

FOURTEENTH DIVISION

[CA-G.R. CV No. 100590, March 16, 2014]

EULOGIO B. TOPACIO, JR., PLAINTIFF-APPELLANT, VS. SPS. ERNESTO V. YU AND ELSIE ONG YU AND BENNY SAULOG AND SPS. JESUS B. MUPAS AND LORINDA T. MUPAS, DEFENDANTS-APPELLEES.

D E C I S I O N

GALAPATE-LAGUILLES, J:

Before Us is an appeal from the Decision^[1] dated December 28, 2011 and the Order^[2] dated July 24, 2012 of Branch 90, Regional Trial Court (RTC), Dasmariñas, Cavite, sitting in Imus, Cavite in Civil Case No. 2215-00 for *Quieting of Title/Recovery of Possession/Reconveyance and Damages*", dismissing the case for lack of merit and denying reconsideration thereof.

The facts are culled from the records.

In his Amended Complaint,^[3] plaintiff-appellant Eulogio B. Topacio, Jr. averred that he is the registered owner of Lot 7402-E of the subdivision plan Psu-042106-054870 situated in Barangay Paliparan, Dasmariñas, Cavite covered by Transfer Certificate of Title(TCT) No. T-348422 issued by the Register of Deeds of Cavite consisting of 9,878 square meters. He alleged that defendants-appellees Spouses Ernesto V. Yu and Elsie Ong Yu (spouses Yu) were issued TCT No. T-490552 of the Register of Deeds of Cavite consisting of 606 square meters, more or less, which is a portion of the area covered by the plaintiff-appellant's title;(3) that TCT No. T-490552 that was issued to defendants-appellees Spouses Yu is spurious, illegal and null and void as the same was issued much later than plaintiff-appellant's title; (4) that defendant-appellee Benny Saulog (Saulog) is claiming and occupying a portion of the area covered by the plaintiff-appellant's title, which is based on a claim of ownership under TCT No. T-289604, which is also spurious and void as it covers a different parcel of land as per sketch plan; (5) that TCT No. T-289604 was cancelled by TCT No. T-597438 issued to Celestina Saulog and later by TCT No. T-376040 issued to spouses Jesus Mupas and Lorinda Mupas (spouses Mupas); (6) that the titles of the defendants have cast a cloud on the title of the plaintiff-appellant as they are invalid, illegal and prejudicial to plaintiff-appellant's title; (7) that despite demand, said defendants-appellees have failed to cease and desist from fencing and constructing a house, respectively, on the plaintiff-appellant's property. Thus, plaintiff-appellant prayed that TCT Nos. T-490552 and T-376040 issued to spouses Yu and spouses Mupas, respectively, be cancelled for being null and void.

By way of Answer with Counterclaims,^[4] spouses Yu explained that they are the owners of Lot No. 8142-New, Fls-2286 consisting an area of 606 square meters and covered by TCT No. T-490552; that they have purchased said property from spouses Asislo Martinez and Norma Linatoc by virtue of an Absolute Deed of Sale dated June

10, 1994; that said property was then covered by TCT No. T-267842 issued by the Register of Deeds of Cavite in the name of Asislo Martinez; that after purchasing said property, they had the sale registered in their name under TCT No. T-490552; that spouses Martinez have acquired the subject property from the Bureau of Lands on June 9, 1989 by virtue of Sales Certificate No. 1793, Deed No. V-70973 which was signed by the Director of Lands; that spouses Martinez have caused the conduct of a relocation survey to ascertain its boundaries until a relocation survey plan was prepared by Geodetic Engineer Antonio P. Pascual, Jr.; that Spouses Yu have taken possession of the subject property and exercised dominion over it; that they have religiously paid the property taxes; that they have constructed a fence with the permission of the Barangay Officer; and that they have secured a permit to construct said fence from the Office of the Municipal Engineer.

The defendants-appellees spouses Yu interposed the following defenses: (1) that the complaint does not state a cause of action; (2) that plaintiff-appellant is not a real party-in-interest; (3) that they were innocent purchasers of the subject property for value and in good faith; (4) that said complaint amounts to a collateral attack on their lawful and valid title over the subject property which cannot be done in this proceeding.^[5]

On the other hand, defendant-appellee Saulog filed a separate Answer with Affirmative and Special Defenses with Compulsory Counterclaim,^[6] denying the material allegations in the Complaint. As special and affirmative defenses, Saulog alleged that he owned and occupied Lot No. 7569-A with an area of 152 square meters and not Lot No. 7589 as stated in the Complaint. According to Saulog, he bought Lot No. 7569-A, which was then covered by TCT No. T-289604, from Ferdinand T. Ramirez and Ricardo T. De Leon. Further, he averred that TCT No. T-289604 was cancelled by TCT No. T-597438 issued in the name of Celestina Saulog and registered on January 5, 1996; and that the same was likewise cancelled by TCT No. T-736040 issued in the name of Spouses Jesus B. Mupas and Lorinda T. Mupas (spouses Mupas) on June 18, 1997. According further to Saulog, plaintiff-appellant should be held liable for perjury for stating in the complaint that he was claiming a portion of plaintiff-appellant's property covered by TCT No. T-348422. He further posited that the enjoyment of the property in his possession was with factual and legal bases as he was considered a purchaser for value and in good faith.

In the meantime, spouses Mupas were declared in default for failure to file any responsive pleading. Thereafter, plaintiff-appellant filed a Motion to Discharge^[7] Saulog and spouses Mupas upon learning that the property they were occupying were outside of his property. Likewise, he filed a Motion for Joint Survey^[8] which was granted by the court *a quo* in an Order^[9] dated May 7, 2008 in aid of the early disposition of this case without going into trial while the earlier motion to drop defendants-appellees Saulog and spouses Mupas was held in abeyance until after the completion of the joint survey between plaintiff-appellant and spouses Yu.

On March 5, 2009, a survey team from the CENRO of Trece Martirez City led by Geodetic Engineer Ramoncito Tañola was constituted,^[10] and on April 22, 2009, they conducted a verification survey on the parcels of land claimed by plaintiff-appellant and the spouses Yu in the presence of all the parties, who were duly assisted by their counsel and private geodetic engineers.^[11] On February 25, 2010,

Engr. Tañola submitted his Report of Verification Survey^[12] which contained the following findings:

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After computing the actual side-shots of the properties, reference lot, it was verified and ascertained[:]

That Lot 7402-E, Psd-042106-054870 covered by TCT No. 348422 and registered in the name of Eulogio Topacio married to Alicia Cruz Topacio with the total area of 9,878 square meters.

That Lot 8142-New, Fls-2286, Imus Estate covered by TCT No. 490552 and registered in the name of Sps[.] Ernesto V. Yu and Elsie Yu with a total area of 606 square meters.

That the Tie Point of both Lot 7402-E, Psd-042106-054870 and Lot 8142-New, Fls-2286, Imus Estate is Mon. No. 79, of Imus Estate and found out to be visible, undisturbed and still in correct position.

That both [Lot] 7402-E, Psd-042106-054870 and Lot 8142-New, Fls-2286, Imus Estate have the same Tie Points which is Mon. 79, of Imus Estate and when plotted using their respective Tie Lines it appeared that they fall apart with each other with the approximate distance of 1,526 meters. (see attached sketch plan sheet 1)

That based on the actual verification survey[,], the property claimed by Sps[.] Ernesto V. Yu and Elsie Yu with existing structure and with the total area of 450 square meters is inside the property of Eulogio A. Topacio, Jr. covered by Lot 7402-E, Psd-042106-054870. (see attached sketch plan sheet 2)^[13]

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During the trial, only plaintiff-appellant and spouses Yu presented their evidence. The testimonies of plaintiff-appellant's witnesses, Engr. Tañola and Engr. Juanito Galang, were summarized by the court *a quo* as follows:

"Engineer Ramoncito Tañola xxx has testified on the CENRO report pertaining to the verification survey that he has conducted on the subject property, together with the sketch plan. He explained that the property of the plaintiff and the Spouses Yu have common tie lines, which can be gathered from their respective titles that both parties have furnished him for his reference in conducting the verification survey xxx with the use of the instrument called the "total station". After the actual survey, it appeared that the property of the plaintiffs and that of the defendant-spouses Yu are 1,526.21 meters away from each other based on the tie lines and tie points that appear in their references. Engr. Tañola stressed that there is no overlapping as it appeared in the titles of the property, **however, based on the actual survey, it would appear that the property of defendants spouses is inside the property of Mr. Topacio, and Engr. Tañola could only wonder why this had happened. He suggested that perhaps the remedy of the parties would be to check the authenticity and genuineness of their respective titles, and, the title that was issued first shall prevail.**

On cross examination, the same witness simply testified on the manner that he conducted the actual survey by means of the instrument called the total station starting at monument 79, and that they have finished the survey at around 5:00 o'clock in the afternoon on April 22, 2009. He again admitted that he could not understand how it happened that **upon actual survey of the property there exists an overlapping of the Yu property on the plaintiff's property. On re-direct examination, Engr. Tañola reiterated that after plotting the technical descriptions of the respective properties of the parties as a consequence of the actual survey, there really appeared an overlapping of the Yu property on the Topacio property.** Thereafter, he had furnished the parties with copies of his actual survey."

Thereafter, Engineer Juanito Galang was again put to the witness stand as witness in the main trial of this case, and testifying along the lines of the testimony of Engr. Tañola, he recalled that he simply assisted Engr. Tanola in the actual survey of the subject property on April 22, 2010, and that he represented the plaintiff in the same survey. He tagged along Engr. Tañola during the survey that the latter conducted as he was familiar with the property, and helped him in putting up the traverse stations as per the reference points indicated in the technical descriptions and the monuments on the property; however, after the reference points were placed, his job was done and they went on their separate ways. He did not participate in that particular survey as he has already had his prior survey, **but he and Engr. Tanola are one in saying that based on the respective titles of the parties there would be no overlapping, although it appeared that Mr. Yu's property is actually occupying a portion of the Topacio property.**

On cross-examination, Engr. Galang recalled *in synthesis* that he conducted the survey on the subject property sometime in 2003 upon the behest of the plaintiff, although he does not know whether a similar survey was conducted prior to his own survey. He admitted that what he did in the 2003 survey was simply plotting the technical description of the property of Mr. Topacio on the basis of the photocopies of the certified true copies of the title, and he did not even inquire as to the authenticity of these titles. He stated that it is the defendants Yu [who] are in possession of the subject portion, but he was able to identify the exact location of the Topacio and Yu properties. He stated that it is not possible for a lot to be located in another place other than what is defined in the technical description appearing on its title because the technical description of the property should conform to the ground where the property is located. The ideal is that the technical description in the title should be the same as that projected on the ground, and what is not ideal is the situation that the technical description does not reconcile with the location of the lot.”^[14] (Emphasis Ours)

On the other hand, the testimonial evidence for the defense consisting of the testimonies of Engr. Ramon Miranda and Ernesto Tu was synthesized by the court *a quo* as follows:

First to testify for the defendants-spouses was Engr. Ramon Miranda, who is presently the construction project manager of EVY Construction and Development Corporation, and as such he takes charge of research and implementation of projects for the company that is owned by the Spouses Yu.

He recalled that a certain Asislo Martinez had sold to Mr. Ernesto V. Yu, the subject property, and soon after the sale, Mr. Yu gave him instruction to verify the authenticity of Transfer Certificate of Title No. T-267842 of the Register of Deeds Cavite covering the said property. Later on, he found that the said title is clean xxx, and soon thereafter, they constructed a perimeter fence around the property xxx. Eventually, Mr. Yu again instructed him to have the title to the property registered in the name of Mr. Yu, and later on Transfer Certificate of Title No. T-490552 was issued in favor of the Spouses Ernesto V. Yu xxx. Thereafter, his job was finished.

Testifying along the lines of his answer, Mr. Ernesto Yu testified that he is the owner of the property xxx subject matter of this case, which property he purchased from Asislo Martinez. The latter had shown Mr. Yu the title to the property covered by Transfer Certificate of Title No. T-267842 xxx and then, the latter instructed Engr. Ramon Miranda to have the said title verified. Later on, Engr. Miranda told him that the title is clean, so he immediately gave instructions for Miranda to process the deed of sale xxx. Soon after, Mr. Yu took possession of the said property and put up a fence around it xxx.