

## **SPECIAL NINETEENTH DIVISION**

**[ CA-G.R. CV NO. 03420, March 27, 2014 ]**

**NIEVEZ PLASABAS, JOINED BY HER HUSBAND, MARCOS MALAZARTE, PLAINTIFFS-APPELLANTS, VS. DOMINADOR LUMEN AND AURORA AUNZO, DEFENDANTS-APPELLEES.**

### **DECISION**

**HERNANDO, J:**

Before this Court is an appeal from the Decision<sup>[1]</sup> dated March 11, 2010 of the Regional Trial Court (RTC), Branch 24 of Maasin, Southern Leyte in Civil Case No. R-1949, an action for Recovery of Title to Property with Damages.

#### **The Antecedents:**

The disputed property here is a parcel of land situated in Canturing, Maasin, Southern Leyte containing an area of approximately 2.6360 hectares, as declared in Tax Declaration No. 3587 in the name of herein plaintiff-appellant Nievez Plasabas. The land is bounded on the north by Palermo Espere's lot, on the east by Cipriano Plasabas' lot, on the south by Canturing River and on the west by San Rafael River.

On September 11, 1974, plaintiffs-appellants filed a complaint<sup>[2]</sup> before the trial court for Recovery of Title to Property with Damages against herein defendants-appellees alleging that plaintiff Nievez Plasabas<sup>[3]</sup> is the absolute owner of the disputed property which she inherited from her parents and that she and her husband had been in actual, open, public, continuous, adverse and peaceful possession of it from the time she inherited the same up to the filing of the instant action. However, their peaceful possession was interrupted sometime in September 1970 when defendants-appellees occupied a portion of the lot and enjoyed the produce therefrom. They demanded from defendants-appellees to vacate the property but to no avail, prompting them to institute the instant action. They further averred that judgment be rendered confirming their rights and legal title to the subject property and ordering the defendants to vacate the occupied portion and to pay moral damages, attorney's fees and litigation expenses.

In their Answer, defendants-appellees vehemently denied plaintiff-appellants' allegations. They claimed that the disputed property once formed part of the intestate estate of the late Francisco Plasabas. After Francisco's death, said estate was extrajudicially partitioned by his seven children, namely: Basilio (defendant Aurora Aunzo's greatgrandfather), Irene Lumen (defendant Dominador Lumen's mother), Priscilla, Leoncio, Ramon, Dionesio and Irene. However, the disputed lot was segregated from the estate and was divided equally among the seven siblings. The 1/7 share of Basilio of the disputed lot was inherited by defendant Aurora Aunzo after the death of her father Esteban (son of Basilio). Irene Lumen's 1/7 share was inherited by defendant Dominador Lumen and which was subsequently sold by the latter to defendant Aurora Aunzo. In effect, defendant Aurora Aunzo owned and

possessed 2/7 portion of the disputed lot. Leoncio Plasabas' 1/7 share was sold to Jovita Talam, plaintiff Nieves Plasabas' maternal grandmother. Contrary to plaintiffs-appellants' assertion, Nieves did not inherit the 1/7 share from her parents but from her grandmother, who donated the same to Nieves. Thus, plaintiffs-appellants are only entitled to 1/7 share of the disputed lot and not the entire property. By way of counterclaim, they prayed for moral and exemplary damages, attorney's fees and litigation expenses.

On April 30, 1975, the trial court appointed commissioners to conduct an ocular inspection and survey on the disputed land. Thereafter, the said commissioners submitted their report<sup>[4]</sup> with sketch map distinctly specifying the respective properties of the parties under litigation. Based on the report, the disputed land is the property claimed by the defendants-appellees which forms part of the land claimed by the plaintiffs-appellants.

During trial, plaintiffs-appellants presented as witnesses plaintiff-appellant Marcos Malazarte, Ricardo Plasabas (grandson of Francisco Plasabas), Eugenio Plasabas (grandson of Francisco Plasabas) and Justo Montederamos (tenant of the disputed land). All of them declared that the disputed property and the land adjacent to it are owned and possessed by plaintiffs-appellants together with the brothers and sisters of plaintiff-appellant Nieves Plasabas. Said land was declared in the name of Nieves Plasabas under Tax Declaration No. 3587<sup>[5]</sup>. They also claimed that the disputed land was originally owned by Leoncio Plasabas which represented his share in the estate of Francisco Plasabas. Leoncio then sold the land to Nieves' grandmother, Jovita Talam. However, plaintiff-appellant Marcos Malazarte admitted that no tax declaration had been issued in the name of Jovita Talam. Witness Justo Montederamos likewise testified that during his tenancy and that of his father's, defendants-appellees had never disturbed plaintiffs-appellants' possession of the disputed land.

On the other hand, defendants-appellees, through the testimonies of Candido Plasabas, Roman Capistrano, Loreto Mesa, and defendants-appellees Dominador Lumen and Aurora Aunzo, insisted that the disputed land was partitioned equally among the seven children of Francisco Plasabas so that only 1/7 portion of the land is owned by plaintiffs-appellants.

Defendant-appellee Aurora Aunzo testified that she and her predecessors-in-interest had been in possession of the property for forty-two years. She inherited the 1/7 share of Basilio Plasabas because the latter sold it to her father Esteban. However, she admitted that she had no documentary evidence of the said transaction between her father and Basilio and what she had was only a document of sale for the improvements of the land. She averred that the disputed lot was declared separately for taxation purposes from the portion which she possessed, as illustrated in the court-appointed commissioners' sketch map. She further alleged that the portion she occupied was declared in her name and that she had been paying the taxes thereon.

On March 11, 2010, the trial court rendered the appealed Decision<sup>[6]</sup> which dismissed the instant case for failure of the plaintiffs-appellants to prove their case by preponderance of evidence. The trial court ratiocinated that the instant action was actually for quieting of title to property even though the complaint was captioned as Recovery of Title to Property". Thus, it was necessary for the plaintiff-