

## **TWENTY-SECOND DIVISION**

**[ CA-G.R. SP NO. 03221-MIN, January 30, 2014 ]**

**VITO OSCAR PARAS AND RITA PARAS, PETITIONERS, VS.  
JOSEFINA B. LIZADA, RESPONDENT.**

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

**LOPEZ, J.:**

Petitioners, by way of petition for review under Rule 42 of the Rules of Court, seek the reversal of the Decision<sup>[1]</sup> dated July 1, 2009 of the Regional Trial Court of Davao City, Branch 16,<sup>[2]</sup> which affirmed with modification the Decision<sup>[3]</sup> dated December 8, 2008 of the Municipal Trial Courts in Cities of Davao City, Branch 2,<sup>[4]</sup> granting respondent's complaint for recovery of possession.

Petitioners likewise assailed the denial of their motion for reconsideration to the July 1, 2009 Decision.<sup>[5]</sup>

#### **The Antecedents**

On June 6, 2008, respondent Josefina B. Lizada filed a complaint<sup>[6]</sup> against petitioners spouses Vito Oscar Paras and Rita Paras for Recovery of Possession, Damages and Attorney's Fees before the Municipal Trial Courts in Cities (MTCC) of Davao City, docketed as Civil Case No. 20,842-2008. Respondent alleged that she is a co-owner of a 210-square meter residential lot known as Lot No. 552-G-1 which is a portion of a bigger lot covered by Transfer Certificate of Title (TCT) No. 326<sup>[7]</sup> located at Lanang, Davao City. The subject lot is adjacent to the residential property of petitioners with an area of 1,509 square meters, known as Lot No. 552-B-2-C-2-1 of Psd 70494 and covered by TCT No. T-288274<sup>[8]</sup> registered in the name of petitioners. She further alleged that by tolerance of her predecessors-in-interests and subsequently by her and her co-owners, petitioners were allowed to use the subject lot as parking area, flower garden and for other purposes.

On May 26, 2008, respondent demanded from petitioners to vacate the subject premises as her family will use the same.<sup>[9]</sup> However, petitioners refused to vacate and return the subject lot to her thereby depriving her of the reasonable use and enjoyment of the lot. The matter was eventually referred to the Barangay Chairperson for conciliation proceeding but no settlement was reached by them.<sup>[10]</sup>

Hence, she filed the complaint and prayed that after due proceedings, the court may render a judgment in her favor ordering petitioners and their assigns and successor-in-interest to vacate the subject lot and to deliver the possession of the same to her; that petitioners be ordered to pay Five Thousand Pesos (P5,000.00) as monthly payment for the use and enjoyment of the lot starting May 2008 and until they vacate the same; and that petitioners be ordered to reimburse her the sum of Thirty Thousand Pesos (P30,000.00) as attorney's fees as she was compelled to engage

the services of a counsel plus Two Thousand Pesos (P2,000.00) per court appearances.

On July 21, 2008, petitioners filed their answer to the complaint.<sup>[11]</sup> They denied the allegations of respondent arguing that the subject 210-square meter lot referred to by respondent is actually a road known as Lizada Drive. They further argued that the house and lot they owned and occupied which is adjacent to the subject lot is previously owned by Prudencio Lizada, one of the predecessors-in-interests of respondent. The parents of petitioner Rita Paras purchased the property from Prudencio Lizada and thereafter, petitioners acquired the same from the parents of petitioner Rita Paras. Even before their property was conveyed by Prudencio Lizada to petitioner Rita Paras' parents, Prudencio Lizada already utilized the subject 210-square meter lot as a road. In fact, the house, the gates and main entrances of their house are all facing the said road while the other side of the property is fenced. Thus, even Prudencio Lizada has intended that the entry of their house is always through the subject lot which is used as road.

By way of affirmative defenses, petitioners contended that respondent has no cause of action to take exclusive possession of the subject lot because the subject property is a road and it is part of the road network of the general area which was required when the whole property was subdivided by the original owners whom respondent claimed as her ancestors. They argued that the subject 210-square meter lot is just a portion of a bigger lot covered by TCT No. 326 and which portion is used as a road from the national highway going to the beach. The right to utilize the same as a road is part and parcel of the sale of their house and lot by the original owner Prudencio Lizada to petitioner Rita Paras' parents. Moreso, if respondent wished to convert the said portion for her personal use, then all the property owners of the many different parcels of land located along the said road should be impleaded as indispensable parties.

By way of compulsory counterclaim, petitioners alleged that because of the baseless action filed by respondent, they were compelled to engage the services of a counsel for a fee in the sum of Fifty Thousand Pesos (P50,000.00) plus appearance fee of Two Thousand Five Hundred (P2,500.00) per court hearing. As such, respondent should recompense them in addition to the other costs of litigation. Likewise, the baseless actions of respondent have caused them serious anxiety, moral shock and sleepless nights for which respondent should be held liable for moral damages in the sum of One Hundred Thousand Pesos (P100,000.00). Moreso, in order to teach respondent a lesson considering that the complaint was filed in bad faith in view of respondent's knowledge that the subject lot is a road, respondent should be held liable for exemplary damages in the amount of One Hundred Thousand Pesos (P100,000.00).

After due proceedings, on December 8, 2008, the MTCC rendered a decision<sup>[12]</sup> the dispositive portion thereof reads:

WHEREFORE, judgment is rendered in favor of the plaintiff (respondent in this case) and against defendants (petitioners in this case), their assign and successors-in-interests ordering them to peacefully vacate and to deliver the possession of Lot 552-G-1 to herein plaintiff; to pay the sum of P5,000.00 monthly for the use and enjoyment of said lot starting May 2008 until they vacate the same, to pay attorney's fees of P10,000.00 and to pay the costs of suit.

SO ORDERED.

Aggrieved, petitioners appealed to the Regional Trial Court (RTC) of Davao City.

On July 1, 2009, the RTC rendered the assailed Decision<sup>[13]</sup> which decreed thus:

WHEREFORE, PREMISES CONSIDERED, the assailed Decision dated December 8, 2008 is AFFIRMED, with MODIFICATION, reducing the monthly rental to P2,000.00 for the use and enjoyment of the lot in question starting May 2008 until defendants-appellants vacate the same.

SO ORDERED.

Petitioners seasonably moved for the reconsideration thereto raising almost the same arguments contained in their affirmative defenses and counterclaim but the same was likewise denied by the RTC on October 5, 2009.<sup>[14]</sup>

Hence, the instant petition.

### The Issues

#### I.

THAT THE COURT A QUO SERIOUSLY ERRED IN RULING AND AFFIRMING THAT THE PLAINTIFF-APPELLEE HAS A BETTER RIGHT TO POSSESS AND USE THE SUBJECT PROPERTY CONSIDERING THAT THE SAID PROPERTY IS A ROAD AND PART OF THE PROPERTIES INVOLVED AND ITS VERY EXISTENCE AS SUCH IS AN APPARENT SIGN THAT, UNDER ARTICLE 624 OF THE CIVIL CODE, SERVES AS A TITLE THAT THE EASEMENT MAY CONTINUE ACTIVELY AND PASSIVELY DESPITE ITS OWN FINDINGS THAT THERE IS EVIDENCE TO SHOW THAT INDEED THE SUBJECT PROPERTY IS A ROAD.

#### II.

THAT THE COURT A QUO SERIOUSLY ERRED IN RULING AND AFFIRMING THE MTCC'S FINDINGS THAT THE SUBJECT PROPERTY IS RESIDENTIAL IN NATURE WHEN CLEAR EVIDENCE HAS BEEN SHOWN THAT THE PLAINTIFF-APPELLEE HAS MADE NUMEROUS PRIOR ADMISSIONS THAT THE SAME IS A ROAD LOT.

#### III.

THAT THE COURT A QUO SERIOUSLY ERRED IN AFFIRMING THE MTCC'S DECISION RELYING UPON THE ALLEGEDLY SUBDIVIDED TAX DECLARATIONS SUPPOSEDLY COVERING THE SUBJECT PROPERTY WHEN THERE IS NO SHOWING OF ANY SUCH SUBDIVISION OF TRANSFER CERTIFICATE OF TITLE NO. 326 THAT ACTUAL PROPERTY COVERED THEREBY AND CONSIDERING FURTHER THAT THE SUBDIVISION AND AMENDMENT OF THE SAID TAX DECLARATION WAS APPARENTLY DONE UNILATERALLY AND WITHOUT THE CONSENT OF THE DEFENDANTS-APPELLANTS WHO, WITHOUT DUE PROCESS OF LAW, ARE BEING DEPRIVED OF THEIR RIGHT TO USE THE SAID ROAD, A RIGHT ESTABLISHED BY THE ORIGINAL OWNERS OF THE INVOLVED PROPERTIES.

IV.

THAT THE COURT A QUO SERIOUSLY ERRED IN AFFIRMING THE MTCC'S RULING THAT THE EXISTENCE OF ANOTHER ROAD ABUTTING THE DEFENDANTS-APPELLANTS' PROPERTY NEGATES THEIR RIGHT AND ENTITLEMENT TO USE THE SUBJECT PROPERTY AS A ROAD WHEN THESE ROADS WERE ESTABLISHED BY THE ORIGINAL OWNERS OF THE INVOLVED PROPERTIES AND IT IS NOT THE DEFENDANTS-APPELLANTS WHO ARE SEEKING THE ESTABLISHMENT OF A ROAD RIGHT OF WAY.

V.

THAT THE COURT A QUO SERIOUSLY ERRED IN EFFECTIVELY AFFIRMING THE MTCC'S RULING THAT AN ACTION FOR EJECTMENT IS AN APPLICABLE REMEDY IN THIS CASE IN VIEW OF THE FACT THAT THE DEFENDANTS-APPELLANTS DO NOT OCCUPY THE SAID PROPERTY BUT ONLY USE IT AS A ROAD INTO AND OUT OF THEIR PROPERTY.

The Court's Ruling

The petition is bereft of merit.

At the outset, it should be emphasized that this is mainly an action for recovery of possession of a real property filed by respondent as an heir of the registered owners and as a co-owner of the property under litigation against petitioners who are the adjacent lot owners of the subject 210-square meter lot and who are allegedly possessing the said lot to the exclusion of respondent. While petitioners raised as a defense the nature of the subject lot asserting that it is a road right-of-way, yet, it should be emphasized that the present case is not an easement case or for the establishment of one.

Considering that all the issues raised by petitioners are interrelated, we will discuss them jointly. In sum, the focal issue in this case is whether or not the court *a quo* erred in affirming the decision of the MTCC finding respondent to have a better right of possession over the subject 210-square meter lot and in ordering petitioners to vacate the lot and to return the possession thereof to respondent.

We answer in the negative.

In this case, petitioners assert that the subject 210-square meter lot is a road lot and that the court *a quo* erred in affirming the decision of the MTCC ordering them to vacate the lot and to return the possession thereof to respondent. They argue that the subject lot is just a portion of the 2,569 square meter lot covered by TCT No. 326 which is a very long stretch of land about six (6) meters wide beginning at the edge of the national highway all the way near to the beach known as Lizada Drive and used by the people in the area to pass through and gain access to the national highway. In fact, petitioners argue that the tax declarations covering the subject property described it as a road and even the title of their land adjoining the subject property described it as a road. As such, the apparent sign that the subject lot is indeed intended by the owners as a road will serve as their title to the right to use the same as a road.

Moreover, petitioners contend that the intention to use the subject lot as part of the road lot could be traced from respondent's predecessors-in-interests and respondent as a mere successor-in-interest of the subject lot has no right to deny them the use

of the lot as a road and respondent has no right to exclude them from the use of the subject property which right respondent's predecessors-in-interests established. They argue that their property which is adjacent to the subject lot was previously owned by Prudencio Lizada, one of the original owners of TCT No. 326 and one of the predecessors-in-interests of respondent. When their property was acquired from Prudencio Lizada, the subject lot was already an established easement of right-of-way. Hence, under Article 624 of the Civil Code, they were given the right as the subsequent owners to utilize an easement established by the original owners. Likewise, none of the grounds for the extinguishment of easement as provided in Article 631 of the Civil Code exist. Thus, an already established easement of road right-of-way must continue to exist in favor of the subsequent owners of the benefited properties and the fact that another road abutting their property exists is not a ground to extinguish the easement of road right-of-way already established by respondent's predecessors-in-interests. Petitioners likewise assert that they are not trying to claim or demand a road right-of-way but instead, they are seeking to defend their title to the road right-of-way established by the original owner of their property and one of the registered owners of TCT No. 326.

Finally, petitioners contend that respondent availed of the wrong remedy when she filed a case for recovery of possession of the subject lot because such action presupposes that they are occupying and detaining the possession of the subject lot and they refused to return it to respondent. They argue that such is not the case because they did not occupy or detain the possession of the subject lot. At most, their possession is merely intermittent as they use it only as a road from their house to the national highway and certainly, their use of the subject lot as a road cannot qualify as the occupation or "detainer" as understood in the unlawful detainer case. While there was a prior mandamus case filed by respondent and her relatives against them in order to cause the removal of the gate and the fence on the subject property and which was originally built by their predecessors-in-interests and subsequently improved by them, yet, the same were already removed by respondent and her relatives. The gate and the fence on the subject lot were no longer there and the subject property is free and clear from any permanent occupation by them. It is thus clear that the purpose of respondent in filing the instant case is not to remove them from the subject lot but rather to prevent them from using it. This, however, does not constitute a cause of action for unlawful detainer.

We are not persuaded. We find petitioners' contentions untenable.

In instituting the instant case, respondent asserts that she has a better right to possess the subject lot based on her claim of ownership as an heir of the original registered owners. Petitioners, on the other hand, allege that they have a better right to possess the lot because they have already acquired the right of possession over it, which is akin to a title, for the use of the lot as a road for so long a time. They argue that the subject lot has already been established by respondent's predecessors-in-interests as an easement of right-of-way going to the national highway and as such, they should not be denied the right to use the same as their ingress and egress. While petitioners did not deny the ownership of respondent, yet, they assert that respondent should respect what has been established by her predecessors-in-interests and because the lot is intended by the original owners to be an easement of right-of-way. Respondent, nonetheless, argues that the possession of petitioners over the subject lot was merely tolerated by her and her