

## TWENTIETH DIVISION

[ CA-G.R. CV NO. 04967, November 21, 2014 ]

**ILUMINADA GUZMAN, ALIPIO GUZMAN, CONSOLACION GALVE,  
SUZETTE FERRERA, PABLO GUZMAN, JR., SIMEON GUZMAN,  
EMMANUEL GUZMAN AND ROBINSON GUZMAN, PLAINTIFFS-  
APPELLANTS, VS. GEORGE ORCASITAS AND FE ORCASITAS,  
DEFENDANTS-APPELLEES.**

### D E C I S I O N

**QUIJANO-PADILLA, J.:**

This is an appeal<sup>[1]</sup> from the Order<sup>[2]</sup> dated June 17, 2013 of the Regional Trial Court (RTC), Branch 64, San Jose, Antique in Civil Case No. 0207 for Quieting of Title, Recovery of Possession and Damages. The assailed order dismissed the instant case for lack of jurisdiction.

#### **The Antecedents**

This appeal is rooted in a Complaint<sup>[3]</sup> for Quieting of Title, Recovery of Possession and Damages before the RTC of San Jose, Antique, filed by plaintiffs-appellants against defendants-appellees. The instant action involves parcel of land, denominated as Lot. No. 4099 situated in La Rioja, Patnongon, Antique, covered by OCT No. P-23965,<sup>[4]</sup> (Lot No. 4099). Lot No. 4099 is bounded on the northeastern side by Lot No. 4094 and Lot No. 4098. Lot No. 4094 is owned by defendants-appellees while Lot No. 4098 was formerly wholly owned by Emerita Bacaoco until defendants-appellees acquired a right of way over it along the northeastern side of Lot No. 4099.

Plaintiffs-appellants alleged, in their Amended Complaint,<sup>[5]</sup> that they are co-owners of Lot No. 4099, the same being registered in the name of Pablo Y. Guzman, the late husband of plaintiff-appellant Illuminada Guzman and the late father of the other plaintiffs-appellants herein. That defendants-appellees, owning a beach resort on Lot No. 4094, built a road to the beach, running along the northeastern side of Lot No. 4099. Later, despite plaintiffs-appellants' objections, defendants-appellees cut down the tress on the northeastern side of Lot No. 4099. Consequently, plaintiffs-appellants caused a relocation survey to be conducted on Lot No. 4099 and as shown by the relocation survey plan,<sup>[6]</sup> defendants-appellees allegedly encroached upon a portion of Lot No. 4099 consisting of 118 square meters.<sup>[7]</sup>

Plaintiffs-appellants alleged further that they are entitled to recover the possession of the portion of their land allegedly encroached upon by the defendants-appellees and that they are likewise entitled to damages occasioned by the alleged encroachment of defendants-appellees.<sup>[8]</sup> Thus, this complaint.

In their Amended Answer with Counterclaim,<sup>[9]</sup> defendants-appellees vehemently denied the allegations in the complaint and averred that they acquired a right of way over a portion of Lot No. 4098 by way of purchase from its owner Emerita Bacaoco.

By way of special and affirmative defenses, defendants-appellees raised the following arguments: the verification and certification of non-forum shopping is legally defective as it was signed by only one of the plaintiffs-appellants; that the instant complaint failed to implead as an indispensable party, Emerita Bacaoco, the owner of Lot No. 4098 from whom the defendants-appellees acquired a portion of the same; the action questioning defendants-appellees' ownership over a portion of Lot No. 4098 has prescribed; the portion of Lot No. 4099 allegedly encroached upon by defendants-appellees has not been specified, thus, this complaint stated no cause of action; this complaint likewise failed to state a cause of action for quieting of title as there is no cloud over plaintiffs-appellants' title; this complaint is also premature on the ground that it has not complied with the barangay conciliation proceedings; that the trial court has no jurisdiction to adjudicate on the validity of the cadastral survey; and, even assuming that there was encroachment, still the trial court has no jurisdiction over this case as the assessed value of the disputed portion is below P20,000, hence, jurisdiction is with the first level courts.<sup>[10]</sup>

As counterclaim, defendants-appellees asserted that as a result of the filing of this malicious, baseless and unfounded action, defendants-appellees demand moral and exemplary damages, attorney's fees and per court appearance fees. Likewise, defendants-appellees prayed that the instant case be dismissed.<sup>[11]</sup>

On January 28, 2013, defendants-appellees moved for the setting for preliminary hearing on the special and affirmative defenses,<sup>[12]</sup> which was opposed by the plaintiffs-appellants.<sup>[13]</sup> A Reply (To The Opposition)<sup>[14]</sup> was subsequently filed by defendants-appellees.

On March 4, 2013, a preliminary hearing on the special and affirmative defenses was conducted and thereafter, the parties were directed to submit their respective memoranda.<sup>[15]</sup>

#### The Ruling of the RTC

After due proceedings, the RTC rendered its challenged June 17, 2013 Order<sup>[16]</sup> upon the following findings and conclusions:

“Finally, recovery of possession which is tantamount to correction of the title shall be filed and entitled in the original case in which the decree of registration is entered and the petition of this kind is within the jurisdiction of the Land Registration Court and not in the Regional Trial Court to prevent the confusion and to avoid difficulty in tracing the origin of entries in the registry.

WHEREFORE, premises considered, for lack of jurisdiction, this case is DISMISSED. All other issues raised by the plaintiffs and defendants are subsumed by this Order.”

Dissatisfied with the foregoing decision, plaintiffs-appellants appealed before Us assigning the following errors:

**I.**

**THE RTC MADE AN ERRONEOUS FINDING OF FACT THAT PLAINTIFFS-APPELLANTS SEEK TO RECOVER A PORTION OF LOT 4099 ERRONEOUSLY INCLUDED BY THE CADASTRAL SURVEY IN LOT 4098.**

**II.**

**THE RTC ERRED IN DISMISSING THE CASE FOR LACK OF JURISDICTION OVER THE SUBJECT MATTER OF THE CASE. <sup>[17]</sup>**

This Court's Ruling

The instant appeal is bereft of merit.

***Recovery of Possession Not Proper Remedy***

Plaintiffs-appellants contend that they seek to recover a portion of Lot No. 4099 encroached upon by the defendants-appellees which portion is covered by OCT No. P-23965 and not a portion included in the neighboring land, Lot No. 4098. Consequently, the discourse of the RTC on its lack of jurisdiction to order the correction of a cadastral survey is irrelevant.

We beg to disagree.

As correctly observed by the trial court, plaintiffs-appellants alleged that there was encroachment due to an erroneous cadastral survey and the same survey should have been corrected to reflect the exact area of Lot No. 4099. The trial court likewise observed that there was a cadastral survey on Lot No. 4099 and the said survey was made the basis for the issuance of OCT No. P-23965. As such, this case sought for the return to the plaintiffs-appellants of a portion of Lot No. 4099 as reflected by the relocation survey plan conducted by Gadayan Surveying Office. However, as stated by the trial court, the said survey is not binding:

"The instant case seeks to return to the plaintiffs the portion of Lot 4099 encroached by the defendants according to their complaint we take note that the survey was conducted by Gadayan Surveying Office and the said survey did not reflect the approval of DENR, hence, it did not amend the previous cadastral survey which was conducted and approved by the said government agency. This survey cannot be considered as a correction survey conducted by the government to correct the previous survey which was already approved and was made the basis of the issued (sic) of the Original Certificate of Title No. P-23965. We further take note the correction survey of Lot 4099 the area of which is Twenty Six Thousand Seven Hundred Seventy-Three (26,773) square meters and the said area is reflected while in the plan prepared by Gadayan Surveying Office the area was reduced to Twenty Six Thousand Three Hundred Seventy-Three (26,373) square meters."<sup>[18]</sup>