

## TWENTY-SECOND DIVISION

[ CA-G.R. CV NO. 02274-MIN, January 29, 2015 ]

**SIMEON G. NEPOMUCENO, PLAINTIFFS-APPELLANTS, VS.  
CALIXTO SAÑADO, AND SIX JOHN DOES, DEFENDANTS-  
APPELLEES.**

### D E C I S I O N

**PEREZ, J.:**

Assailed in this appeal is the 21 January 2010 Decision<sup>[1]</sup> rendered by the Regional Trial Court, Branch 24, Zamboanga-Sibugay, Ninth Judicial Region, in Civil Case No. I-176 for Damages filed by plaintiff-appellant Simeon Nepomuceno (Nepomuceno) against defendants-appellees Calixto Sañado (Sañado) and six John Does.

The 21 January 2010 Decision<sup>[2]</sup> disposed as follows:

WHEREFORE, in view of the foregoing considerations, plaintiff's complaint is hereby DISMISSED for lack of cause of action, with costs against plaintiff.

Defendant's counterclaim is hereby dismissed for lack of evidence.

IT IS SO ORDERED.

#### ***The Antecedents***

This appeal is but an offshoot of Civil Case No. 2085<sup>[3]</sup> filed by appellee Sañado against appellant Nepomuceno and Edgar Chu (Chu) for Recovery of Possession and Damages before the Regional Trial Court Branch 18, Pagadian City filed on July 17, 1981.

The facts are as found in G.R. No. 108338<sup>[4]</sup> denying review of the Decision of the Court of Appeals, 13th Division, in CA-G.R. CV No. 23165<sup>[5]</sup>.

The antecedent proceedings show that after trial on the merits, the RTC Branch 18 on 19 June 1989 rendered a Decision<sup>[6]</sup> in Civil Case No. 2085 in favor of appellee as follows:

WHEREFORE, IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered in favor of the plaintiff and against the defendants:

1. Ordering defendants jointly to restore possession and control of the fishpond area in question to the plaintiff;
2. Declaring the Waiver of All Rights, Interests and Participations over a

Fish Pond Area (Part) Exhibit (B) executed by defendant Nepomuceno in favor of the defendant Edgar Chu as null and void;

3. Ordering defendant Simeon Nepomuceno to pay the share of plaintiff in the amount of P168,000.00 covering the period of four years from February 19, 1975 to February 19, 1979, with only eight (8) hectares considered to be productive;

4. Ordering defendants to jointly pay plaintiff the rentals of the fishpond area in question at a reasonable rate of P25,000.00 per annum reckoned from February 19, 1979 up to the time the same fishpond area shall have been duly restored to the possession of plaintiff;

5. Ordering defendants to jointly and severally pay plaintiff the sum of P100,000.00 as attorney's fees, and

6. To pay the costs.

Dissatisfied with the decision, appellant together with Chu filed and perfected his appeal before the 13<sup>th</sup> Division of the Court of Appeals which was docketed as CA-G.R. CV No. 23165. The records disclose that Chu's appeal was dismissed by the 13<sup>th</sup> Division for failure to file an appellant's brief.<sup>[7]</sup>

In a Decision dated September 11, 1992, the Court of Appeals, 13<sup>th</sup> Division affirmed the Decision of the trial court in Civil Case No. 2085 with modifications, but partially reversed it "insofar as it ordered defendants [ Nepomuceno and Chu] jointly to restore possession and control of the fishpond area in question to the plaintiff [Sañado]", fully disposing as follows:<sup>[8]</sup>

WHEREFORE, premises considered, judgment is hereby rendered:

(a) Affirming the judgment appealed from with modification as follows:

1. Ordering and sentencing defendant-appellant Simeon G. Nepomuceno to pay the share of plaintiff-appellee in the amount of P168,000.00 covering the period of four (4) years from February 19, 1975 to February 19, 1979 with only eight (8) hectares considered to be productive;

2. Ordering defendant-appellant Simeon G. Nepomuceno to pay the reasonable rental of the fishpond area in question from February 20, 1979 to March 20, 1980 in the amount of P25,000.00;

3. Ordering and sentencing defendant-appellant Simeon G. Nepomuceno and Defendant Edgar Chu to jointly pay plaintiff-appellee the reasonable rentals of the fishpond area in question at the rate of P25,000.00 per annum from March 21, 1980 to January 2, 1985;

4. Ordering and sentencing defendant-appellant Simeon G. Nepomuceno and defendant Edgar J. Chu to jointly and severally pay plaintiff-appellee

the sum of P100,000.00 as attorney's fees;

5. Ordering and sentencing defendant-appellant Simeon G. Nepomuceno and defendant Edgar J. Chu to pay the costs; and

(b) reversing the decision appealed from insofar as it ordered "defendants jointly to restore possession and control of the fishpond area in question to the plaintiff.

SO ORDERED.

Earlier, in view of the dismissal of Chu's appeal, Sañado filed a Motion for Execution before the RTC Branch 18 with respect to Chu. On 3 June 1991, the RTC Branch 18 issued a Writ of Execution<sup>9</sup> in favor of Sañado which pertinently decreed as follows:

TO:

Sheriff Alfonso V. Demoni Regional Trial Court, Branch 13, Pagadian City

xxx

xxx

WHEREAS, the aforementioned decision has been appealed by the defendants to the Honorable Court of Appeals, Manila and the latter Court issued a MINUTE RESOLUTION on April 24, 1991, with respect to defendant Edgar Chu only, which had become final and executory on February 21, 1991, as shown on the partial Entry of Judgment rendered by said Court, dispositive part of which read as follows:

".... the appeal of defendant-appellant Edgar Chu is hereby DISMISSED for failure to file appellant's brief pursuant to Sect. 1 (f), Rule 50 of the Rules of Court. The appeal of the other appellant shall proceed."

WHEREAS, on May 31, 1991, plaintiff thru Counsel filed with this Court a Motion for Execution, and said motion was resolved by this Court in its Order dated June 3, 1991, dispositive part of which read as follows:

"Finding the grounds relied upon by counsel for the plaintiff in the aforesaid motion for execution to be well-founded, the same is hereby GRANTED. Let writ of execution issue.

SO ORDERED."

NOW THEREFORE, you are hereby directed to proceed to Monching, Siay, Zamboanga del Sur, and enforce the foregoing writ of execution by way of ejecting Edgar Chu and /or all persons acting for and in his behalf found within the fishpond area in question at Monching, Siay, Zamboanga del Sur, and restore to actual possession and control the said plaintiff Calixto Sanado on said fishpond area by virtue of the foregoing writ, and to make your return of service within 60 days from receipt hereof, thru

proper indorsement.

WITNESS MY HAND AND SEAL of this Court this 3<sup>rd</sup> day of June 1991, at  
Pagadian City, Philippines.

SO ORDERED.

Clothed by the Writ of Execution, appellee and six John Does on June 4, 1991 entered Fishpond No. 4 and harvested the tiger prawns inside the pond.<sup>[10]</sup>

As already stated, the Court of Appeals, 13th Division later rendered a Decision on the then pending appeal of Nepomuceno and Chu on September 11, 1992<sup>[11]</sup>, which was subsequently brought to the Supreme Court for review on questions of law in G.R. No. 108338.<sup>[12]</sup>

While G.R. No. 108338 was pending, Nepomuceno filed a suit for Damages on 27 May 1997 against Sañado and six John Does before the Regional Trial Court, Branch 24, Ipil, Zamboanga del Sur<sup>[13]</sup> based on the alleged wrongful execution of the Writ of Execution dated 3 June 1991. This case is the subject of the present appeal.

In his Complaint,<sup>[14]</sup> Nepomuceno declared that he was in actual possession of the fishponds subject of Civil Case No. 2085, including Fishpond No. 4. He averred that on 4 June 1991, Sañado and six John Does illegally entered the pond and harvested 2,500 kilos worth of fully grown tiger prawns valued at P800,000.00 without legal basis or authority.<sup>[15]</sup>

Nepomuceno alleged that the Writ of Execution issued by the RTC Branch 18 in Civil Case No. 2085 was directed only against his co-defendant Chu, not him, and that the fishpond, specifically Fishpond No. 4, was not part or subject of the writ of execution. Thus, appellant alleged that the harvesting of the tiger prawns was illegal and caused him damages.<sup>[16]</sup>

In addition, Nepomuceno stated that on 14 June 1991, a Writ of Preliminary Mandatory Injunction<sup>[17]</sup> was issued by the Court of Appeals in CA G.R. CV No. 23165 restoring possession of the fishpond in his favor.

In Answer<sup>[18]</sup> to the complaint, Sañado countered that he was granted possession of the fishpond by virtue of the 4 June 1991 Writ of Execution issued by the RTC Branch 18 in Civil Case No. 2085.

Sañado claimed no damages could have resulted from the enforcement of the writ as the subject fishpond, including Fishpond No. 4 had always been in the possession of Chu not Nepomuceno in view of the *Waiver of Rights and Interests* the latter executed in favor of Chu.<sup>[19]</sup>

Sañado concluded that since the Writ of Execution was issued against Chu, whose appeal had been dismissed by the Court of Appeals and as to whom the Decision dated June 19, 1989 of the RTC, Branch 18, Pagadian City had already become final and executory, there could have been no conflict when he took possession of the same from Chu as directed in the writ.<sup>[20]</sup>

Sañado then quoted pertinent portions of the Court of Appeal's Decision in CA-G.R. CV No. 23165 that pointed to Chu's possession of the fishpond after Nepomuceno had transferred possession to the latter, as follows:

In fine, defendant Nepomuceno know(s) all along when he executed the waiver (Exh. "E") that the contract with the plaintiff had already expired. Hence, he had to pass the hat to co-defendant Chu who was self-minded, grabbed the opportunity and outrightly (sic) took possession of the fishpond in question without even informing the plaintiff about the waiver. [21]

During the trial, Nepomuceno presented Oscar Oligado (Oligado), the Legal Officer of the Department of Agriculture, Region 9.[22] Oligado averred that on 5 July 1991, he inspected and took pictures of Fishpond No. 4 to inspect and assess the damages.

Oligado observed that the water in Fishpond No. 4 had already been drained and that the wooden gate to control the water had already been destroyed.[23] Oligado assessed the harvested tiger prawns inside Fishpond No. 4 to be valued at P882,000.00 and the damage to the wooden gate at P20,000.00.[24]

As established, Oligado performed the same upon the behest of Nepomuceno's counsel.[25]

On 11 August 2005, Nepomuceno testified that he had always been in possession of the contested fishponds and that Chu possessed the same only for a very brief period sometime in 1989.<sup>26</sup> Nepomuceno explained that he did not oppose the 3 June 1991 Writ of Execution issued by the RTC Branch 18 as he was not a party to the same.<sup>27</sup>

Nepomuceno then presented his employee Raul Ecot (Ecot), who identified Sañado and six unidentified persons as those responsible for harvesting the tiger prawns inside Fishpond No. 4 on 4 June 1991.[28]

For his part, Sañado testified but his testimony largely covered matters that do not join issues with the allegations of Nepomuceno involving the harvesting of the tiger prawns in Fishpond No. 4.

Sañado instead narrated that a couple of years after the decision in Civil Case No. 2085, Nepomuceno, on an alleged fabricated charge, filed Civil Case No. 3441 before the MTCC, Branch 4, Zamboanga City for Collection of Sum of Money, wherein Sañado was ordered to pay, among others, the amount of P14,000.00.[29]

Sañado then presented Julie S. Elago, the Clerk of Court of the MTCC, Branch 4, Zamboanga City, who authenticated the judgment among others in Civil Case No. 3441.[30]

On 21 January 2010, the RTC, Branch 24, rendered the present appealed Decision<sup>[31]</sup> dismissing the Nepomuceno's complaint as follows: