

THIRD DIVISION

[G.R. No. 117228, June 19, 1997]

**RODOLFO MORALES, REPRESENTED BY HIS HEIRS, AND
PRISCILA MORALES, PETITIONERS, VS. COURT OF APPEALS
(FORMER SEVENTEENTH DIVISION), RANULFO ORTIZ, JR., AND
ERLINDA ORTIZ, RESPONDENTS.**

DECISION

DAVIDE, JR., J.:

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioners urge this Court to reverse the 20 April 1994 decision of the Court of Appeals (Seventeenth Division) in CA-G.R. CV No. 34936,^[1] which affirmed in toto the 26 August 1991 decision of the Regional Trial Court of Calbayog City in Civil Case No. 265.

Civil Case No. 265 was an action for recovery of possession of land and damages with a prayer for a writ of preliminary mandatory injunction filed by private respondents herein, spouses Ranulfo Ortiz, Jr. and Erlinda Ortiz, against Rodolfo Morales. The complaint prayed that private respondents be declared the lawful owners of a parcel of land and the two-storey residential building standing thereon, and that Morales be ordered to remove whatever improvements he constructed thereon, vacate the premises, and pay actual and moral damages, litigation expenses, attorney's fees and costs of the suit.

On 2 February 1988, Priscila Morales, one of the daughters of late Rosendo Avelino and Juana Ricaforte, filed a motion to intervene in Case No. 265. No opposition thereto having been filed, the motion was granted on 4 March 1988.^[2]

On 30 November 1988 Rodolfo Morales passed away. In its order of 9 February 1989^[3] the trial court allowed his substitution by his heirs, Roda, Rosalia, Cesar and Priscila, all surnamed Morales. Thereafter, pre-trial and trial on the merits were had and the case was submitted for decision on 16 November 1990.

On 26 August 1991 the Trial Court rendered its decision^[4] in favor of plaintiffs, private respondents herein, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered in favor of the Plaintiffs and against Defendants-Intervenor:

1. Declaring the Plaintiffs the absolute and rightful owners of the premises in question;
2. Ordering the Defendants-Intervenor to:

- a. vacate from the premises in question;
- b. remove the beauty shop thereat;
- c. jointly and severally, pay the Plaintiffs, a monthly rental of P1,500.00 of the premises starting from March 1987, and the amounts of P75,000.00 for moral damages, P5,000.00 for litigation expenses, and P10,000.00 for Attorney's fees; and
- d. to pay the costs.

The injunction issued in this case is hereby made permanent.

SO ORDERED.^[5]

The following is trial court's summary of the evidence for the plaintiffs:

The evidence adduced by the Plaintiffs discloses that the Plaintiffs are the absolute and exclusive owners of the premises in question having purchased the same from Celso Avelino, evidenced by a Deed of Absolute Sale (Exh. "C"), a public instrument. They later caused the transfer of its tax declaration in the name of the female plaintiff (Exh. "I") and paid the realty taxes thereon (Exh. "K" & series).

Celso Avelino (Plaintiffs' predecessor in interest) purchased the land in question consisting of two adjoining parcels while he was still a bachelor and the City Fiscal of Calbayog City from Alejandra Mendiola and Celita Bartolome, through a 'Escritura de Venta' (Exh. "B"). After the purchase, he caused the transfer of the tax declarations of the two parcels in his name (Exhs. "D" & "E" to "G" & "H") as well as consolidated into one the two tax declarations in his name (Exh. "F"). With the knowledge of the Intervenor and the defendant, (Cross-examination of Morales, t.s.n. pp. 13-14) Celso Avelino caused the survey of the premises in question, in his name, by the Bureau of Lands (Exh. "J"). He also built his residential house therein with Marcial Aragon (now dead) as his master carpenter who was even scolded by him for constructing the ceiling too low.

When the two-storey residential house was finished, he took his parents, Rosendo Avelino and Juana Ricaforte, and his sister, Aurea, who took care of the couple, to live there until their deaths. He also declared this residential house in his tax declaration to the premises in question (Exh. "F") and paid the corresponding realty taxes, keeping intact the receipts which he comes to get or Aurea would go to Cebu to give it to him (t.s.n. Morales, pp. 4-6).

After being the City Fiscal of Calbayog, Celso Avelino became an Immigration Officer and later as Judge of the Court of First Instance in Cebu with his sister, Aurea, taking care of the premises in question. While he was already in Cebu, the defendant, without the knowledge and consent of the former, constructed a small beauty shop in the premises in question.

Inasmuch as the Plaintiffs are the purchasers of the other real properties of Celso Avelino, one of which is at Acedillo (now Sen. J.D. Avelino) street, after they were offered by Celso Avelino to buy the premises in question, they examined the premises in question and talked with the defendant about that fact, the latter encouraged them to purchase the premises in question rather than the property going to somebody else they do not know and that he will vacate the premises as soon as his uncle will notify him to do so. Thus, they paid the purchase price and Exh. "C" was executed in their favor.

However, despite due notice from his uncle to vacate the premises in question (Exh. "N"), the defendant refused to vacate or demolish the beauty shop unless he is reimbursed P35,000.00 for it although it was valued at less than P5,000.00. So, the Plaintiffs demanded, orally and in writing (Exhs. "L" & "M") to vacate the premises. The defendant refused.

As the plaintiffs were about to undertake urgent repairs on the dilapidated residential building, the defendant had already occupied the same, taking in paying boarders and claiming already ownership of the premises in question, thus they filed this case.

Plaintiffs, being the neighbors of Celso Avelino, of their own knowledge are certain that the premises in question is indeed owned by their predecessor-in-interest because the male plaintiff used to play in the premises when he was still in his teens while the female plaintiff resided with the late Judge Avelino. Besides, their inquiries and documentary evidence shown to them by Celso Avelino confirm this fact. Likewise, the defendant and Intervenor did not reside in the premises in question because they reside respectively in Brgy. Tarobucan and Brgy. Trinidad (Sabang), both of Calbayog City with their own residential houses there.

Due to the damages they sustained as a result of the filing of this case, the plaintiffs are claiming P50,000.00 for mental anguish; monthly rental of the premises in question of P1,500.00 starting from March 1987; litigation expenses of P5,000.00 and P10,000.00 for Attorney's fees.^[6]

The trial court's summary of the evidence for the defendants and intervenor is as follows:

Defendants'-Intervenor's testimonial evidence tend to show that the premises in question (land and two-storey building) is originally owned by the spouses, Rosendo Avelino and Juana Ricaforte, who, through their son, Celso Avelino, through an Escritura de Venta (Exh. "2") bought it from the Mendiolas on July 8, 1948. After the purchase the couple occupied it as owners until they died. Juana died on May 31, 1965 while Rosendo died on June 4, 1980. Upon their demise, their children: Trinidad A. Cruz, Concepcion A. Peralta, Priscila A. Morales and Aurea Avelino (who died single) succeeded as owners thereof, except Celso Avelino who did not reside in the premises because he was out of Calbayog for more than 30 years until his death in Cebu City.

The premises in question was acquired by Celso Avelino who was entrusted by Rosendo with the money to buy it. Rosendo let Celso buy it being the only son. The property is in the name of Celso Avelino and Rosendo told his children about it (TSN, Morales, p. 21). In 1950 Rosendo secured gratuitous license (Exh. "1") and constructed the two-storey house, having retired as Operator of the Bureau of Telecommunications, buying lumber from the father of Simplicia Darotel and paying the wages of Antonio Nartea as a laborer.

In 1979, defendant Rodolfo Morales constructed beside the two-storey house and beauty shop for his wife with the consent of Celso and the latter's sisters.

Priscila Morales was aware that the premises in question was surveyed in the name of Celso but she did not make any attempt, not even her father, to change the muniment of title to Rosendo Avelino. Despite the fact that Intervenor has two sons who are lawyers, no extra-judicial settlement was filed over the premises in question since the death of Rosendo Avelino up to the present.

Celso Avelino kept the receipts for the realty tax payments of the premises. Sometimes Aurea would go to Cebu to deliver these receipts to Celso or the latter will come to get them. Rodolfo also gave some of the receipts to Celso.

The sale of the subject premises to the Plaintiffs is fraudulent because it included her (Intervenor's) share and the beauty shop of her son, the defendant.

As a result of this case she is worried and suffered moral damages, lost her health, lacks sleep and appetite and should be compensated for P80,000.00 and the expenses for litigation in the amount of P30,000.00 until the case is finished.

The Intervenor would not claim ownership of the premises if her son, the defendant is not being made to vacate therefrom by the Plaintiffs.^[7]

The trial court reached the aforementioned disposition on the basis of its findings of facts and conclusions, which we quote:

During the ocular inspection of the premises in question on April 4, 1988, conducted by the Court upon motion of the parties, the Court found that the two-storey residential building urgently needed major general repairs and although the bedrooms seemed occupied by lodgers, neither the defendant nor the Intervenor informed the Court where or in which of the rooms they occupied.

Observing the questioned premises from the outside, it is easily deducible that it has not been inhabited by a true or genuine owner for a

long time because the two-story building itself has been left to deteriorate or ruin steadily, the paint peeling off, the window shutters to be replaced, the lumber of the eaves about to fall and the hollow-block fence to be straightened out, a portion along Umbria street (West) cut in the middle with the other half to the south is tilting while the premises inside the fence farther from the beauty shop to be cleaned.

From the evidence adduced by the parties, the following facts are undisputed:

1. The identity of the premises in question which is a parcel of land together with the two residential building standing thereon, located at corner Umbria St. (on the West) and Rosales Blvd. (on the North), Brgy. Central, Calbayog City, with an area of 318 sq. meters, presently covered by Tax Declaration No. 47606 in the name of the female Plaintiff and also bounded on the East by lot 03-002 (1946) and on the South by lot 03-006 (1950);
2. The Deeds of Conveyance of the questioned premises -- the Escritura de Venta (Exh. "B") from the Mendiolas to Celso Avelino and the Deed of Sale (Exh. "C") from Celso Avelino to the Plaintiffs- are both public instruments;
3. The couple, Rosendo and Juana Avelino as well as their daughter, Aurea, resided and even died in the disputed premises;
4. The defendant, Rodolfo Morales, constructed the beauty parlor in the said premises and later occupied the two-storey residential house;
5. Not one of the children or grandchildren of Rosendo Avelino ever contested the ownership of Celso Avelino of the disputed premises;
6. There has no extra-judicial partition effected on the subject property since the death of Rosendo Avelino although two of the Intervenor's children are full-pledged lawyers;
7. Since the premises in question had been acquired by Celso Avelino, it has been declared in his name for taxation purposes and the receipts of the realty taxes thereon were kept by him, some were either delivered to him by Aurea or by defendant; and
8. Ever since the Plaintiffs acquired the disputed premises, its tax declaration is now in the name of the female Plaintiff with the current realty taxes thereon paid by her.

A very careful study and meticulous appraisal of the evidence adduced by both parties and the applicable laws and jurisprudence show a preponderance of evidence conclusively in favor of the Plaintiffs, due to the following facts and circumstances, all borne of the record.

One. While Plaintiff's claim of ownership over the premises in question is