

SEVENTH DIVISION

[CA-G.R. CV NO. 100660, July 28, 2014]

**GAUDENCIO C. FERRER, JOINED BY HIS WIFE, LUCIA V. FERRER,
PETITIONER-APPELLANT, VS. MERCY LITAO JAMIR,
MUNICIPALITY OF HERMOSA REPRESENTED BY MAYOR EFREN J.
CRUZ, VICENTE V. SAMANIEGO, GENEROSA M. DAYO, AND
REGISTRY OF DEEDS OF BATAAN, RESPONDENTS-APPELLEES.**

D E C I S I O N

REYES, JR., J.C., J.:

On appeal is the Decision dated November 23, 2012 of the Regional Trial Court (RTC), Branch 5 of Dinalupihan, Bataan in Civil Case No. DH-1060-05 in re: Petition to Cancel TCT Nos. T-219657 and T-218820.

The antecedents as culled from the records:

On June 7, 2005, petitioner-appellant Gaudencio C. Ferrer (hereinafter appellant) filed a petition (Records, pp. 2-7) against respondents-appellees for the cancellation of Transfer Certificate of Title (TCT) Nos. T-219657 and T-218820.

He alleged that on April 19, 2000, respondent-appellee Mercy Jamir (hereinafter appellee Jamir) sold in his favor a parcel of land situated in Culis, Hermosa, Bataan. Said parcel of land which was covered by TCT No. T-182374 measures 240 square meters, more or less. On even date, appellee Jamir executed a Deed of Absolute Sale of Real Property in appellant's favor. He further alleged that appellee Jamir gave to him the original copy of TCT No. T-182374.

Further, he averred that sometime in 2002, he learned that the aforesaid property was transferred by appellee Jamir to respondent-appellee Municipality of Hermosa (hereinafter appellee Municipality of Hermosa) and a portion thereof was transferred by the Municipality of Hermosa to respondent-appellee Generosa M. Dayo. Having learned of such information, he registered his adverse claim thru a letter dated February 5, 2002 which was annotated as Entry No. 425239 in TCT Nos. T-218820 and T-219657.

Appellant further alleged that TCT No. T-182374 was cancelled by respondent-appellee Registry of Deeds pursuant to a decision in CAD Case No. V-262-01 which pertained to the issuance of owner's duplicate copy. In lieu thereof, TCT No. 191101 was issued. Also, he alleged that appellee Jamir executed an affidavit of loss in CAD Case No. V-262-01 stating that she lost the original copy of TCT No. T-182374, when in truth and in fact, she gave it to appellant when the latter purchased the property from her.

Finally, he alleged that the property he purchased from appellee Jamir was donated

to appellee Municipality of Hermosa for which TCT No. 218819 was issued, thereby cancelling TCT No. T-191101. TCT No. 218819 registered under the name of the Municipality of Hermosa was later cancelled by the subject titles TCT No. T-218820 in the name of appellee Dayo and TCT No. T-219657 in the name of appellee Municipality of Hermosa.

On June 27, 2005, appellee Jamir filed via registered mail a motion to dismiss (Records, pp. 36-37) on the grounds of lack of barangay conciliation and lack of jurisdiction over the nature of the suit. Appellant filed his comment (Records, pp. 41-43) on the motion to dismiss arguing that it should be denied for lack of merit both in fact and in law.

On the other hand, Jamir's co-appellees filed an Answer (Records, pp. 45-48) on July 29, 2005. They specifically denied the allegation that appellee Jamir sold the subject property to appellant as what took place was a donation of said property to appellee Municipality of Hermosa which was at the time represented by appellant as he was then the incumbent municipal mayor. By way of special and affirmative defense, appellees averred that appellant's petition to cancel TCT Nos. T-219657 and T-218820 is not proper as it did not include the title from which these two titles emanated from, *i. e.*, TCT No. T-191101. Further, they invoked as a special and affirmative defense that if indeed there was a sale, it is rather inconsistent with ordinary human experience that appellant did not exert any effort to process the transfer of title to his name. They furthermore averred that when Efren Cruz assumed as mayor of the Municipality of Hermosa, he came to know of appellee Jamir's donation of the property to the municipality but no documents could be found as no official turnover was made by appellant, his predecessor. Hence, appellee Vicente Samaniego (hereinafter appellee Samaniego) was tasked to trace the documents and he first inquired from appellee Jamir from whom he learned that the corresponding deed of donation and the owner's copy of the title were given to appellant, in his capacity as then municipal mayor. However, when appellee Samaniego inquired from appellant, appellant denied the donation and that no title was in his possession. Faced with this dilemma and so as not to delay the construction of the municipal building, appellee Jamir was convinced to execute an affidavit of loss concerning the loss of TCT No. T-182374 and thereafter filed a petition in court for the issuance of a new owner's copy of title.

On August 2, 2005, appellee Jamir's motion to dismiss was denied for lack of merit. (Records, p. 50) Eventually, appellee Jamir filed on August 19, 2005 via registered mail her Answer with Counterclaim. (Records, pp. 59-61) She denied the material allegations of the petition and essentially averred as an affirmative defense that she donated the property in question to the municipality of Hermosa which was then represented by appellant in his capacity as the then municipal mayor.

On October 30, 2008, the RTC rendered the appealed decision (Rollo, pp. 32-39). It held that appellant miserably failed to prove by clear and convincing evidence the fact of fraud. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the instant complaint for lack of clear and convincing evidence.

SO ORDERED." (Rollo, p. 39)