455 Phil. 285

THIRD DIVISION

[G.R. No. 124699, July 31, 2003]

BOGO-MEDELLIN MILLING CO., INC., PETITIONER, VS. COURT OF APPEALS AND HEIRS OF MAGDALENO VALDEZ SR., RESPONDENTS.

D E C I S I O N

CORONA, J.:

This is an appeal by *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the decision[1] dated November 17, 1995 of the Court of Appeals, Tenth Division, which reversed the decision[2] dated November 27, 1991 of the Regional Trial Court of Cebu City, Branch IX, which ruled in favor of herein petitioner, Bogo-Medellin Milling Company, Inc. and dismissed herein private respondents' complaint for payment of compensation and/or recovery of possession of real property and damages with application for restraining order or preliminary injunction; and its resolution dated March 2, 1996 denying petitioner's motion for reconsideration.

The antecedent facts follow.

Magdaleno Valdez, Sr., father of herein private respondents Sergio Valdez, Angelina Valdez-Novabos, Teresita Argawanon-Mangubat and Daylinda Argawanon-Melendres (hereafter the heirs), purchased from Feliciana Santillan, on December 9, 1935, a parcel of unregistered land covered by Tax Declaration No. 3935 with an area of one hectare, 34 ares and 16 centares, located in Barrio Dayhagon, Medellin, Cebu.[3] He took possession of the property and declared it for tax purposes in his name.[4]

Prior to the sale, however, the entire length of the land from north to south was already traversed in the middle by railroad tracks owned by petitioner Bogo-Medellin Milling Co., Inc. (hereafter Bomedco). The tracks were used for hauling sugar cane from the fields to petitioner's sugar mill.

When Magdaleno Valdez, Sr. passed away in 1948, herein private respondents inherited the land. However, unknown to them, Bomedco was able to have the disputed middle lot which was occupied by the railroad tracks placed in its name in the Cadastral Survey of Medellin, Cebu in 1965. The entire subject land was divided into three, namely, Cadastral Lot Nos. 953, 954 and 955. Lot Nos. 953 and 955 remained in the name of private respondents. However, Lot No. 954, the narrow lot where the railroad tracks lay, was claimed by Bomedco as its own and was declared for tax purposes in its name. [5]

It was not until 1989 when private respondents discovered the aforementioned claim of Bomedco on inquiry with the Bureau of Lands. Through their lawyer, they

immediately demanded the legal basis for Bomedco's claim over Cadastral Lot No. 954 but their letter of inquiry addressed to petitioner went unheeded, as was their subsequent demand for payment of compensation for the use of the land.[6]

On June 8, 1989, respondent heirs filed a "Complaint for Payment of Compensation and/or Recovery of Possession of Real Property and Damages with Application for Restraining Order/Preliminary Injunction" against Bomedco before the Regional Trial Court of Cebu.[7] Respondent heirs alleged that, before she sold the land to Valdez, Sr. in 1935, Santillan granted Bomedco, in 1929, a railroad right of way for a period of 30 years. When Valdez, Sr. acquired the land, he respected the grant. The right of way expired sometime in 1959 but respondent heirs allowed Bomedco to continue using the land because one of them was then an employee of the company.[8]

In support of the complaint, they presented an ancient document â€• an original copy of the deed of sale written in Spanish and dated December 9, 1935[9] â€• to evidence the sale of the land to Magdaleno Valdez, Sr.; several original real estate tax receipts[10] including Real Property Tax Receipt No. 3935[11] dated 1922 in the name of Graciano de los Reyes, husband of Feliciana Santillan, and Real Property Tax Receipt No. 09491[12] dated 1963 in the name of Magdaleno Valdez, Sr. Magdaleno Valdez, Jr. also testified for the plaintiffs during the trial.

On the other hand, Bomedco's principal defense was that it was the owner and possessor of Cadastral Lot No. 954, having allegedly bought the same from Feliciana Santillan in 1929, prior to the sale of the property by the latter to Magdaleno Valdez, Sr. in 1935. It also contended that plaintiffs' claim was already barred by prescription and laches because of Bomedco's open and continuous possession of the property for more than 50 years.

Bomedco submitted in evidence a Deed of Sale[13] dated March 18, 1929; seven real estate tax receipts[14] for the property covering the period from 1930 to 1985; a 1929 Survey Plan of private land for Bogo-Medellin Milling Company;[15] a Survey Notification Card;[16] Lot Data Computation for Lot No. 954;[17] a Cadastral Map for Medellin Cadastre[18] as well as the testimonies of Vicente Basmayor, Geodetic Engineer and property custodian for Bomedco, and Rafaela A. Belleza, Geodetic Engineer and Chief of the Land Management Services of the DENR, Region VIII.

In its decision dated November 27, 1991, the trial court[19] rejected Bomedco's defense of ownership on the basis of a prior sale, citing that its evidence - a xerox copy of the Deed of Sale dated March 18, 1929 - was inadmissible and had no probative value. Not only was it not signed by the parties but defendant Bomedco also failed to present the original copy without valid reason pursuant to Section 4, Rule 130 of the Rules of Court.[20]

Nonetheless, the trial court held that Bomedco had been in possession of Cadastral Lot No. 954 in good faith for more than 10 years, thus, it had already acquired ownership of the property through acquisitive prescription under Article 620 of the Civil Code. It explained:

> Under Article 620 of the Civil Code, CONTINUOUS and APPARENT easements can be acquired by prescription after ten (10) years. The "apparent" characteristic of the questioned property being used by defendant as an easement is no longer at issue, because plaintiffs themselves had acknowledged that the existence of the railway tracks of defendant Bomedco was already known by the late Magdaleno Valdez, herein plaintiffs' predecessor-in-interest, before the late Magdaleno Valdez purchased in 1935 from the late Feliciana Santillan the land described in the Complaint where defendant's railway tracks is traversing [*sic*] (TSN of February 5, 1991, pp. 7-8). As to the continuity of defendant's use of the strip of land as easement is [*sic*] also manifest from the continuous and uninterrupted occupation of the questioned property from 1929 up to the date of the filing of the instant Complaint. In view of the defendant's UNINTERRUPTED possession of the strip of land for more than fifity (50) years, the Supreme Court's ruling in the case of Ronquillo, et al. v. Roco, et al. (103 Phil 84) is not applicable. This is because in said case the easement in question was a strip of dirt road whose possession by the dominant estate occurs only everytime said dirt road was being used by the dominant estate. Such fact would necessarily show that the easement's possession by the dominant estate was never continuous. In the instant case however, there is clear continuity of defendant's possession of the strip of land it had been using as railway tracks. Because the railway tracks which defendant had constructed on the questioned strip of land had been CONTINUOUSLY occupying said easement. Thus, defendant Bomedco's apparent and continuous possession of said strip of land in good faith for more than ten (10) years had made defendant owner of said strip of land traversed by its railway tracks. Because the railway tracks which defendant had constructed on the questioned strip of land had been continuously occupying said easement [*sic*]. Thus, defendant Bomedco's apparent and continuous possession of said strip of land in good faith for more than ten (10) years had made defendant owner of said strip of land traversed by its railway tracks.

Respondent heirs elevated the case to the Court of Appeals which found that Bomedco did not acquire ownership over the lot. It consequently reversed the trial court. In its decision dated November 17, 1995, the appellate court held that Bomedco only acquired an easement of right of way by *unopposed and continuous use* of the land*,* but not ownership, under Article 620 of the Civil Code.

The appellate court further ruled that Bomedco's claim of a prior sale to it by Feliciana Santillan was untrue. Its possession being in bad faith, the applicable prescriptive period in order to acquire ownership over the land was 30 years under Article 1137 of the Civil Code. Adverse possession of the property started only in 1965 when Bomedco registered its claim in the cadastral survey of Medellin. Since only 24 years from 1965 had elapsed when the heirs filed a complaint against Bomedco in 1989, Bomedco's possession of the land had not yet ripened into ownership.

And since there was no showing that respondent heirs or their predecessor-in-interest was ever paid compensation for the use of the land, the appellate court awarded compensation to them, to be computed from the time of discovery of the

adverse acts of Bomedco.

Its motion for reconsideration having been denied by the appellate court in its resolution dated March 22, 1996, Bomedco now interposes before us this present appeal by certiorari under Rule 45, assigning the following errors:

I

> THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT REVERSED AND SET ASIDE THE TRIAL COURT'S DECISION DISMISSING PRIVATE RESPONDENT'S COMPLAINT.

II

> THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT ORDERED THE PETITIONER TO PAY THE PRIVATE RESPONDENT THE REASONABLE VALUE OF LOT 954 AND THE AMOUNT OF TEN THOUSAND (P10,000.00) PESOS AS REASONABLE ATTORNEY'S FEES.

Petitioner Bomedco reiterates its claim of *ownership of the land* through *extraordinary acquisitive prescription* under Article 1137 of the Civil Code and *laches* to defeat the claim for compensation or recovery of possession by respondent heirs. It also submits a third ground originally tendered by the trial court â€• *acquisition of the easement of right of way by prescription* under Article 620 of the Civil Code.

EXTRAORDINARY ACQUISITIVE PRESCRIPTION
UNDER ART. 1137 OF THE CIVIL CODE

Petitioner's claim of ownership through extraordinary acquisitive prescription under Article 1137 of the Civil Code cannot be sustained.

There is no dispute that the controversial strip of land has been in the continuous possession of petitioner since 1929. But possession, to constitute the foundation of a prescriptive right, must be possession under a claim of title, that is, it must be adverse.[21] Unless coupled with the element of hostility towards the true owner, possession, however long, will not confer title by prescription.[22]

After a careful review of the records, we are inclined to believe the version of respondent heirs that an easement of right of way was actually granted to petitioner for which reason the latter was able to occupy Cadastral Lot No. 954. We cannot disregard the fact that, for the years 1930, 1937, 1949, 1962 and 1963, petitioner unequivocally declared the property to be a "central railroad right of way" or "sugar central railroad right of way" in its real estate tax receipts when it could have declared it to be "industrial land" as it did for the years 1975 and 1985.[23] Instead of indicating *ownership* of the lot, these receipts showed that all petitioner had was *possession* by virtue of the right of way granted to it. Were it not so and petitioner really owned the land, petitioner would not have consistently used the phrases "central railroad right of way" and "sugar central railroad right of way" in its tax declarations until 1963. Certainly an owner would have found no need for these phrases. A person cannot have an easement on his own land, since all the uses of an easement are fully comprehended in his general right of ownership.[24]

While it is true that, together with a person's actual and adverse possession of the land, tax declarations constitute strong evidence of ownership of the land occupied by him,[25] this legal precept does not apply in cases where the property is declared to be a mere easement of right of way.

An easement or servitude is a real right, constituted on the corporeal immovable property of another, by virtue of which the owner has to refrain from doing, or must allow someone to do, something on his property, for the benefit of another thing or person. It exists only when the servient and dominant estates belong to two different owners. It gives the holder of the easement an incorporeal interest on the land but grants no title thereto. Therefore, an acknowledgment of the easement is an admission that the property belongs to another.[26]

Having held the property by virtue of an easement, petitioner cannot now assert that its occupancy since 1929 was in the concept of an owner. Neither can it declare that the 30-year period of extraordinary acquisitive prescription started from that year.

Petitioner, however, maintains that even if a servitude was merely imposed on the property in its favor, its possession immediately became adverse to the owner in the late 1950's when the grant was alleged by respondent heirs to have expired. It stresses that, counting from the late 1950's (1959 as found by the trial court), the 30-year extraordinary acquisitive prescription had already set in by the time respondent heirs made a claim against it in their letters dated March 1 and April 6, 1989.

We do not think so. The mere expiration of the period of easement in 1959 did not convert petitioner's possession into an adverse one. Mere material possession of land is not adverse possession as against the owner and is insufficient to vest title, unless such possession is accompanied by the intent to possess as an owner.[27] There should be a hostile use of such a nature and exercised under such circumstances as to manifest and give notice that the possession is under a claim of right.

In the absence of an express grant by the owner, or conduct by petitioner sugar mill from which an adverse claim can be implied, its possession of the lot can only be presumed to have continued in the same character as when it was acquired (that is, it possessed the land only by virtue of the original grant of the easement of right of way),[28] or was by mere license or tolerance of the owners (respondent heirs).[29] It is a fundamental principle of law in this jurisdiction that acts of possessory character executed by virtue of license or tolerance of the owner, no matter how long, do not start the running of the period of prescription.[30]

After the grant of easement expired in 1959, petitioner never performed any act incompatible with the ownership of respondent heirs over Cadastral Lot No. 954. On the contrary, until 1963, petitioner continued to declare the "sugar central railroad right of way" in its realty tax receipts, thereby doubtlessly conceding the ownership of respondent heirs. Respondents themselves were emphatic that they simply tolerated petitioner's continued use of Cadastral Lot No. 954 so as not to jeopardize the employment of one of their co-heirs in the sugar mill of petitioner.[31]