup>

On March 4, 1996, the petitioners filed a motion for reconsideration of the decision with an alternative prayer that they be allowed to adduce evidence. They alleged that they received a copy of the decision of the court in **February 1996**.<sup>[13]</sup> The trial court issued an Order on July 5, 1996 denying the motion.<sup>[14]</sup> The petitioners' counsel received a copy of the said order on July 19, 1996, and thereafter filed a notice of appeal from the judgment of the court on July 23, 1996.<sup>[15]</sup>

On October 10, 1996, the trial court issued an Order rejecting the notice of appeal for having been filed beyond the period provided therefor.<sup>[16]</sup> On motion of respondent Agravio, the court issued a writ of execution.<sup>[17]</sup> The court also issued, on April 2, 1997, an Order granting the respondent's motion for the issuance of a writ of demolition.<sup>[18]</sup>

On April 8, 1997, the petitioners filed a petition for review on *certiorari* with the Court of Appeals (CA), with a plea for injunctive relief, for the reversal of the decision of the RTC and to compel the said court to receive the evidence on their behalf.<sup>[19]</sup>

The petitioners alleged the following in their petition:

1. THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION IN NOT ALLOWING DEFENDANTS (Civil Case No. B-3431, Ibid) AT LEAST TO PRESENT/ADDUCE EVIDENCE AT ALL.
2. THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION BY RENDERING "SUMMARY JUDGMENT" DATED JANUARY 11, 1996 IN HASTE IF NOT AT ALL CONTRARY TO [THE] REPORT MADE BY GOVERNMENT ENGR. ANDRES VALENCIA DATED SEPTEMBER 4, 1991 (Ibid).
3. RESPONDENT JUDGE and/or CLERK OF COURT GRAVELY ABUSED THEIR DISCRETION WHEN THEY ACCEPTED COMPLAINT/AMENDED COMPLAINT FILED BY PLAINTIFF WITHOUT THAT (sic) APPROVED PLAN/RELOCATED SURVEY-PLAN OF SUBJECT LOTS THEREOF.
4. RESPONDENT JUDGE'S GRAVE ABUSE OF DISCRETION IS A RECTIFIABLE ERRORS (sic) CORRECTIBLE BY THIS PROCEEDINGS (sic).<sup>[20]</sup>

The petitioners asserted that the report of Engr. Valencia was erroneous, despite which the court rendered summary judgment based on the said report. Moreover, the petitioners averred that the trial court committed grave abuse of discretion amounting to excess or lack of jurisdiction when it denied their motion to adduce testimonial and documentary evidence to controvert the said report, rendered a summary judgment, and dismissed their appeal from the said decision.<sup>[21]</sup>

In his opposition to the petition, the public respondent claimed that, if at all, any error committed by the trial court in its summary judgment was merely an error of judgment, not correctible by a *writ of certiorari*. He insisted that by agreeing to be bound by the report of the surveyor, the petitioners waived their right to adduce evidence to controvert the findings of the said surveyor. It was then proper for the court to render judgment, considering that the petitioners agreed to be bound by the said findings. As such, no genuine issue was raised by the petitioners. He also posited that the surveyor was cross-examined by the petitioners' counsel on his report. According to the public respondent, by their failure to appeal in due course from the decision of the trial court within the period therefor, the said decision had become final and executory.

In the meantime, the Sheriff implemented the writ of demolition issued by the trial court, but stopped when the petitioners asked that they be allowed to remove that portion of their house which, according to the decision, encroached on the property of the respondent. The petitioners, however, renege on their promise and even installed additional improvements on the property.<sup>[22]</sup>

On November 23, 1998, the CA rendered judgment dismissing the petition on the