

THIRD DIVISION

[G.R. No. 145588, September 10, 2001]

ESPERIDION LOPEZ AND SPOUSES ROSALAIDA AND AUDIE ABOY, PETITIONERS, VS. HON. COURT OF APPEALS AND CARMEN L. CABRERA, RESPONDENTS.

D E C I S I O N

VITUG, J.:

A petition for review on *certiorari* under Rule 45, Rules of Court, seeks a reversal of two resolutions, dated 21 August 2000 and 28 September 2000, of the Court of Appeals. The dispute involves a piece of land situated in Barrio Kauswagan, Cagayan de Oro City, covered by TCT-T-49610 registered in the name of deceased Silvino Daculan.

On 15 May 1990, Luz Daculan, the surviving spouse of Silvino who died on 19 January 1988, sold a portion, hereunder described, of the property to Carmen Cabrera.

"xxx that remaining portion of Lot 1282-C-2, after deducting therefrom Lot 1282-C-2-C and Lot 1282-C-2-D, with an area of 2,751 sq. m., which remaining portion of Lot 1282-C-2 has an area of Four Hundred Seventy Six (476) square meters, xxx."^[1]

Rodolfo Roldan claimed to have acquired the subject property on 03 December 1987 from and during the lifetime of Silvino Daculan. Rodolfo, in turn, sold the property to the spouses Rosalaida and Audie Aboy, herein petitioners, on 29 April 1989. Petitioners would thus assert superior right over the property.

A civil case for recovery of ownership and possession was filed by private respondent before the Regional Trial Court of Misamis Oriental, Branch 20, Cagayan de Oro City, docketed Civil Case No. 93-534, against petitioners.

The trial court ruled in favor of private respondent.

On 29 October 1998, petitioners filed a timely notice of appeal. The trial court thereupon issued an order, dated 09 December 1998, directing the branch Clerk of Court to forward the records of the case to the Court of Appeals.

On 24 April 2000, petitioners' counsel, Atty. Angel R. Quimpo, sent a letter addressed to the Clerk of Court of the Court of Appeals, inquiring about the status of the case and whether the appellate court had already received the records from the court *a quo*.