

## TWELFTH DIVISION

[ CA-G.R. CV NO. 79196, September 05, 2006 ]

**SPOUSES ROLANDO C. ABAQUIN & TRINIDAD R. LACUATA,  
REPRESENTED BY THEIR ATTORNEY-IN-FACT ILDEFONSA  
LACUATA PELINDARIO, PLAINTIFFS-APPELLEES, VS. SPOUSES  
ROLANDO ICASAS & EVELYN ICASAS, DEFENDANTS-  
APPELLANTS.**

### D E C I S I O N

**BATO, JR., J.:**

On appeal is the Decision<sup>1</sup> dated May 8, 2003 of the Regional Trial Court of Parañaque City, Branch 274, in Civil Case No. 98-0447, an *accion publiciana* case involving a parcel of land located at the corner of Sampaguita and Everlasting Streets, United Parañaque Subdivision IV, Barangay Marcelo, Parañaque City.

Spouses Rolando C. Abaquin and Trinidad R. Lacuata, (hereinafter referred to as the "appellees"), are the registered owners of the disputed lot as evidenced by Transfer Certificate of Title No. (S-27387) 95054 and declared for taxation purposes under Tax Declaration No. E-006-09253. Appellees claim that sometime in 1983, when they were already residing abroad, spouses Rolando Icasas and Evelyn Icasas ("appellants" for brevity), occupied the said parcel of land without their consent and built thereon a "*carinderia*". Appellees discovered the unauthorized occupancy of the appellants sometime in 1990 when they visited the Philippines. Through their lawyer, appellees demanded that appellants vacate the same. In 1998, appellees again visited the Philippines and found that appellants were still occupying their lot. Acting through their counsel, appellees again sent another demand letter to appellants on March 4, 1998 regarding their unauthorized occupancy and gave them the opportunity to buy the lot at the prevailing market value. Receiving no response to their March 4, 1998 demand letter, appellees sent two successive letters to the appellants reiterating their demand for the appellants to vacate from the lot in question. When appellees' final demand letter was not heeded by the appellants, the instant case was instituted by the appellees before the trial court on November 24, 1998.

In answer to the appellees' complaint, appellants claimed that they are the tenants of the so-called Rodriquez Estate which is the real owner of the subject parcel of land, hence, appellees title over the disputed lot is spurious.

The appellants did not show-up during the pre-trial conference. Thus, on motion of the appellees, the trial court declared the appellants as in default and appellees were allowed to adduce their evidence *ex-parte*.

After due proceedings, the assailed decision in favor of the appellees was promulgated with the following dispositive portion:

"Wherefore, the foregoing considered, decision is hereby rendered for the plaintiffs and against the defendants ordering the latter, and/or their representatives to –

; (1) Vacate the parcel of land described and covered by Transfer Certificate Of Title No. (S-27387) 95054 and to surrender possession thereof to the plaintiffs; 2.

(2) Pay the plaintiffs P1,000.00 a month for and as rentals on reasonable compensation for the use of the subject lot from the date of demand in August, 1990 until they vacate the same;

(3) Pay the plaintiffs the sum of P50,000.0 and P2,000.00 per Court appearance by way of attorney's fees;

(4) Pay the costs of suit.

SO ORDERED."<sup>2</sup>

Hence this appeal wherein appellants contend that:

"The Court a quo erred:

WHEN IT HELD:

1. That the plaintiffs were able to prove the ownership of the lot in question by being the registered owner as shown in TCT# (S-227387) 95054.

2. That Tax Declaration No. E-006-09243 proves the ownership of the land in question.

3. That plaintiffs were able to prove that defendants occupied the property in 1983.

4. The Order dated November 5, 2002 submitting the case for resolution due to the failure of the defendants and their counsel to appear on the scheduled date of hearing, November 5, 2002, has no proof of receipt of the notice/order setting the hearing on the aforesaid date."<sup>3</sup>

The focal point of this appeal is to determine who between the parties has the better right to possess the subject property.

*Accion publiciana*, which is a plenary action to recover possession, is proper where the issue is who has the better and legal right to possess or to whom possession *de jure* pertains.<sup>4</sup> In the case at bar, after a scrutiny of the evidence before us, we affirm the trial court's decision that the appellees have the better right to be in possession of the disputed lot.

Appellants' defense that the appellees' title to the disputed lot was acquired through fraud and is therefore spurious must fail for the simple reason that the validity of a Torrens Title cannot be assailed collaterally. In *Ybañez vs. Intermediate Appellate*