

TWENTIETH DIVISION

[CA-G.R. CV NO. 00971, June 25, 2014]

ROSARIO ALOHA, PLAINTIFF-APPELLEE, VS. SPOUSES RODULFO AND ROSARIO MEDALLO, DEFENDANTS-APPELLANTS.

DECISION

AZCARRAGA-JACOB, J.:

Assailed in this appeal under Rule 41 of the 1997 Rules of Civil Procedure is the *21 April 2004 Decision* of Branch 6, Regional Trial Court, Cebu City, (RTC-Branch 6), in Civil Case No. CEB-10767 which declared plaintiff-appellee Rosario Aloha to have a better right of possession over the subject property.

THE ANTECEDENTS

On 25 September 1991, plaintiff-appellee Rosario Aloha (Rosario) filed a complaint^[1] for recovery of possession with damages which was raffled to Branch 58, Regional Trial Court of Cebu City (RTC-Branch 58). It was alleged in the complaint that Rosario and her late husband Dioscoro Aloha (Dioscoro) were the owners of a parcel of land denominated as Lot 807, covered by OCT No. OP-37910 and situated in Kawit, Medellin, Cebu. On 6 June 1989, Dioscoro died and Rosario took over the management of their properties. A few weeks after Dioscoro's death, Rosario visited Lot 807 and discovered that Victoria and Rosie Medallo were occupying subject property. Rosario demanded from Victoria and Rosie to vacate the property and restore possession to her, but such demand fell on deaf ears. Because of the refusal of Victoria and Rosie to vacate, Rosario was prompted to institute the said complaint.

Despite service of summons on Victoria and Rosie, no Answer was filed by them. Upon motion of Rosario, Victoria and Rosie were declared in default and the *ex parte* presentation of Rosario's evidence was set.^[2]

Meanwhile, defendants-appellants spouses Rodulfo and Rosario Medallo (spouses Medallo), filed a Motion for Intervention^[3] praying that they be allowed to intervene in the case. An Answer-in Intervention^[4] was subsequently filed by spouses Medallo claiming ownership over the lot occupied by Victoria and Rosie, whom they claim as their overseers. Spouses Medallo also asserted that they acquired ownership over subject property by virtue of a deed of sale dated 18 December 1989 executed by Cristina Rosos^[5] (Cristina) in their favor. Spouses Medallo also countered that the land which was actually sold by Crsitina to Dioscoro was the one occupied by Igmedio and Teodoro Tumakay (Tumakays) and covered by Tax Declaration No. 07859.

Rosario filed an amended complaint^[6] impleading the Tumakays and Cristina who,

as additional defendants, filed separate Answers.

A Third Amended Complaint^[7] was later filed by Rosario, dropping Rosie and Victoria Medallo, Cristina and the Tumakays, and impleading spouses Medallo as defendants.

Spouses Medallo filed a Supplemental Answer^[8] questioning the issuance of OCT No. OP-37910 in Dioscoro's name.

Pre-trial was conducted and after its termination, trial proceeded. In the course of the trial, Rosario presented, among others, a document denominated as "Confirmation of Previous Absolute Sale"^[9] dated 14 August 1986 as proof that Cristina sold the subject property to Dioscoro.

After Rosario's presentation of evidence, a Motion to Dismiss^[10] was filed by spouses Medallo. They moved for the dismissal of the case on the ground that RTC-Branch 58 has no jurisdiction over the case. Spouses Medallo cited R.A. 7691 which took effect on 15 April 1994 and which provides that the first level courts have jurisdiction over the case because the market value of the land appearing on the Tax Declaration was only P4,235.00. Said Motion was granted by RTC-Branch 58 in its Order^[11] of 7 May 2002 and the case was ordered dismissed for lack of jurisdiction over the subject matter.

Rosario moved for reconsideration^[12] of the Order dated 7 May 2002 and this was granted by RTC-Branch 58 in the Order of 6 June 2002.^[13]

Spouses Medallo also filed a Motion for Reconsideration^[14] of the 6 June 2002 Order which recalled the order of dismissal but it was denied in the Order of 22 June 2002.^[15]

On 29 August 2002, Spouses Medallo filed a Petition for Review^[16] before the Court of Appeals-Manila (CA-Manila). Said petition assailed the Orders of 06 June 2002 and 22 June 2002. In view of the filing of the petition for review, proceedings before RTC-Branch 58 was temporarily suspended.^[17]

Since no restraining order or writ of preliminary injunction was issued by the CA-Manila, proceedings before RTC-Branch 58 was resumed and reception of Spouses Medallo's evidence was set.

On 24 August 2004, the 20th Division of CA-Manila rendered a Decision affirming the RTC's jurisdiction over the case.^[18]

On 13 May 2003, the records of the case were ordered forwarded to RTC-Branch 6, Cebu City (RTC-Branch 6).^[19] RTC-Branch 6 continued the conduct of trial until its completion.

On 21 April 2004, RTC-Branch 6 rendered the assailed Decision declaring Rosario as the rightful owner of Lot 807. Spouses Medallo were directed to surrender

possession of subject property and to pay the amount of Thirty Thousand Pesos (P30,000.00) as attorney's fees. The RTC held as follows:

It was the plaintiff [Rosario] and her deceased husband [Dioscoro] who first acquired the subject parcel of land. They bought it verbally from Cristina in 1985 or thereabout. Such prior oral sale is eloquently shown by the instrument known as Confirmation of Previous Absolute Sale (Exhibit B) which Cristina executed in favor of plaintiff. The oral sale is valid. Basic is the rule that oral sale of a parcel of land is valid. For its validity, the law does not require a specific requirement or form, unlike in donation of real property where the law specifically requires execution of a public instrument.

Since the land was previously sold to plaintiff, Cristina was no longer the owner of the same when she sold it to the defendants in 1989. It follows [that] Cristina transmitted no title to the defendants and the defendants acquired nothing.

Moreover, plaintiff was the first to register her title. Article 1544 of the Civil Code provides that if the same immovable property should have been sold to different vendees, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.xxx^[20]

In view of the adverse Decision of the RTC, spouses Medallo filed a Notice of Appeal. ^[21] RTC-Branch 6 granted said notice of appeal in its Order^[22] of 14 May 2004.

Hence, spouses Medallo filed the instant appeal raising a lone assignment of error:

WITH ALL DUE RESPECT, THE HONORABLE LOWER COURT ERRED IN DECLARING PLAINTIFF THE RIGHTFUL

OWNER OF THE PARCEL OF LAND IN LITIGATION AND DIRECTING THE DEFENDANTS TO PAY PLAINTIFF ATTORNEY'S FEES OF P30,000.00.^[23]

THE COURT'S RULING

From the above antecedents, it can be gleaned that both parties are claiming a better right of possession over Lot 807 on the basis of ownership. As proof of ownership, both parties have presented their respective deeds of sale both executed by Cristina on separate occasions (one in 1986 and one in 1989). Since Rosario's 1986 deed of sale was executed ahead of Spouses Medallo's 1989 deed of sale, the RTC held that the case is one of double sale of an immovable under Article 1544^[24] of the Civil Code and ruled in favor of Rosario.

Significantly, in addition to the 1986 deed of sale, Rosario's claim of ownership is also anchored on a certificate of title (OCT No. OP-37910) in the name of "Dioscoro Aloha, married to Rosario Puza."

Indeed, it is a fundamental rule that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein.^[25]

However, said rule on indefeasibility of title finds no applicability in this case where OCT No. OP-37910 is a nullity.

It is worth noting that Rosario's claim of ownership over the property was derived from the "Confirmation of Previous Absolute Sale"^[26] executed by Cristina on 14 August 1986. Subject of the sale was a parcel of land in Kawit, Medellin, Cebu, particularly described in the document as:

A parcel of land declared in my name Ma. Cristina Rosos under Tax Dec. No. 04176, CAD lot No. 807, bounded on the North, Narcisa Rosales; South, Lamerta Rosos; East, Felix Tumulak and on the West, Mateo Orbiso, with an area of 1.085 has. More or less, assessed vale at P1575.00 series of 1985. Kind of land is cornland. Visible monuments consisting of concrete post found in every corner of the said land. (*Emphasis supplied.*)

It is therefore clear that as Rosario herself declared that the property was previously owned by Cristina and is considered of private ownership at the time Disocoro managed to secure OCT No. OP-37910^[27] in his name on 3 March 1987.

Well-settled is the rule that a free patent issued over a private land is null and void and produces no legal effects whatsoever. Free patent applications under the Public Land Act apply only to disposable lands of the public domain, and not to private lands. The Supreme Court has enunciated:

xxx Private ownership of land — as when there is a *prima facie* proof of ownership like a duly registered possessory information or a clear showing of open, continuous, exclusive, and notorious possession, by present or previous occupants — is not affected by the issuance of a free patent over the same land, because **the Public Land law applies only to lands of the public domain. The Director of Lands has no authority to grant free patent to lands that have ceased to be public in character and have passed to private ownership. Consequently, a certificate of title issued pursuant to a homestead patent partakes of the nature of a certificate issued in a judicial proceeding only if the land covered by it is really a part of the disposable land of the public domain.**^[28] (*Emphasis supplied.*)

In *Sampaco v. Lantud*,^[29] the Court ruled that an original certificate of title issued by the Register of Deeds under an administrative proceeding is as indefeasible as a certificate of title issued under judicial proceedings but said indefeasibility of title does not attach to titles secured by fraud and misrepresentation.

The Supreme Court also elaborated in *De Pedro v. Romasan Development Corp.*,^[30] that:

We agree with the petitioners that, generally, a certificate of title shall be conclusive as to all matters contained therein and conclusive evidence of the ownership of the land referred to therein. **However, it bears stressing that while certificates of title are indefeasible,**

unassailable and binding against the whole world, including the government itself, they do not create or vest title. *They merely confirm or record title already existing and vested. They cannot be used to protect a usurper from the true owner, nor can they be used as a shield for the commission of fraud; neither do they permit one to enrich himself at the expense of others.*(Emphasis supplied. Italics in the Original)

Rosario has not shown that subject property was ever an alienable land of the public domain. In fact, she herself presented evidence that said property was previously owned by Cristina and thus segregated from the alienable lands of the public domain. Hence, the patent and title issued to Dioscoro must be cancelled for being null and void.

Section 48 of Presidential Decree No. 1529^[31] (the Property Registration Decree) proscribes a collateral attack to a certificate of title and allows only a direct attack thereof. It may be argued that no action was instituted by Spouses Medallo to question the validity of Rosario's OCT which could have constituted a direct attack thereon.

However, it should be stressed that in the Supplemental Answer filed by Spouses Medallo, it was specifically raised in the Counterclaim that the issuance of OCT No. 37910 was highly erroneous because the parcel of land it covers was already owned and possessed by them after they bought the property from Cristina.^[32] Jurisprudence instructs that an attack on the title made in a defendant's counterclaim is not considered a collateral but a direct attack:

The Court cannot sustain the CA's ruling that TCT No. T-10567 cannot be invalidated because it constitutes as a collateral attack which is contrary to the principle of indefeasibility of titles.

It must be noted that Bangis interposed a counterclaim in his Answer seeking to be declared as the true and lawful owner of the disputed property and that his TCT No. T-10567 be declared as superior over the titles of the Heirs of Adolfo. **Since a counterclaim is essentially a complaint then, a determination of the validity of TCT No. T-10567 vis-a-vis the titles of the Heirs of Adolfo can be considered as a direct, not collateral, attack on the subject titles.**

In *Pasiño v. Monterroyo*, the Court has ruled, thus:

It is already settled that **a counterclaim is considered an original complaint and as such, the attack on the title in a case originally for recovery of possession cannot be considered as a collateral attack on the title.** *Development Bank of the Philippines v. Court of Appeals* is similar to the case before us insofar as petitioner in that case filed an action for recovery of possession against respondent who, in turn, filed a counterclaim claiming ownership of the land. xxx

Besides, **the prohibition against collateral attack does not apply to spurious or non-existent titles, which are not accorded**