

ELEVENTH DIVISION

[CA-G.R. CV NO. 97569, May 22, 2014]

PACITA R. BUENCONSEJO, PLAINTIFF-APPELLEE, VS. ANGIE LUCIANO, DEFENDANT-APPELLANT.

D E C I S I O N

ANTONIO-VALENZUELA, J.:

This is the appeal^[1] filed by Angie Luciano ("defendant-appellant Luciano") assailing the Decision dated 12 August 2011^[2] ("assailed Decision) issued by the Regional Trial Court, Branch 160, Pasig City (San Juan Station; "RTC"), in a civil case for recovery of ownership and possession of real property, and damages, docketed as Civil Case Number 70009.

The facts are as follows: On 05 June 2006, Pacita R. Buenconsejo ("plaintiff-appellee Buenconsejo") filed the Complaint^[3] for recovery of ownership and possession of real property, and damages, against Angie Luciano ("defendant-appellant Luciano") before the RTC.

The Complaint alleged: plaintiff-appellee Buenconsejo was the registered co-owner of a parcel of land with an area of 857 square meters, located at No. 129 F. Manalo Street, Barangay Maytuna, San Juan, Metro Manila covered under Transfer Certificate of Title Number 3204-R, and Tax Declaration Number 96-07513 ("subject property"); plaintiff-appellee Buenconsejo was the same person as Paz S. Roque whose name appears as one of the co-owners in TCT No. 3204-R; plaintiff-appellee Buenconsejo was known as "Carmen Paz S. Roque" before she married Julian Buenconsejo ("Julian") in 1955; sometime in October 2002, defendant-appellant Luciano constructed a 3-storey residential house on the southeastern portion of the subject property, through strategy and stealth, and against plaintiff-appellee Buenconsejo's express objection; plaintiff-appellee Buenconsejo made oral and written demands upon defendant-appellant Luciano to vacate and surrender possession of the subject property, but the latter did not heed the demands; on 25 October 2002, plaintiff-appellee Buenconsejo advised defendant-appellant Luciano that the construction was illegal, and hence he should discontinued with it.

The Complaint prayed that: defendant-appellant Luciano and all person claiming rights under her be ordered to vacate the subject property; the 3-storey residential house be demolished; defendant-appellant Luciano be ordered to pay P 10,000.00 per month, from October 2002 up to the time she surrenders possession of the subject property, as reasonable compensation; defendant-appellant Luciano be ordered to pay P 100,000.00 as attorney's fees, and costs of suit; other just and equitable relief be granted.

On 05 July 2004, defendant-appellant Luciano filed the Answer^[4], which alleged: defendant-appellant Luciano's parents had been in possession of the lot situated at 136 (not number "129") F. Manalo Street, San Juan, Metro Manila ("Lot No. 136")

since 1975; defendant-appellant Luciano inherited the right of possession from her parents; defendant-appellant Luciano was in actual, lawful and peaceful possession of Lot 136; Lot 136 was a government lot; the RTC had no jurisdiction over the action, because by alleging the employment of "strategy and stealth," the Complaint alleged elements of forcible entry and not recovery of ownership and possession.

By way of compulsory counterclaim, defendant-appellant Luciano prayed for the award of P 50,000.00 as actual, moral and exemplary damages, and P 50,000.00 as attorney's fees.

Referral to the Philippine Mediation was futile.

Trial ensued.

The following persons testified for plaintiff-appellee Buenconsejo: plaintiff-appellee Buenconsejo; Elizabeth T. Asis ("Asis"); and Julian.

The evidence for plaintiff-appellee Buenconsejo is summarized, thus: plaintiff-appellee Buenconsejo and Carmen Paz S. Roque were one and the same person (as per the Certificate of Birth^[5], Diploma^[6], Marriage Contract^[7], Power of Attorney dated 25 January 1990^[8], and Affidavit dated 16 June 1999^[9]); plaintiff-appellee Buenconsejo and Remedios S. Roque ("Remedios") were the registered co-owners of the subject property under TCT No. 3204-R^[10]; plaintiff-appellee Buenconsejo and Remedios declared the subject property for taxation purposes^[11]; plaintiff-appellee paid real property tax due on the subject property for the year 2007^[12]; the 3-storey residential building was constructed within the subject property (as per Relocation Survey Plan^[13], Structural Survey Report^[14], Structural Plan^[15], and photographs of the subject property^[16]); defendant-appellant Luciano was advised that the construction of the residential building was illegal, and a demand was made upon her to cease and desist from the construction.^[17]

The following persons testified for defendant-appellant Luciano: defendant-appellant Luciano; and Myrna Magallano ("Magallano").

The evidence for defendant-appellant Luciano is summarized, thus: defendant-appellant Luciano's family had been residents of 136 F. Manalo Street, San Juan City since the 1970s; Magallano and her husband, defendant-appellant Luciano's parents, had been in possession of Lot 136 since 1974, when they built a semi-concrete house on it; in 2002, Magallano and her husband transferred the possession of Lot 136 to their eldest child, defendant-appellant Luciano; in the same year, defendant-appellant Luciano built the 3-storey residential building^[18] on Lot 136; the subject property (i.e., 129 F. Manalo Street) was situated near the Lot 136 occupied by defendant-appellant Luciano; defendant-appellant Luciano did not know plaintiff-appellee Buenconsejo until the filing of the civil action; defendant-appellant Luciano suffered shock, sleepless nights, and stress when she received the letter informing her that plaintiff-appellee Buenconsejo was the owner of Lot 136.^[19]

On 12 August 2011, the RTC issued the assailed Decision. The dispositive portion of the assailed Decision read:

WHEREFORE, defendant and all persons claiming rights under her are hereby ordered as follows: (1.) to vacate the premises known as No. 136

F. Manalo Street, Barangay Maytunas, San Juan, Metro Manila and surrender possession thereof to plaintiff; (2.) to pay plaintiff reasonable compensation for her occupancy of the premises in the sum of P5,000.00 a month, counted from the filing of the complaint up to the time she surrenders possession thereof to plaintiff with interest at the legal rate; and (3.) to pay plaintiff P20,000.00 as and by way of attorney's fees, plus the cost of this suit.

SO ORDERED.^[20]

Thus, this appeal, with the following assignment of error:

THE TRIAL COURT GRAVELY ERRED IN NOT APPLYING ARTICLE 448 OF THE NEW CIVIL CODE, NOTWITHSTANDING THE DEFENDANT-APPELLANT'S GOOD FAITH.^[21]

The issue is whether the RTC erred in issuing the assailed Decision, insofar as it found defendant-appellant Luciano a builder in bad faith.

The Brief for the Defendant-Appellant^[22] answers in the affirmative. The RTC erred in issuing the assailed Decision, insofar as it found defendant-appellant Luciano a builder in bad faith. It thrusts: in 1974, defendant-appellant Luciano's parents started occupying the subject property in good faith, believing it was government property; her parents built a house on the subject property, and resided there with their family for almost 20 years; defendant-appellant Luciano's parents maintained open, public, adverse, continuous, and uninterrupted possession in the concept of owners; in 2002, defendant-appellant Luciano's parents transferred the possession of the subject property and the house to her; in the same year, defendant-appellant Luciano started the gradual renovation of the house; plaintiff-appellee Buenconsejo made demands upon defendant-appellant Luciano to cease the renovations, but the latter did not accede to the demands; defendant-appellant Luciano did not desist from renovating, as she was not among the named defendants in the ejectment suits that plaintiff-appellee Buenconsejo filed, and she strongly believed the subject property was government property; defendant-appellant Luciano was a builder in good faith; plaintiff-appellee Buenconsejo should exercise the option to sell the subject property or appropriate the improvements.

The Brief for Plaintiff-Appellee^[23] answers in the negative. The RTC did not err in issuing the assailed Decision, insofar as it found defendant-appellant Luciano a builder in bad faith. It parries: plaintiff-appellee Buenconsejo was the registered owner of the subject property under TCT No. 3204-R; she also declared the subject property for taxation purposes, and paid for real property taxes; as registered owner, plaintiff-appellee Buenconsejo had the rights to the possession, enjoyment, and recovery of the subject property; plaintiff-appellee Buenconsejo may make demands to vacate upon defendant-appellant Luciano; defendant-appellant Luciano was a builder in bad faith; during the construction of defendant-appellant Luciano's house, plaintiff-appellee Buenconsejo warned her to desist because the construction encroached upon the subject property; despite plaintiff-appellee Buenconsejo's warnings, defendant-appellant Luciano continued and finished the construction; Articles 449, 450, and 452 of the New Civil Code were applicable; defendant-appellant Luciano's claim that she believed the subject property to be government property was an admission that she knew she did not own the subject property, and