

TWELFTH DIVISION

[CA-G.R. CV NO. 61859, August 31, 2006]

**LORETO SERAFION "LARRY" SERVAS, PLAINTIFF-APPELLEE, VS.
MARIA APIO, SUBSTITUTED BY HER HEIRS, NAMELY:
FRUCTUOSO APIO, MA. LUISA A. SERVAS, AVELINA A.
FELIZARIO, ANNABELLE A. ALCANTARA, JOSELITO APIO AND
CRISTINA A. EBOL,^[1] AND MARILOU APIO, DEFENDANTS-
APPELLANTS.**

D E C I S I O N

ASUNCION-VICENTE, J.:

The Case

Before this Court is an appeal from the Decision dated August 28, 1998 of the Regional Trial Court (RTC) of Imus, Cavite, Branch 20 in Civil Case No. BCV-94-27, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is rendered in favor of plaintiff and against defendants as follows:

a) Declaring plaintiff to be the absolute owner and rightful awardee of Lot 23, Blk. 1-G Extension, PSU-04-25744; &

2. Ordering defendants and all persons claiming under them to surrender the possession of said lot to plaintiff.

SO ORDERED."^[2]

The Facts

The subject matter of this controversy is a parcel of land with an area of ninety (90) square meters, more or less, situated in General Mariano Alvarez (GMA), Cavite, particularly known as Lot 23, Block 1-G Extension, Psu-04-25744 (subject lot, for brevity).

The subject lot was awarded by the National Housing Authority (NHA) in favor of plaintiff-appellee Loreto Serafion "Larry" Servas (hereinafter plaintiff-appellee) in 1991 as evidenced by a Deed of Absolute Sale dated May 27, 1991.^[3] Claiming that defendants-appellants Maria Apio and Marilou Apio (hereinafter defendants-appellants) are unlawfully withholding possession of subject lot from him by refusing to vacate and continuously asserting their claim over the subject lot, plaintiff-appellee filed a complaint^[4] for quieting of title with damages before the RTC of Imus, Cavite on February 15, 1994.

On March 18, 1994, defendants-appellants filed their Answer^[5] claiming that plaintiff-appellee was not the real awardee but an impostor because the real awardee was defendant-appellant Marilou Apio's common-law husband Larry Servas with whom she had been separated since 1989 but prior to their separation, or since 1986, had already been occupying the subject lot. In 1987, said Larry Servas applied with the NHA for the award to him of subject lot and in 1988, defendant-appellant Marilou Apio received an Individual Notice of Award from the NHA. When defendant-appellant Marilou Apio and Larry Servas separated in 1989, she continued paying the taxes on the subject lot in the name of her common-law husband.

After trial on the merits, the trial court ruled in favor of plaintiff-appellee, rationalizing in this wise:

"From the evidence adduced, it is clear that plaintiff is the rightful awardee of the lot in question. Undoubtedly, plaintiff and defendant lived together for a while as common-law husband and wife. It is even possible that a child was born during their cohabitation. But then, the act of defendant Maria Luisa Apio or Marilou Apio in filing another application before the NHA for the same lot applied for by plaintiff, when the latter was abroad and at the time that the papers of plaintiff were missing, is uncalled for. What is even worse is that defendant Marilou Apio submitted a fake marriage contract to the NHA to make it appear that she and Larry Servas are legally married. Believing that she is the legal wife of plaintiff, the NHA was misled in issuing an award in her favor. It was only after plaintiff returned home from abroad that he learned about the fraud perpetrated by the defendants. Thus, in an investigation conducted by the NHA, the award issued to defendant was cancelled. NHA upheld the award given to plaintiff which led to the issuance of a deed of sale in his favor.

"It may be true that plaintiff when (sic) defendant Marilou Apio lived under a common-law relationship and a child was born out of their illicit relationship. It is equally true that defendants stayed and occupied the premises in question for quite sometime, as against plaintiff who might have been an absentee awardee. However, defendants should have sought the cancellation of the award to plaintiff before the NHA. As it is, the NHA has already ruled in favor of plaintiff when it executed a deed of sale in his favor."^[6]

Feeling aggrieved, defendants-appellants appealed the decision of the trial court before this Court.

The Issues

In their Brief, defendants-appellants assigned the following errors allegedly committed by the trial court.

I.

THE TRIAL COURT ERRED IN NOT FINDING THAT DEFENDANT-APPELLANT MARIA LUISA APIO, AS THE COMMON-LAW WIFE OF PLAINTIFF-APPELLEE SERVAS, IS A CO-OWNER OF THE SUBJECT

PROPERTY; AND AS SUCH, DEFENDANT-APPELLANT MA. LUISA APIO HAS A VALID CLAIM THEREON;

II.

THE TRIAL COURT ERRED IN NOT FINDING THAT DEFENDANT-APPELLANT MA. LUISA APIO CANNOT BE ORDERED TO VACATE THE SUBJECT PROPERTY; and

III.

ASSUMING ARGUENDO THAT PLAINTIFF-APPELLEE SERVAS IS THE SOLE OWNER OF THE SUBJECT PROPERTY, THE PRESENT ACTION IS NOT THE PROPER RECOURSE AVAILABLE FOR PLAINTIFF-APPELLEE SERVAS TO RECOVER THE SUBJECT PROPERTY FROM DEFENDANTS-APPELLANTS.^[7]

The Court's Ruling

The appeal is devoid of merit.

On the first and second assigned errors.

The first and second assigned errors, being interrelated, shall be discussed jointly.

In their appellants' brief, defendants-appellants put forth the argument that plaintiff-appellee and defendant-appellant Marilou (Ma. Luisa) Apio were common-law spouses when subject lot was awarded by the NHA. Having been acquired by both of them during their cohabitation, the subject lot is co-owned by them pursuant to Article 148 of the Family Code.^[8]

Plaintiff-appellee in his appellee's brief debunks this claim of common-law relationship by defendants-appellants as being utterly baseless, as in fact, such claim is contrary to their evidence, both testimonial and documentary. In her testimony, defendant-appellant Marilou Apio claimed that plaintiff-appellee is not the same person as the Larry Servas who is her common-law husband. To the same effect is the testimony of their witness Romeo Felizardo who testified that plaintiff-appellee is not the Larry Servas who asked him to construct their house in GMA sometime in 1983. Even assuming that they once maintained a common-law relationship, plaintiff-appellee is very much married to his wife Modgina Papa, before, during and after the approval of his housing application in GMA, Cavite.^[9]

We rule for the plaintiff-appellee.

Defendants-appellants' contention that plaintiff-appellee and defendant-appellant Marilou Apio lived together as husband and wife and thus the subject lot is co-owned by them under Article 148 of the Family Code is a matter which was raised by herein defendants-appellants for the first time in this appeal.

It must be emphasized that defendants-appellants, during the trial of this case, were resolute in their theory that plaintiff-appellee was not the same Larry Servas