

THIRD DIVISION

[G.R. No. 119730, September 02, 1999]

**RODOLFO NOCEDA, PETITIONER, VS. COURT OF APPEALS AND
AURORA ARBIZO DIRECTO, RESPONDENTS.**

D E C I S I O N

GONZAGA-REYES, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court seeks to reverse the decision dated March 31, 1995 of the respondent Court of Appeals^[1] in CA GR CV No. 38126, affirming with modification the decision of the Regional Trial Court, Branch 71, of Iba, Zambales,^[2] in an action by private respondent against petitioner for recovery of possession and ownership and rescission/annulment of donation.

The facts of the case as summarized by the respondent Court are as follows:^[3]

"On June 1, 1981, plaintiff Aurora Directo, defendant Rodolfo Noceda, and Maria Arbizo, the daughter, grandson, and widow, respectively, of the late Celestino Arbizo, who died in 1956, extrajudicially settled a parcel of land, Lot 1121, located at Bitaoag, San Isidro, Cabangan, Zambales, which was said to have an area of 66,530 square meters. Plaintiff Directo's share was 11,426 square meters, defendant Noceda got 13,294 square meters, and the remaining 41,810 square meters went to Maria Arbizo (Exhibit G). On the same date, plaintiff Directo donated 625 square meters of her share to defendant Noceda, who is her nephew being the son of her deceased sister, Carolina (Exhibit D). However, on August 17, 1981, another extrajudicial settlement-partition of Lot 1121 was executed by plaintiff Directo, defendant Noceda, and Maria Arbizo. Three fifths of the said land went to Maria Arbizo while plaintiff Directo and defendant Noceda got only one-fifth each. In said extrajudicial settlement-partition as well as in the Tax Declaration 16-0032 over Lot 1121 in the name of the late Celestino Arbizo, the said parcel of land was said to have an area of only 29,845 square meters (Exhibit C). Sometime in 1981, defendant Noceda constructed his house on the land donated to him by plaintiff Directo. Plaintiff Directo fenced the portion allotted to her in the extrajudicial settlement, excluding the donated portion, and constructed thereon three huts. But in 1985, defendant Noceda removed the fence earlier constructed by plaintiff Directo, occupied the three huts (3) and fenced the entire land of plaintiff Directo without her consent. Plaintiff Directo demanded from defendant Noceda to vacate her land, but the latter refused. Hence, plaintiff Directo filed the present suit, a complaint for the recovery of possession and ownership and rescission/annulment of donation, against defendant Noceda before the lower court. During the trial, the lower court ordered that a relocation

survey of Lot 1121 be conducted by Engr. Edilberto Quejada of the Bureau of Lands. After the survey of Lot 1121 in the presence of both parties, Engr. Edilberto Quejada reported that the area of Lot 1121 stated in the extrajudicial settlement-partition of August 17, 1981 was smaller than the actual area of Lot 1121 which is 127,298 square meters. Engr. Quejada subdivided Lot 1121, excluding the portions occupied by third persons, known as Lot 8, the salvage zone and the road lot, on the basis of the actual occupancy of Lot 1121 by the heirs of the late Celestino Arbizo and the extrajudicial settlement-partition of August 17, 1981. The portion denominated as Lot A, with an area of 12,957 square meters was the share of defendant Noceda; Lot C, with the same area as that of Lot A, was the share of plaintiff Directo, a portion of which was donated to defendant Noceda; and Lot B, with an area of 38,872 square meters, went to Maria Arbizo (Exhibit E)."

On November 6, 1991, the Regional Trial Court, Branch 71, of Iba, Zambales rendered a decision, the dispositive portion of which reads as follows:^[4]

"WHEREFORE, in view of the foregoing considerations, the Court hereby renders judgment:

- (a) Declaring the Extra-Judicial Settlement-Partition dated August 19, 1981, valid;
- (b) Declaring the Deed of Donation dated June 1, 1981, revoked;
- (c) Ordering the defendant to vacate and reconvey that donated portion of Lot 2, Lot 1121 subject of the Deed of Donation dated June 1, 1981 to the plaintiff or her heirs or assigns;
- (d) Ordering the defendant to remove the house built inside the donated portion at the defendant's expense or pay a monthly rental of P300.00 Philippine Currency;
- (e) Ordering the defendant to pay attorney's fees in the amount of P5,000.00; and
- (f) To pay the cost."

Rodolfo Nocedo appealed to the respondent Court which affirmed the trial court as follows:^[5]

"WHEREFORE, judgment is hereby rendered, ORDERING defendant Rodolfo Noceda to VACATE the portion known as Lot "C" of Lot 1121 per Exhibit E, which was allotted to plaintiff Aurora Arbizo Directo. Except for this modification, the Decision, dated November 6, 1991, of the RTC-Iba, Zambales, Branch 71, in Civil Case No. RTC-354-I, is hereby AFFIRMED in all other respects. Costs against defendant Rodolfo Noceda."

Dissatisfied, petitioner filed the instant petition for review with the following assignment of errors:^[6]

THE COURT OF APPEALS ERRED IN HOLDING THAT THE SUBJECT PROPERTY IDENTIFIED AS LOT 1121 CONTAINS AN AREA IN EXCESS OF THAT STATED IN ITS TAX DECLARATION.

THE COURT OF APPEALS ERRED IN HOLDING THAT LOT 1121 SHOULD BE PARTITIONED IN ACCORDANCE WITH THE EXTRA-JUDICIAL SETTLEMENT DATED 17 AUGUST 1981.

THE COURT OF APPEALS ERRED IN ADJUDICATING AND ALLOTING LOT "C" AS APPEARING IN THE SURVEY PLAN PREPARED BY GEODETIC ENGINEER EDILBERTO QUEJADA TO THE RESPONDENT.

THE COURT OF APPEALS ERRED IN FINDING THAT THE PETITIONER USURPED AN AREA ADJUDICATED TO THE RESPONDENT.

THE COURT OF APPEALS ERRED IN REVOKING THE DEED OF DONATION DATED 1 JUNE 1981.

The first issue raised refers to the actual area of the subject lot known as Lot 1121, which was registered under Tax Declaration No. 16-0032 under the name of the late Celestino Arbizu. Petitioner claims that Tax Declaration No. 16-0032 contains only an area of 29,845 sq. meter; thus the respondent Court exceeded its judicial authority when it sustained the lower court's findings that the subject property actually contains an area of 127,289 square meters.

We find the argument unmeritorious. The records disclose that the trial court in an Order dated June 8, 1987 gave both parties to this case the chance to have the subject property re-surveyed by a licensed surveyor to determine the actual area of Lot 1121.^[7] Plaintiff Aurora Directo filed a motion/compliance where she suggested that Geodetic Engineer Edilberto V. Quejada of the Bureau of Lands, Iba, Zambales be commissioned to undertake the survey^[8] said motion was also sent to defendant's counsel, Atty. Eufrazio Pagunuran for Comment,^[9] but Atty. Pagunuran however failed to file his Comment within the given period. Thus the trial court designated Engineer Quejada to undertake the survey of Lot 1121.^[10] Petitioner Noceda through counsel belatedly filed his Comment without any opposition to the appointment of Engineer Quejada but proposed that the latter be tasked to solely (a) re-survey, determine and identify the metes and bounds of the lot covered by Tax Declaration No. 16-0032; (b) to identify the areas occupied by the parties therein; and (c) to conduct the re-survey with notice and in the presence of the parties therein and their respective counsels.^[11] The Comment was not, however, acted upon by the trial court in view of its earlier Order directing Engineer Quejada to undertake the survey of the land.^[12] Engr. Quejada conducted the survey with the conformity and in the presence of both parties, taking into consideration the extrajudicial partition dated August 17, 1981, deed of donation dated June 1, 1981 executed by plaintiff Aurora Directo in favor of defendant Rodolfo Noceda and the actual area occupied by the parties,^[13] as well as the sketch plan^[14] and the technical description of Lot 1121 taken from the Records Section of the Bureau of Lands, Manila.^[15] The report and the survey plan submitted by Engr. Quejada were approved by the Trial Court in an Order dated December 7, 1987.^[16] These circumstances show that the lower court ordered the re-survey of the lot to

determine the actual area of Lot 1121 and such survey was done with the conformity and in the presence of both parties. The actual land area based on the survey plan which was conducted in the presence of both parties, showed a much bigger area than the area declared in the tax declaration but such differences are not uncommon as early tax declarations are, more often than not, based on approximation or estimation rather than on computation.^[17] We hold that the respondent court did not err in sustaining the trial court's findings that the actual area of Lot 1121 is 127,289 square meters.

Petitioner also contends that said judicial determination improperly encroaches on the rights and claims of third persons who were never impleaded below; that the subject lot was also declared in the name of one Cecilia Obispo and a Free Patent over the said lot was also issued in her name and that there are several residential houses constructed and existing on Lot 8 of lot 1121, thus these possessors/occupants of Lot 8 should be joined as defendants for their non-inclusion would be fatal to respondent's cause of action.

We find no merit in this argument. The respondent Court correctly ratiocinated on this issue as follows:^[18]

"The fact that Cecilia Obispo has tax declarations in her name over Lot 1121 and several persons occupied a portion thereof did not make them indispensable parties in the present case. Defendant Noceda merely presented the tax declarations in the name of Cecilia Obispo without the alleged free patent in her name. Moreover, no evidence was presented showing that Cecilia Obispo possessed or claimed possession of Lot 1121. Tax receipts and declarations of ownership for tax purposes are not conclusive evidence of ownership of property (Republic vs. Intermediate Appellate Court, 224 SCRA 285).

It was not necessary that the occupants of a portion of Lot 1121, designated as Lot 8, be impleaded in the present case. Lot 8, though part of Lot 1121, was excluded by Engr. Quejada in determining the respective portions of Lot 1121 occupied by plaintiff Directo, defendant Noceda and Maria Arbizu pursuant to the extrajudicial settlement which they executed on August 17, 1981. The result of the present suit shall not in any way affect the occupants of Lot 8, since the issues involved in the present case are the usurpation by defendant Noceda of the land adjudicated to plaintiff Directo and the propriety of the cancellation of the deed of donation in favor of defendant Noceda due to his ingratitude to plaintiff Directo."

Notably, defendant's counsel requested for the appearance of Cecilia Obispo and despite notice to her to appear in court and bring with her the alleged free patent in her name,^[19] she failed to appear and even failed to intervene to protect whatever interest and right she has over the subject lot. As to the other possessors of residential houses in Lot 8 of Lot 1121, they are not considered as indispensable parties to this case. A party is not indispensable to the suit if his interest in the controversy or subject matter is distinct and divisible from the interest of the other parties and will not necessarily be prejudiced by a judgment which does complete justice to the parties in court.^[20] Private respondent is not claiming the entire area of Lot 1121 but only a portion thereof which was adjudicated to her based on the

August 17, 1981 extrajudicial settlement and which was denominated in the survey plan as Lot C of Lot 1121; thus there was no need to implead the occupants of Lot 8.

Petitioner further claims that the subject property could not be partitioned based on the extrajudicial settlement-partition dated August 17, 1981, since the distributive share of the heirs of the late Celestino Arbizo and the area of Lot 1121 stated therein were different from the extrajudicial settlement executed on June 1, 1981; that the discrepancies between the two deeds of partition with respect to the area of Lot 1121 and the respective share of the parties therein indicated that they never intended that any of the deeds to be the final determination of the portions of Lot 1121 allotted to them; that the extrajudicial settlement-partition of August 17, 1981 could not effectively subdivide Lot 1121 because it partitioned only 29,845 square meters, and not its actual area of 127,298 square meters.

We see no cogent reason to disturb the findings of the respondent Court as follows:
[21]

The discrepancies between the extrajudicial settlements executed by plaintiff Directo, defendant Noceda and Maria Arbizo on June 1, 1981 and August 17, 1981 only meant that the latter was intended to supersede the former. The signature of defendant Noceda in the extrajudicial settlement of August 17, 1981 would show his conformity to the new apportionment of Lot 1121 among the heirs of the late Celestino Arbizo. The fact that defendant Noceda occupied the portion allotted to him in the extrajudicial settlement, as well as the donated portion of the share of plaintiff Directo, presupposes his knowledge of the extent of boundaries of the portion of Lot 1121 allotted to him. Moreover, the statement in the extrajudicial settlement of August 17, 1981 with respect to the area of Lot 1121, which was 29,845 square meters, is not conclusive because it was found out, after the relocation survey was conducted on Lot 1121, that the parties therein occupied an area larger than what they were supposed to possess per the extrajudicial settlement- partition of August 17, 1981.

Although in the extrajudicial settlement dated August 17, 1981 the heirs of Celestino Arbizo partitioned only a 29,845 square meter lot to conform with the area declared under tax declaration 16-0032 yet the heirs were each actually occupying a bigger portion the total area of which exceeded 29,845 square meters. This was confirmed by Geodetic Engineer Quejada in his report submitted to the trial court where he stated among other things: [22]

7. that upon computation of actual survey, it is informed (sic) that the area dated (sic) as per extrajudicial settlement-partition in the name of Celestino Arbizo was smaller than the computed lots of their actual occupancy as per survey on the ground;

8. The Lot A, Lot B, and Lot C as appearing on prepared plan for ready reference was subdivided, base (sic) on stated sharing as per EXTRA JUDICIAL SETTLEMENT-PARTITION base (sic) on actual occupancy.

The survey conducted on Lot 1121 was only a confirmation of the actual areas being occupied by the heirs taking into account the percentage proportion adjudicated to