

THIRD DIVISION

[G.R. No. 131803, April 14, 1999]

SOTERA PAULINO MARCELO, GABRIELA M. ANGELES, SIMEONA CUENCO, EMILIA MARCELO AND RUBEN MARCELO, PETITIONERS, VS. HON. COURT OF APPEALS, FERNANDO CRUZ AND SERVANDO FLORES, RESPONDENTS.

D E C I S I O N

VITUG, J.:

The reversal of the 28th November 1996 decision^[1] of the Court of Appeals setting aside that of the Regional Trial Court ("RTC"), Branch 19, of Malolos, Bulacan, is sought in this petition for review on *certiorari*. Petitioners seek the reinstatement of the RTC decision which has ordered respondents Fernando Cruz and Servando Flores to return the ownership and possession of a portion of unregistered and untitled land located in Sta. Lucia, Angat, Bulacan, to herein petitioners.

It would appear that on 06 October 1982, herein petitioners, heirs of the deceased Jose Marcelo, filed with the Regional Trial Court of Malolos, Bulacan, an action for the recovery of a portion of **unregistered** land in Sta. Lucia, Angat, Bulacan. The complaint, later amended on 12 October 1983, averred that two parcels of land in Sta. Lucia, declared for taxation purposes under Tax Declarations No. 2880 and No. 2882, owned by the late Jose Marcelo and his spouse, Sotera Paulino-Marcelo, had been encroached, to the extent of 7,540^[2] square meters thereof, by respondents Fernando Cruz and Servando Flores.

In their answer, respondent Cruz and Flores denied the allegations of petitioners, assailing at the same time the jurisdiction of the trial court to act on the complaint which, it was claimed, had effectively asserted a cause of action for ejectment (unlawful detainer).

The appellate court adopted the summary of evidence made by the trial court; thus:

"Evidence adduced by the plaintiffs through the testimony of plaintiff Gabriela Angeles showed that the parcel of land subject of litigation covering Lot 3098 and embraced under Tax Declaration No. 2882 (Exh. A) was originally owned by spouses Jose Marcelo and Sotera Paulino and they had been in continuous possession of said property since 1939. Following the death of plaintiff's father in 1965, they discovered in 1967 that a portion of said property had been encroached by defendant Fernando Cruz. Plaintiffs caused the relocation survey of said property and per plan of Lot 3096 and Lot 3098 of the Angat Cadastre as surveyed for the heirs of Jose Marcelo (Exh. B), 7540 square meters of Lot 3098 had been encroached by defendant Fernando Cruz as indicated in the shaded portion of said plan (Exh. B-1).

"Defendant Fernando Cruz sold his property with an area of 13,856 square meters to defendant Servando Flores pursuant to a deed of sale (*Kasulatan ng Bilihan*) dated November 3, 1968 (Exh. C) which sale, includes the encroached portion (7,540 square meters of plaintiffs' property) Defendant Fernando Cruz heretofore purchased the said property from Engracia dela Cruz and Vicente Marta and Florentino all surnamed Sarmiento, pursuant to a '*Kasulatan ng Partisyon sa Labas ng Hukuman at Bilihang Patulayan*' dated November 19, 1960 (Exh. D) covering an area of 6,000 square meters. The Tax Declaration No. 4482 (Exh. E) covering the property in the name of Jorge Sarmiento and Engracia Cruz covered an area of 6,800^[3] square meters. As soon as the said property was sold to Fernando Cruz, the adjoining property described and classified as '*parang*' with an area of 7,856 square meters was declared by said Fernando Cruz in his name which circumstance, increased his landholding to 13,856 square meters (Exh. F). The said property was subsequently sold by defendant Fernando Cruz to defendant Servando Flores.

"According to Gabriela, they attempted to cultivate the disputed portion sometime in 1968, but were barred from doing so by defendant Servando Flores who claimed that the area was part of the land he bought from co-defendant Fernando Cruz.

"On the other hand, both defendants testified to refute plaintiffs' evidence. They invariably declared that the portion sought to be recovered by plaintiffs is part of the land which defendant Fernando Cruz acquired in 1960 from the Heirs of Jorge Sarmiento; that as stated in their document (Exh 2), the land sold to defendant Fernando Cruz contained 6,000 square meters of '*palayero*' or riceland and 7,856 square meters of '*parang*' or pasture land; that defendant Fernando Cruz caused the entire parcel to be surveyed sometime in 1967 (Exhs. 3 & 4), which he then declared for taxation purposes under Tax Declaration No. 8505 (Exh. F); that on November 3, 1968 defendant Fernando Cruz sold the whole lot to defendant Servando Flores (Exh. I), who thereupon occupied and cultivated it."^[4]

Evaluating the evidence of the contending parties, the trial court found and ratiocinated:

"The crux of the matter at issue apparently resolves on the so-called pasture land (*parang*) supposedly sold by the Sarmientos and Engracia de la Cruz to defendant Fernando Cruz. The said '*parang*' was never included and/or embraced in the Tax Declaration No. 4882 (Exh. E) of the Sarmientos at the time of the said sale in favor of defendant Fernando Cruz pursuant to an extrajudicial partition with sale dated November 19, 1960 (Exh. D). This is evident as indicated by the fact that the same was only declared by Fernando Cruz in his name in 1961 as evidenced by the tax declaration issued in his favor (Exh. F). On the other hand, the said '*parang*' is a part and parcel of plaintiffs' property to which they had been in possession thereof prior to World War II and evidenced by Tax Declaration No. 2882 (Exh. A). The plan of Lot 3096 and Lot 3098 of the

Angat Cadastre (Exhs. B and B-1) inevitably indicated that what has been encroached by defendants refers to the '*parang*' of 7,540 square meters which defendant Fernando Cruz declared the same in his name in 1961. This explains the unnecessary increase of his property from 6,000 square meters which he purchased from the Sarmientos pursuant to extrajudicial partition with sale and embraced under Tax Declaration No. 4882 (Exh. E), to 13,856 square meters."^[5]

The trial court thereupon ruled in favor of petitioners; the dispositive portion of its decision concluded:

"WHEREFORE, judgment is hereby rendered against the defendants ordering the following:

"a. To return the ownership and possession of 7,540 square meters to the plaintiffs as indicated in the relocation survey plan; and

"b To pay attorney's fees in the amount of P5,000.00;

"No actual and/or moral damages (sic) is awarded for lack of factual evidence.

"The counterclaim is hereby dismissed for lack of factual and/or legal basis."^[6]

Respondents Cruz and Flores went to the Court of Appeals; in its now assailed decision, the appellate court reversed the judgment of the court *a quo*. Petitioners moved for a reconsideration; the motion, however, was denied.

In this latest recourse, petitioners assail the holding of the Court of Appeals that the action initiated in 1982 by petitioners against respondent Flores would not prosper on the theory that Flores already has acquired ownership of the disputed land by ordinary acquisitive prescription. Petitioners argue that -

"1. The respondent court erred in not applying the doctrine laid down by this Honorable Court in *Tero vs. Tero*, 131 SCRA 105 considering that respondents never acquired the 7,540 square meters lawfully, as the respondent court already stated that what was sold to respondent Cruz was the 6,800 square meters which he then sold to respondent Flores, hence respondents can not account as to how they acquire said lot, whereas the petitioner proved the 7,540 square meters formed part of 19,231 square meters of their parents in their possession since 1939.

"2. The respondent court erred in disregarding the findings of facts of the trial court, and substitute its own perception of the facts contrary to the incontrovertible evidence."^[7]

Petitioners assert that the property sold by the Sarmientos to respondent Cruz on 19 November 1960, under a "*Kasulatan ng Partisyon sa Labas ng Hukuman at Bilihang Patuluyan*," covers only the "*palayero*" or riceland, which measure about 6,000 square meters, and that the "*parang*," containing 7,856 square meters, has not been included.

The petition must be denied.

Contrary to the insistence of petitioners, the "*Kasulatan ng Partisyon sa Labas ng Hukuman at Bilihang Patuluyan*." executed on 19 March 1960 by Engracia dela Cruz (widow of Jorge Sarmiento) and her children Vicente Sarmiento, Maria Sarmiento and Florentino Sarmiento, pertained not only to the "*palayero*" but also to the "*parang*" as well; this agreement provided thus:

"1. Na akong si Engracia de la Cruz at ang aking yumao ng asawang si Jorge Sarmiento (nuong nabubuhay ito) ay nakapagpundar ng isang lupa na ang buong description ay gaya ng sumusunod:

"Isang parselang lupang PALAYERO na may kasamang PARANG (Cogonales) *na matatagpuan sa Barrio Ng Santa Lucia, Angat, Bulacan, P.I.*

"Ang Palayero ay may sukat na 6,000 metros cuadrados, *klasipikado 2-b, amillarado P270.00 Tax No. 4482; at ang parang ay may sukat na 7,856 metros cuadrados.* *Humahangga sa Norte, kay Antonio de la Rosa; Este, kina Fabian Garcia at Juan Geronimo; Sur, Kina Miguel Illescas, Ciriaco Reyes, y Juan de la Cruz; Oeste, Juan de la Cruz hoy Jose Marcelo y Mariano de la Cruz hoy Felip de Leon. Walang mejoras at ang hangganan sa paligid ay makikilala sa pamamagitan ng matutuwid na sikang o pilapil na buhay.*

*"2. Ayon sa Tax No. 4482 ay lupang palayero lamang ang nakatala, subalit **ito'y mayroong kasamang parang** na hindi lamang naipatala niyang nakaraang pasukan ng lupa sa tanggapan ng Assessor Provincial, kaya't ngayon ay magalang naming hinihiling na matala ang naturang parang."*^[8] (Emphasis supplied)

Shortly after the execution of the deed of sale in his favor, respondent Cruz declared both parcels, i.e., the *palayero* and the *parang*, for taxation purposes in 1960 in the Office of the Provincial Assessor and forthwith a new tax declaration was issued in his name for the entire 13,856 square meter property. The trial court itself likewise found that the sale by the Sarmientos to respondent Cruz covered both the riceland and the pasture land; it said:

"x x x. It is worthy to note that the ownership of the adjoining property by defendant Fernando Cruz originated from an extrajudicial partition with sale (*Kasulatan ng Partisyon sa Labas ng Hukuman at Bilihang Patuluyan* dated November 19, 1960 x x x. Under the said document, Engracia de la Cruz and her children Vicente, Marta, and Florentino, all surnamed Sarmiento, sold to defendant Fernando Cruz a rice land containing an area of 6,000 square meters and embraced under Tax Declaration No. 4482 and a pasture land (*parang*) containing an area of 7,856 square meters. x x x"^[9]

In turn, respondent Cruz sold, on 03 November 1968, the 13,856 square meters of land to respondent Flores under a "*Kasulatan ng Bilihan*." Respondent Flores immediately took possession of the property to the exclusion of all others and promptly paid the realty taxes thereon. From that time on, Flores had been in possession of the entire area in the concept of an owner and holding it in that