

## FOURTEENTH DIVISION

[ CA-G.R. CV NO. 70150, September 27, 2006 ]

**SPOUSES WARLITO AND HERMINIA BUSTOS, PLAINTIFFS-  
APPELLANTS, VS. SPOUSES VENANCIO AND CECILIA VIRAY, ET  
AL., DEFENDANTS- APPELLEES.**

### D E C I S I O N

**VIDAL, M.D., J.:**

Before Us is an *Appeal*<sup>1</sup> filed by Plaintiffs- Appellants Spouses WARLITO<sup>2</sup> and HERMINIA BUSTOS (hereinafter Appellants) assailing the Order<sup>3</sup> dated 12 January 2001 of the Regional Trial Court, Third Judicial Region, Branch 54, Macabebe, Pampanga in CIVIL Case No. 99-0913(M) entitled *SPS. WARLITO C. BUSTOS and HERMINIA REYES vs. SPS. VENANCIO M. VIRAY and CECILIA R. NUNGA, et al. for Annulment and Cancellation of Free Patents*. The *fallo* of the Order reads:

**WHEREFORE, the Court rules as follows:**

**(a) Denies the Motion for Reconsideration dated August 8, 2000;**

**(b) Dismisses the complaint for lack of cause of action, without however, prejudice to the filing of an appropriate complaint for Recovery or Reconveyance of real property by the parties concerned should a cause of action exist for the same.**

**SO ORDERED.**<sup>4</sup>

### THE FACTS

The instant controversy involves Lot 284 of the Masantol Cadastre which was originally part of the estate of PAULINO FAJARDO (PAULINO). Said lot, after an extra-judicial partition of PAULINO's estate, was apportioned to one of his heirs, MANUELA FAJARDO (hereinafter MANUELA), who in turn sold her share to her brother-in-law MOSES MENDOZA (hereinafter MOSES), i.e., the husband of MANUELA's sister BEATRIZ.<sup>5</sup>

Meanwhile, the physical possession of Lot 284 was with TRINIDAD FAJARDO (hereinafter TRINIDAD) who refused to surrender said land to MOSES despite demand. Hence, MOSES filed with the Court of First Instance of Pampanga a complaint for Partition, claiming the one-fourth (1/4) portion of the subject land, representing MANUELA's share which was sold to him.<sup>6</sup>

While the aforementioned case was still pending, TRINIDAD died. Thereafter, her

heirs executed an extra-judicial partition of her estate. LUCIO FAJARDO (hereinafter LUCIO), one of TRINIDAD's heirs, caused the subdivision of the lot into Lot 284-A and Lot 284-B.<sup>7</sup> Thereupon, LUCIO sold Lot 284-B to Defendants- Appellees Spouses VENANCIO and CECILIA VIRAY (hereinafter Appellees VIRAY).<sup>8</sup>

On 8 February 1989, the Regional Trial Court of Macabebe, Pampanga rendered a decision in favor of MOSES, granting the latter one-fourth (1/4) of the abovementioned share of MANUELA.<sup>9</sup>

On 13 September 1991, MOSES sold the subject land (Lot 284) to the Appellants.

In the meantime, Appellees VIRAY sold Lot 284-B to the Defendants- Appellees FRISCO and EPIFANIA GABRIEL (hereinafter Appellees GABRIEL). Thereafter, Appellees GABRIEL applied for the issuance of a free patent over Lot 284-B and were subsequently issued Free Patent No. 035412 under their names.<sup>10</sup>

Defendants- Appellees Spouses FELIMON and GLORIA GUINTO (hereinafter Appellees GUINTO) likewise caused the registration of a free patent over Lot 284-A.<sup>11</sup>

Consequently, Appellants filed a complaint for annulment/ cancellation of free patents with damages<sup>12</sup> against Appellees VIRAY, GABRIEL, GUINTO, LUCIO IGNACIO, ROMARICO P. MELCHOR, CELSO L. PACATE and BIENVENIDO C. OCAMPO.

Acting on a motion to dismiss filed by the Appellees on 20 June 2000, the court *a quo* issued an order dismissing the aforesaid complaint for failure of the Appellants to exhaust administrative remedies, thus:

**The court finds that it has no jurisdiction and cannot acquire jurisdiction over the subject matter of this case considering that the matter pertains to the authority of the executive department to issue free patents covering properties applied for by the applicants-patentee and the said proceedings pertaining to the same should first be exhausted before the matter may be brought to the Court for appropriate review.**<sup>13</sup>

Appellants filed a motion for reconsideration of the abovementioned order which was subsequently denied by the court *a quo*. Said denial was further anchored on the fact that Appellants failed to bring the matter in controversy to the appropriate *Lupong Tagapamayapa* pursuant to the Local Government Code of 1991 considering that all the principal parties therein were residents of Masantol, Pampanga.<sup>14</sup> The court *a quo*, however, conceded to the argument of the Appellants that the doctrine of exhaustion of administrative remedies could not be applied to the case considering that the land in dispute is a private land.<sup>15</sup>

## **THE ISSUES**

Appellants instituted instant appeal raising the sole issue, to wit:

Whether or not the court *a quo* erred in dismissing Appellant's complaint on the ground that there was no prior referral to the *Lupong*