

SECOND DIVISION

[G.R. No. 117734, February 22, 2001]

**VICENTE G. DIVINA, PETITIONER, VS. HON. COURT OF APPEALS
AND VILMA GAJO-SY, RESPONDENTS.**

DECISION

QUISUMBING, J.:

Before us is a petition for review of the decision^[1] dated October 27, 1994 of the Court of Appeals in CA-GR CV No. 03068 reversing and setting aside the judgment dated July 7, 1979 of the Court of First Instance of Sorsogon, Branch II, in LRC Case No. N-147.

The facts of this case are as follows:

Lot No. 1893 located at Gubat, Sorsogon, was originally owned by Antonio Berosa. On July 22, 1960, he sold it to Teotimo Berosa. The portion is particularly described as:

"A parcel of land unirrigated situated in San Ignacio, Gubat, Sorsogon, Philippines, with an area of TWENTY THOUSAND (20,000) square meters and bounded on the North by Lot #1464 - Fausto Ayson and Lot #1888 - Gloria Fajardo: on the East, by Lot # 1446 - Silverio Garcia: on the South, by Lot #1891 - Antonio Escobedo and on the West, by Lot #1880 - Federico Faronas and Lot #1890 - Eugenia Espedido. Cadastral concrete posts are the visible signs of boundary. It has no permanent improvement thereon. Designated as Lot 1893 of Antonio Berosa. Declared under Tax No. 13038, valued at P760.00 for the current year in the name of ANTONIO BEROSA"^[2]

On March 23, 1961, the Berosa spouses sold the same Lot 1893 to Jose P. Gamos. In the deed of sale to Gamos, the lot was more particularly described as:

"A parcel of RICE land situated in San Ignacio, Gubat, Sorsogon, Philippines, with an area of TWENTY THOUSAND (20,000) square meters and bounded on the North, by Lot #1462 - Fausto Ayson and Lot #1888 - Gloria F. Estonante: on the East, by Lot #1464 - Zacarias Espadilla; and Lot #1466 - Felix Arimado; on the South, by Lot #1898 - Silverio Garcia; and on the West, by Lot #1890 - Eugenia Espedido and Lot #1892 - Antonio Escobedo. Concrete cements posts are the visible signs of boundary. No permanent improvements thereon. Covered by Lot #1893 of Teotimo E. Berosa, and declared under Tax No. 13039, valued at P760.00 for the present year in the name of TEOTIMO E. BEROSA."^[3]

On April 26, 1960, Gamos acquired from the heirs of Felix Arimado, a boundary owner of Lot 1893, a 20,687 sq. m. parcel of land identified as Lot 1466, also in

Gubat. It adjoins Lot 1893. On March 28, 1961, Gamos had these two parcels of land under Tax Declaration No. 13237 and declared it had a total area of 4.0867 hectares. He also had the property resurveyed by private land surveyor Antonio Tiotangco. In 1967, Tax Declaration No. 13237 was cancelled by Tax Declaration No. 9032 in Gamos' name.

The re-survey plan (AP-9021), of Lots 1466 and 1893 conducted on June 16, 1961 for Gamos, showed that the consolidated properties contained a total area of 100,034 sq. m. This plan was approved on July 12, 1961 by the Acting Director of Lands.

On November 23, 1968, Tax Declaration No. 12927 which cancelled Tax Declaration No. 9032 was secured by Gamos and declared therein that the area of the consolidated property was 10.0034 hectares with 2500 sq. m. planted to coconut, 3.8187 irrigated for rice planting and 5.9347 were thickets.

On January 19, 1967, Teotimo Berosa conveyed to Vicente G. Divina, herein petitioner, a portion of Lot 1893 referred to as Lot 1893-B. It is described as follows:

"A parcel of dry and thicket land situated in San Ignacio, Gubat, Sorsogon, Philippines, having an area of 54,818 square meters and bounded on the N., by Lot 1888 (Inocencio Eroo); Lot 1887 (Jaime Enaje); and Lot 1462 (Heirs of Zacarias Espadilla); on the (Illegible), by Lot 1466; on the SE, by Lot 1893-A; on the S., by Lot 1898 (Heirs of Silverio Garcia); on the E., by Lot 1892 (Antonio Escobedo) and Lot 1890 (Eugenia Espedido); and on the NE, by Lot 1889 (Pedro Fajardo); all of Gubat Cadastre. NOTE: This lot is designed as Lot 1893-B, a portion of Lot 1893, Cad 308-D".^[4]

On November 28, 1968, two years from the date of said sale and five (5) days after November 23, 1968, when Gamos secured Tax Declaration No. 12927 declaring the consolidated property as containing 100,034 sq. m., the deed of sale was registered. An undated "Subdivision PLAN" of Lot 1893, was prepared for petitioner. The plan, without Bureau of Lands approval, showed that Lot 1893 was divided into two, Lot 1893-A and Lot 1893-B.

On July 24, 1970 Gamos sold the consolidated property to private respondent Vilma Gajo-Sy, for P20,000.00. The land was particularly described as follows:

"A parcel of land located at San Ignacio, Gubat, Sorsogon, under Tax Declaration No. 12927 in the name of Jose P. Gamos, covered by Lots No. 1466 and 1893 of the Gubat Cadastre, with an area of 100,034 sq. m., more or less...."^[5]

On July 29, 1970, Tax Declaration No. 13768 secured by private respondent, was cancelled by Tax Declaration No. 12509.

On August 28, 1972, she filed an application for registration of title to the property at the then Court of First Instance of Sorsogon, docketed as LRC Case No. N-147, GLRO Record No. 42920. The application was amended on March 8, 1973, on order of Branch II of the said court "to include therein the postal address of Inocencio Erpe, adjoining owner of Lot No. 1893 described in Plan AP-9021".

The land registration court, by Decision of July 29, 1975, ordered the registration of private respondent's title over Lots Nos. 1466 and 1893.

On July 13, 1977, pending issuance of the final decree of registration petitioner filed before the same court a Petition for Review of the July 29, 1975 judgment. He alleged that he is the owner of a portion of Lot 1893 consisting of 54,818 sq. m. conveyed to him by Teotimo Berosa on January 19, 1967; that he was unaware of the registration proceedings on Lot 1893 due to private respondent's failure to give him notice and post any notice in the subject lot; and that private respondent fraudulently misrepresented herself as the owner of the disputed portion despite her knowledge that another person had acquired the same.

Private respondent opposed the petition alleging that the registration case had long become final and the court no longer had any jurisdiction thereon; and that lack of personal notice to the petitioner of the registration proceedings did not constitute actual fraud.

The trial court, in its Decision^[6] dated June 7, 1979, found that the petition for review was timely filed. It also ruled that the failure of private respondent to include a known claimant in her application for registration constituted "deliberate misrepresentation that the lot subject of her application is not contested when in fact it was. Private respondent, according to the trial court, should have included in her application at least "the person of petitioner's cousin, Elena Domalaon" who had, before respondent filed her application for registration, made known to the latter's sister her apprehension of "their land" being included in respondent's application for registration. This misrepresentation, according to the court, amounted to fraud within the contemplation of Section 38 of Act 496.^[7] The trial court in its decision disposed as follows:

WHEREFORE, judgment is hereby rendered:

- (a) Setting aside the Decision rendered in the land registration case and revoking the order for the issuance of a Decree;
- (b) Declaring petitioner Vicente G. Divina the owner of the portion of the land applied for containing an area of 54,818 square meters which is described in paragraph 3 of the Petition for Review of Judgment; and
- (c) Allowing this land registration case to proceed as to the portion applied for which is outside the limits of the portion herein awarded to the petitioner Vicente G. Divina; and
- (d) Ordering a subdivision survey of the lots applied for, delimiting therein the area not contested and which is registrable in favor of applicant Vilma Gajo-Sy, and the area herein adjudicated to petitioner Vicente G. Divina, as to whom the land registration proceedings shall likewise be allowed to proceed after he shall have adduced such other evidence as are appropriate in land registration cases.

SO ORDERED.^[8]