

THIRTEENTH DIVISION

[CA-G.R. CV NO. 75815, August 31, 2006]

**MAR ESTEBAN, PLAINTIFF-APPELLEE, VS. LEONARDO ROXAS,
MANUEL ROXAS, NORBERTO ROXAS AND DALMACIO PASCUA,
DEFENDANTS-APPELLANTS.**

D E C I S I O N

CRUZ, J.:

Contested before the Regional Trial Court of Isabela (Roxas, Branch 23), in an action for recovery of possession and damages, was a parcel of land with an area of 748 square meters (or "subject land"), situated at Barrio Callang, Residential Site, San Manuel (formerly Gamu), Isabela and registered in the name of Mar Esteban (or "appellee") under Transfer Certificate of Title (or "TCT") No. T-204700.

The subject land was originally owned by Trigidia Caluya (or "Trigidia"), to whom Original Certificate of Title (or "OCT") No. 0-2559 was issued on October 3, 1966. Pursuant to the Deed of Absolute Sale dated October 11, 1977 (or "1977 deed of sale") executed by Trigidia in favor of Esmelita Valiente (or "Valiente") covering the subject land, OCT No. 0-2559 was canceled and, in lieu thereof, TCT No. T-147677 was issued to Valiente.

On November 28, 1987, Valiente sold the subject land to appellee per Deed of Absolute Sale of Unregistered Land of even date. Upon registration of said Deed, title to the subject land was transferred to appellee per TCT No. T-204700.

Instituted by appellee against Leonardo Roxas, Manuel Roxas, Norberto Roxas and Dalmacio Pascua (or "appellants") on June 28, 1995, the action was predicated on the averments that after buying the subject land from Valiente, he talked to appellants, who were occupying portions thereof upon tolerance of Valiente, and it was agreed that appellants could remain therein without paying rentals subject to the condition that they would vacate and surrender the same when asked to do so; and that appellee repeatedly demanded of appellants to vacate and surrender possession of the subject land because he already needed the same for his personal use, but the latter refused claiming that it belongs to them by actual possession for a long time.

Resisting the action, appellants claimed that the subject land is still owned by their mother Trigidia per OCT No. 0-2559 and, therefore, Valiente could not sell the same to appellee; that the owner's copy of OCT No. 0-2559 was lent to Maria Caluya (or "Maria"), Trigidia's sister, as collateral for a loan obtained by Maria from Valiente; and that Valiente, without any conveyance from either Trigidia or Maria, succeeded in titling the subject land in her name.

With leave of court, appellants filed a third-party complaint against Valiente. Upon

motion of appellants, Valiente was declared in default for failure to file an answer to the third-party complaint within the reglementary period.

After trial, a decision dated February 18, 2002 was rendered by the lower court , the dispositive portion of which reads:

“WHEREFORE, premises considered, and by convincing and satisfactory proof of his claim following his allegations of his complaint, judgment is hereby rendered in favor of the plaintiff and against the defendants:

1. Declaring the plaintiff as the lawful owner of the land alleged and described in paragraph 2 of his complaint;
2. Ordering the defendants to surrender peacefully to the plaintiff the physical possession of the same;
3. Directing the defendants to pay to the plaintiff the sum of TEN THOUSAND (P10,000.00) PESOS for having acted willfully in bad faith in contesting this suit; and
4. To pay the costs.

SO ORDERED.”

Unsatisfied, appellants interposed the instant appeal, ascribing errors to the lower court –

1. “IN DECLARING APPELLEE x x x THE LAWFUL OWNER OF THE (SUBJECT) LAND x x x AND IN CONSEQUENTLY ORDERING (THEM) TO SURRENDER TO x x APPELLEE THE PHYSICAL POSSESSION OF SAID LAND”; and
2. “IN FINDING (THEM) X X X GUILTY OF BAD FAITH AND IN CONSEQUENTLY DIRECTING THEM TO PAY APPELLEE x x x THE SUM OF P10,000.00 AS DAMAGES AND IN DIRECTING (THEM) TO PAY THE COSTS OF SUIT.

The appeal is devoid of merit.

Appellants contend that the 1977 deed of sale (Exhs. “D” and “2”) did not express the true intention of the contracting parties, *i.e.*, mortgage of the subject land by Trigidia to Valiente. In support of their contention, appellants cite these circumstances: (i) subsequent to the execution of the 1977 deed of sale, Trigidia continued paying Valiente in installments, reconstituted OCT No. 0-2559 and paid taxes on the subject land; and (ii) after appellee's purchase of the subject land from Valiente, they remained in peaceful possession thereof for more than seven years without paying rentals to anybody. We are not convinced.

It bears emphasis that the transaction between Trigidia and Valiente concerning the subject land is embodied in a notarized deed of sale. The rule is that a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity (*Mendezona vs. Ozamis*, 376 SCRA 482; *Loyola vs.*