

## EIGHTH DIVISION

[ CA-G.R. CV No. 102474, March 12, 2015 ]

**NESTOR A. VOCALAN, PLAINTIFF-APPELLANT, VS. HEIRS OF PEDRO LIPIO, NAMELY: LANI F. LIPIO-POON, LORNA LIPIO AND REYNALDO LIPIO, DEFENDANTS-APPELLEES.**

### D E C I S I O N

**LANTION, J.A.C., J.:**

Before Us is an appeal from the Decision<sup>[1]</sup> dated 27 January 2014 of the Regional Trial Court of Binangonan, Rizal, Branch 67 ("**court a quo**" for brevity ) in Civil Case No. 11-026, the dispositive portion of which reads:

"In light of this, we **DISMISS** the complaint for lack of proof and merit. All claims and counterclaims for damages and attorney's fees are **DISMISSED** for lack of basis. No pronouncement as to costs.

SO ORDERED."

### FACTS

On 13 July 2011, plaintiff-appellant Nestor A. Vocalan ("**plaintiff-appellant**" for brevity) filed a *Complaint*<sup>[2]</sup> for recovery of possession and damages against defendants-appellees Lerma, Lani and Reynaldo, all surnamed Lipio<sup>[3]</sup> ("**defendants-appellees**" for brevity) before the court *a quo*, alleging as follows:

"3. That plaintiff Nestor A. Vocalan, together with his brothers Benjamin A. Vocalan, Josefino A. Vocalan, Leonito A. Vocalan and Herbert H. Vocalan in representation of the Heirs of Emmanuel A. Vocalan, and sister Elena A. Vocalan, are all co-owners of a residential land consisting of more or less twenty-five (25) square meters fronting No. 62 Capt. Allano Street, Brgy. Bagumbayan, Angono, Municipality, Rizal Province and wherein the plaintiff is the designated administrator for his brothers and sisters, as evidenced by a "General Power of Attorney";

4. That sometime in August 19, 1949, plaintiff's father Rafael Vocalan bought from Caridad, Natividad, and Leonides, all surnamed Bautista, a parcel of residential land consisting of more or less 119.09 square meters, as shown by a "Deed of Sale of Unregistered Land" a xerox copy is hereto attached as Annex "A", and the corresponding Tax Declaration No. 1341 was issued to Rafael Vocalan by the Province of Rizal Office of the Assessor on December 15, 1949, a xerox copy is hereto attached as Annex "B";

5. That sometime in the year 1970, the Provincial Government of Rizal bought/acquired from plaintiff's father Rafael Vocalan, eighty-four (84)

square meters of the 119.09 square meters for the street named "Capt. Allano" leaving to plaintiff's father 35 square meters of land covered by Tax Declaration Nos. 5284 (for 1974), 02-0384 (for 1979), A-0007-0147 (for 1995) and replaced with A-003-0681 (for 1995), xerox copies are hereto attached as Annexes "B-1", "B-2", "B-3", respectively;

6. That during the Cadastral Survey of Angono in 1985, the defendants claimed without the knowledge, consent and presence of plaintiff's father the 35 square meters of land adjacent to the defendants (*sic*) land and fronting Capt. Allano Street as their own, xxx

7. That the plaintiff filed a Protest with the DENR, Regional Office No. IV-A Calabarzon against Pedro Lipio, as the latter was able to have the consolidation of the 35 square meters lot to his (*sic*) Pedro Lipio's lot as (Lot No, 765, Cad. 687-D, Plan AP 04-012-785), and the plaintiff was able to have the same cancelled as shown by the "Order" [dated 16 March 2011] of the DENR in Case No. IV-5929, a xerox copy is hereto attached as Annex "C", which Order had become "final and executory" after running the gamut of appeals to the Court of Appeals and Supreme Court by the defendants;

8. That since December 12, 2006 when the Order became final and executory (Annex "C"), the defendants had adamantly refused and without reason to return the possession of the said 35 square meters to the plaintiff and remove/demolish the concrete fence and fence structure occupying the question (*sic*) lot, despite repeated notices send (*sic*) to the defendants, the last which (*sic*) was send by the undersigned counsel by registered mail, as shown by xerox copies of the "Demand Letter" dated April 28, 2011, "Registry Receipt No. 006293 of the Quezon City Hall Post Office", and "Registry Return Receipt"/Card dated received on May 17, 2011, hereto marked as Annexes "D", "D-1" and "D-2", respectively;

9. That since the final and executory "Order" of the DENR on December 12, 2006, the herein defendants had resisted on several occasions the implementations of said Order by preventing the CENRO Antipolo City to perform their duty to take a survey and restore the plaintiff in peaceful possession of the more or less twenty-five (25) square meters parcel of land which the defendants had without reason withheld from the plaintiff, with the last incident occurring on May 27, 2011, as recorded by the Office of the Barangay of Bagumbayan, Angono Municipality, Rizal Province, a xerox copy consisting of two (2) pages, which are hereto attached as Annexes "E" and "E-1", respectively;

xxx"

For their part, defendants-appellees, in their *Answer*,<sup>[4]</sup> materially denied the allegations of plaintiff-appellant. Defendants-appellees averred that the Resolution dated 04 September 2006 of the Department of Environment and Natural Resources (**DENR**) was unclear and unexecutable for the following reasons:

"a) The dispositive portion referred to the "subject land" that has been consolidated to Lot 765, Cad 67-D but it did not mention what "subject land" that is;

b) It ordered the cancellation of Plan AP-04-012785 and thereafter the verification/segregation and consolidation/subdivision of Lot 765, Cad-687-D and yet it did not state what is that to be verified and segregated therefrom; what is to be consolidated with Lot 765, Cad-687-D; and how will the consolidation and subdivision of Lot 765, Cad-687-D be effected"

Furthermore, defendants-appellees averred that the "veracity of the 25 or 35.09 square meters" being claimed by plaintiff-appellant is still yet to be determined by the DENR because they have a pending *Motion for Reconsideration* of the Order dated 16 March 2011 with the DENR when plaintiff-appellant filed his *Complaint*.<sup>[5]</sup>

Thereafter, trial on the merits ensued and both parties presented their respective evidence supporting their claim.

On 27 January 2014, the court *a quo* ruled in favor of defendants-appellants, ratiocinating in this wise:

"xxx Plaintiff erred in relying on the DENR's Order upholding his protest because even that is unclear since it refers to 25 square meters of land. Besides we are not bound by the DENR's findings since the relief sought is judicial and not administrative. Plaintiff should have presented the same evidence which made the DENR conclude in his favor for our own independent perusal because plaintiff's complaint here is a totally new creature from his DENR protest. Hence, plaintiff clearly failed to meet his onus probandi on the land's identity."<sup>[6]</sup>

Hence, this appeal.

### **ASSIGNMENT OF ERROR**

Plaintiff-appellant raises this lone error:

**WHETHER THE COURT A QUO CORRECTLY HELD THAT THE DECISION OF THE DENR (Regional Office No. IV-A) MAY NOT BE EXECUTED DESPITE ITS HAVING ATTAINED FINALITY BECAUSE PLAINTIFF-APPELLANT HAD NOT SATISFACTORILY PROVED THE IDENTITY OF THE PARCEL OF LAND BEING CLAIMED.**<sup>[7]</sup>

### **OUR RULING**

Plaintiff-appellant avers that the court *a quo* erred in dismissing his *Complaint* because he has satisfactorily proved the identity of the parcel of land subject of the instant case.<sup>8</sup>

*The instant appeal fails.*

***Plaintiff-appellant's Complaint for Recovery of Possession Should Be Dismissed***