

## **TWENTY-THIRD DIVISION**

**[ CA-G.R. CV NO. 02824-MIN, February 27, 2015 ]**

**HEIRS OF JOSE VILLEGAS, REP. BY CIRICA VDA. DE VILLEGAS  
AND EDNA BITANCOR, PLAINTIFFS-APPELLEES, VS. FLORA  
VISORRO,<sup>[1]</sup> LUIS VISORRO AND BALTAZARA BUSANO,  
DEFENDANTS-APPELLANTS.**

### **D E C I S I O N**

**SANTOS, J [2].:**

Before this Court is an appeal under Rule 41 of the Rules of Court filed by defendants-appellants to assail the 15 November 2010 Decision<sup>[3]</sup> of Branch 27 of the Regional Trial Court of Gingoog City in Civil Case No. 98-532, which decreed, thus:

WHEREFORE, upon preponderance of evidence, the Court renders judgment:

- 1.1 Declaring the plaintiffs the absolute owner of the parcel of land described in paragraph 2 of the Complaint let alone the areas in which the defendants erected their respective houses to the exclusion of the defendants.
- 1.2 Ordering the defendants to remove their houses and to vacate the premises of which they are erected and to surrender and cancellation of any document that defendants might have relied their alleged claim over said areas this thereby removing the cloud upon Jose Villegas' and plaintiffs' title aforestated.
- 1.3. Ordering the defendants to pay jointly and severally the plaintiffs the following sums of money;
  - 1.3.a P20,000.00 plus P1,000.00 appearance fee, per court hearing, as attorney's fees
  - 1.3.b P10,000.00 as litigation expenses;
  - 1.3.c P1000,000.00 to each of the plaintiffs as moral damages;
  - 1.3.d P50,000.00 to each of the plaintiffs as corrective damages and

1.3.e P28,000.00 as reasonable rental of the areas of which defendants' houses are erected from January 1997 to the filing of the Amended Complaint, and thereafter, plus P1,000.00 per month from March 1998 until defendants houses are effectively removed and defendants vacated the premises.

1.4 To pay the costs.

SO ORDERED.

#### *The Antecedents*

Subject of the present controversy is an unregistered residential lot identified as Lot 340-D (subject lot) which is a portion of Lot 340, located at De Lara – Guanzon Sts., Brgy. 7, Gingoog City and originally owned and declared for taxation purposes by the late Servando Villegas (Servando). The subject lot is particularly described as follows:

Cadastral Lot 340-D, Cad.-10-000752, being a portion of Lot 340, Cad. 295, Gingoog Cadastre, declared in the name of Jose Villegas under Tax Dec. No. 00611, Series of 1996; bounded in the NE., along line 9-10 by Guanzon St. (10.00 m. wide); on the SE., along lines 10-11-12 by Lot 340-C of the subdivision plan, Cad. 10-000752-D, along lines 12-13-1 by Lot 338; on the SW., along line 1-2 by Lot 334, both of Cad. 295, Gingoog Cadastre, on the NW., along line 2-3 by De Lara St. (10.00 m. wide), along lines 3-4-5 by Lot 340-A, along lines 5-6-7 by Lot 340-B, both of the subdivision plan. Cad.-10-000752-D, along lines 8-9 by de Lara St. (10.00 m. wide); consisting of 704 sq. meters more or less.<sup>[4]</sup>

The subject lot is only one of the several properties left by Servando upon his death. He died on 16 September 1935 and was survived by his three (3) children, namely: Jose, Maria and Natividad, all surnamed Villegas.<sup>[5]</sup>

Servando is the common ancestor of both the plaintiffs-appellees and defendants-appellants.

Jose Villegas was survived by his heirs, the plaintiffs-appellees in this case, namely: his wife Cirica Vda. De Villegas and their children Edna, Ophelia, Evangeline, Rustom and Gilda, all surnamed Villegas.<sup>[6]</sup>

Maria was survived by her heirs Cayetana Abad Agosto (Cayetana)<sup>[7]</sup>, Margarito Abad (Margarito) and Magno Abad (Magno). Cayetana had several children and among them are defendants-appellants Flora A. Visorro, married to Luis Visorro, and Baltazara A. Busano. On the other hand, both Margarito and Magno are already dead. Margarito was survived by his heirs Felicitas Abad and Diosdado Abad; while, Magno died without an issue.<sup>[8]</sup>

Likewise, Natividad, also known as Trinidad, was survived by her heirs, namely: Rosendo Calo and Eutiquio Calo.<sup>[9]</sup>

Defendants-appellants Flora A. Visorro and Baltazara A. Busano constructed their respective houses on the subject lot in 1971 and 1979, respectively.<sup>[10]</sup>

On 16 February 1998, plaintiffs-appellees, represented by Cirica Vda. De Villegas and Edna Villegas Bitancor, filed a Complaint<sup>[11]</sup> for "Quieting of Title, Recovery of Possession and Damages coupled with Injunction and TRO" against defendants-appellants spouses Flora and Luis Visorro and Baltazara A. Busano before the RTC of Gingoog City, docketed as Civil Case No. 98-532. Plaintiffs-appellees claimed to be the owners in fee simple and in possession of the subject lot. They alleged that upon repeated pleas of defendants-appellants and considering that they are blood relatives, they allowed and tolerated the construction by defendants-appellants Flora and Baltazara of their respective temporary houses on the portions of the subject lot with the condition that should they desire to make use of the area, defendants-appellants will voluntarily vacate the premises and turn it over to them. However, plaintiffs-appellees said that when they demanded from defendants-appellants to remove their houses and to vacate the same, the latter failed and refused to heed their demands. They likewise alleged that they exerted earnest efforts towards compromise but to no avail. Hence, as a final recourse, plaintiffs-appellees, through counsel, sent a written request to defendants-appellants for a conference on 17 September 1997.<sup>[12]</sup> However, no settlement was reached among them.

Plaintiffs-appellees also claimed that they "hinted" a claim by defendants-appellants over the subject lot; hence, they filed the complaint. They argued that the belated claim of defendants-appellants, if supported by document, such document is forged and fictitious and invalid which created a cloud upon the title of their predecessor-in-interest Jose Villegas so that equity demands that defendants-appellants surrendered the document and have it cancelled. Likewise, they claimed that for failure of defendants-appellants to surrender the subject lot, defendants-appellants should pay a reasonable rental of P500.00 from January 1997 the date when demands were made for them to vacate. They also prayed for an injunctive writ as defendants-appellants threaten to expand and put up a permanent structures or fixtures on their respective houses and continue to brazenly deprive them of their dominion and use of the subject lot.

Plaintiffs-appellees also alleged that as a result of defendants-appellants' unlawful and malicious withholding of the subject lot, they prayed for moral damages in the amount of P100,000.00 for each of them; exemplary or corrective damages in the amount of P50,000.00 to each of them; attorney's fees of P20,000.00 plus appearance fee of P1,000.00 per court hearing; litigation expenses of P10,000.00; reasonable rental in the amount of P14,000.00 from January 1997 to the filing of the case and P1,000.00 per month from March 1998 until defendants-appellants houses are effectively removed and the latter vacated the premises.

On 28 May 1998, defendants-appellants filed their Answer.<sup>[13]</sup> They denied the claim of exclusive ownership of the plaintiffs-appellees on the subject lot arguing that they are co-owners thereof because the subject lot is a hereditary property of the late Servando Villegas who upon his death transmitted the same to his heirs Jose, Trinidad and Maria in three (3) equal shares. They claimed that it was from the share of Maria from whom their mother Cayetana and her brother Margarito acquired by succession the one-third (1/3) share of the subject lot. While they

admitted having received a demand from the plaintiffs-appellees to vacate the premises they occupied, yet, they asserted that their continued stay and occupation on the subject lot is pursuant to their rightful claim of co-ownership over said property.

Defendants-appellants likewise claimed that plaintiffs-appellees were indulged in simulation, maneuvering and manipulations by procuring and holding in their possession conflicting and contradictory documents which are suspicious and equally doubtful documents vainly calculated to defeat their rightful claim as well as the other heirs of Maria over the subject lot. They alleged that among the documents in the possession of plaintiffs-appellees are a Quitclaim Deed<sup>[14]</sup> dated 03 June 1940, a "*Kalig-unan*"<sup>[15]</sup> or Agreement<sup>[16]</sup> dated 29 January 1951, and an "*Eskritura de Donacion Onerosa*"<sup>[17]</sup> dated 30 October 1947. It was also alleged by defendants-appellants that there is no basis for the issuance of the provisional remedy of injunction because they had been long in occupation and possession of the portion of the subject lot following the principle that acts already done can no longer be validly enjoined.

By way of affirmative defense, defendants-appellants alleged that plaintiffs-appellees have no cause of action against them and if they do, the same had long been lost by prescription and laches. Likewise, they alleged that plaintiffs-appellees have no personality to institute the case because in a court's Decision<sup>[18]</sup> dated 23 December 1969 in Cadastral Case No. N-10, L.R.C. Rec. No. 347, Lot 340 was adjudicated to a certain Jose L. Reyes, married to Isabel Ponce, unless Jose L. Reyes and Isabel Ponce are mere dummies whose names were only used by the plaintiffs-appellees to confuse and deprive them and the other heirs of Servando Villegas of their rightful claim over the subject lot. They even claimed that Lot 340 is with a pre-existing conflict among Jose, Trinidad, Cayetana and Felicitas Abad. The said Lot 340 had been surveyed as a conflicted lot for and among the conflicting claimants per records in the CENRO, DENR, Gingoog City, as shown in its Certification<sup>[19]</sup> and which is the same conflicting claim carried out in Tax Declaration No. 17581<sup>[20]</sup> for Lot 340.

By way of counterclaim, defendants-appellants prayed for moral damages in the sum of P100,000.00; attorney's fees of P35,000.00 plus P1,000.00 per court appearance; and litigation expenses of P10,000.00.

Meanwhile, it was found out in the course of the Pre-Trial Conference that there is a need to amend the complaint in order to conform to certain documents. Hence, in an Order<sup>[21]</sup> dated 16 March 1999, the trial court ordered the plaintiffs-appellees to amend their complaint and for the defendants-appellants to file their corresponding answer thereto.

On 12 April 1999, the plaintiffs-appellees filed their Amended Complaint.<sup>[22]</sup> In addition to their allegations found in their original complaint, they further alleged that the subject lot is part of the bigger area measuring about 1,044 square meters (sq. m.) under Tax Declaration No. 16634<sup>[23]</sup> in the name of Servando Villegas who upon his death was transmitted by operation of law to his children, namely: Jose, plaintiffs-appellees' predecessor-in-interest; Maria, the grandmother of defendants-appellants, being the children of Cayetana the daughter of Maria; and Natividad.

Plaintiffs-appellees claimed that the absolute ownership and possession of the subject lot was vested in their predecessor-in-interest Jose pursuant to the Deed of Quitclaim<sup>[24]</sup> executed by Natividad and defendants-appellants' mother Cayetana on 03 June 1940. They alleged that the said document was duly notarized and was registered<sup>[25]</sup> with the Office of the Register of Deeds of Misamis Oriental on 22 April 1949 together with the "Affidavit to Supplement the Quitclaim Deed."<sup>[26]</sup> They also claimed that it is on this subject lot that the original residential house of Jose was built.

It was also alleged by plaintiffs-appellees that on 30 October 1947, Jose donated 88 sq. m. out of the original area in favor of defendants-appellants' mother Cayetana as evidenced by the document denominated as "*Escritura de Donacion Onerosa*."<sup>[27]</sup> From the original area of 1,044 sq. m., the subject lot is only 704 sq. m. as this is the only area left to Jose since during his lifetime he already made dispositions of some portions of the land. Also, they claimed that defendants-appellants' mother Cayetana has already sold her rights, shares and interest of the property located at Kahulugan, Gingoog City, which she inherited from the estate of Servando Villegas to the Intestate Estate of C.V. Lugod as shown in the Deed of Partition<sup>[28]</sup> dated 22 July 1971.

On 24 May 1999, defendants-appellants filed their Answer to the Amended Complaint.<sup>[29]</sup> In addition to their denials and allegations found in their original answer, they also alleged that the execution of the document denominated as "*Escritura de Donacion Onerosa*" was in furtherance of the scheme pursued by the late Jose Villegas in taking advantage of and in exploiting to his own benefit the unsuspecting trust in him, the credulity and the inability of his other co-heirs to discern his cunning maneuvers to exclude, deprive and to make it appear that he alone has the exclusive claim over the entire estate left by Servando Villegas. Also, they claimed that the "Deed of Quitclaim" adverted to by the plaintiffs-appellees is simulated, feigned and characterized by gross inadequacy and incredibly disproportionate consideration of P100.00 in order for Cayetana and Trinidad to surrender their rights over four (4) parcels of prime land with areas of 1,044 sq. m., 49,725 sq. m., 10,464 sq. m., and 12,303 sq. m. all in favor of Jose. They alleged that the supposed execution of the said document was carried out without prior formal adjudication and settlement of the estate of Servando Villegas; hence, the Deed of Quitclaim is a nullity.

During the Pre-Trial, the principal issue submitted by the parties was who between Cayetana Abad Augusto and plaintiffs-appellees own the subject lot?<sup>[30]</sup>

After due proceedings, the trial court rendered the assailed Decision dated 15 November 2010 in favor of the plaintiffs-appellees.

Hence, the present appeal.

Meanwhile, before the record of the case could be forwarded to this Court, a Notice of Death<sup>31</sup> was filed before the trial court on the demise of defendant-appellant Flora Visorro. The deceased defendant-appellant is now substituted by her heirs, namely: Rolando Augusto Reyes, Rebecca Augusto Visorro, Ritchie Augusto Visorro