

FIRST DIVISION

[G.R. No. 231639, January 22, 2020]

THE HEIRS OF MARSELLA T. LUPENA (IN SUBSTITUTION OF MARSELLA T. LUPENA), PETITIONERS, VS. PASTORA MEDINA, JOVITO PAGSISIHAN, CENON PATRICIO, AND BERNARDO DIONISIO, RESPONDENTS.

DECISION

CAGUIOA, J:

Before the Court is a Petition for Review^[1] (Petition) under Rule 45 of the Rules of Court filed by the petitioners Heirs of Marsella T. Lupena (petitioners Heirs of Lupena), in substitution of Marsella T. Lupena (Lupena) assailing the Decision^[2] dated January 13, 2017 (assailed Decision) and Resolution^[3] dated May 11, 2017 (assailed Resolution) rendered by the Court of Appeals (CA) in CA-G.R. CV No. 106794.

The Facts and Antecedent Proceedings

As culled from the recital of facts in the assailed Decision, the essential facts and antecedent proceedings of the instant case are as follows:

On 29 August 2001, the original plaintiff, [Lupena], filed a [Complaint^[4] for Recovery of Possession of Real Property (Complaint)] against [respondents] Pastor Medina (Medina), Jovita Pagsisihan (Pagsisihan), Cenon Patricio (Patricio) and Bernardo Dionisio (Dionisio) before the [Regional Trial Court of Pasig City, Branch 155 (RTC)].

While the case was pending before the RTC, Lupena died but she was substituted by her heirs[, the petitioners Heirs of Lupena], represented by Hermogenes L. Jose.

[Petitioners Heirs of Lupena's] View

Lupena was the registered owner of a parcel of land with an area of 180 square meters located in Brgy. Bagumbayan, Taguig [(subject property)], covered by Transfer Certificate of Title (TCT) No. 18547. In or about 1985-1986, [respondents Medina, Pagsisihan, Patricio, and Dionisio (respondents)] entered the property of Lupena and unlawfully withheld and deprived the latter of possession over a big portion thereof by force, intimidation, threat, strategy and stealth. Lupena demanded that the [respondents] vacate the premises but they adamantly refused and ignored her plea. Lupena thus hired a licensed surveyor, Engineer Oscar Tenazas (Engr. Tenazas) to determine the extent and exact area of the portion of lot individually encroached by each [respondent]. After the survey, Engr. Tenazas prepared a *Relocation Plan*, which was duly

approved by the Land Management Bureau (LMB), Department of Environment and Natural Resources (DENR) and a *Sketch Plan*. The [respondents] were found to have encroached on Lupena's lot as follows: 1) [respondent] Medina occupied 34 square meters; 2) [respondent] Pagsisihan occupied 61 square meters; 3) [respondent] Patricio occupied 8 square meters; and 4) [respondent] Dionisio occupied 15 square meters.

During trial, Francisco Jose and Engr. Oscar Tenazas testified to prove the [petitioners Heirs of Lupena's] cause of action.

Francisco Jose testified that the property subject of the case was owned by his mother, Lupena, as shown by TCT No. [1]8547. They learned that there was an encroachment on their property only after they had it surveyed by Engr. Tenazas. They brought the matter to the barangay but they failed to settle the same.

On cross-examination, Francisco Jose testified that he has visited the subject premises daily since 1991 because he had to tend his mother's store. He cannot, however, recall when the [respondents] built their houses. He, however, admitted that as early as 1991, the houses of the [respondents] were already there on the subject property.

Engr. Tenazas, who is a geodetic and civil engineer, testified, among others, that sometime in July 2000, Lupena, through her son, Francisco Jose, hired him to conduct a relocation survey of their land for P10,000.00. To accomplish his job, he did some research work at the Land Registration Commission and LMB. Thereafter, he conducted the actual survey. He found out that a portion of the land that he was tasked to relocate was actually occupied by four people, namely, [respondents] Pastora Medina, Jovito Pagsisihan, Cenon Patricio and Bernardo Dionisio. After the survey, he prepared a plan and the necessary papers to be submitted to LMB for approval. These papers included the original plan, the resulting completion of the relocation survey, field notes with cover, certified true copy of the land title, transmittal of survey returns and the Geodetic Engineer's report. He was also required by his client to make a sketch of the land in which the houses of the aforementioned occupants were located and what area they occupied on the mentioned lot. He pointed out that in the sketch plan that he prepared, it was shown that [respondent] Pagsisihan occupied an area of 61 square meters; [respondent] Dionisio occupied 15 square meters; [respondent] Medina occupied 34 square meters and [respondent] Patricio occupied 8 square meters. He also testified that the relocation plan that he prepared after he conducted the survey was approved by the LMB on 23 August 2000.

On cross, Engr. Tenazas testified that since the subject lot was titled, there was no need to notify the four occupants, although he notified [respondent] Pastora because the lot of the latter was adjacent to that of Lupena. When he conducted the survey, the four owners were, however, present.

[Respondents'] View

For their part, [respondents] Pagsisihan and Dionisio alleged that they were owners of the parcel of land on which their houses were erected. The respective boundaries of their houses were all within the area covered by TCT No. 268143-(701) in the names of Spouses Bernardo Dionisio and Delicia Leuterio and Spouses Victor and Carmen Dionisio. In 1970, [respondents] Pagsisihan and Dionisio, who were relatives, decided to partition the lot among themselves into two portions. [Respondent] Pagsisihan had established and erected his own residence on the former front yard of the lot in the same year.

[Respondents] Pagsisihan and Dionisio argued that, assuming without admitting, that they had indeed encroached on the property of Lupena, they ought to be considered builders in good faith for way back in 1964, the year in which [respondent] Dionisio erected his family dwelling, Lupena had not informed him that he had encroached on her property, considering that the lot was already enclosed by a wooden fence, which was distinct and made known to the public. Also, the adjoining lot was a pathway which was established and used by the farmers in going to the rice fields as early as 1950.

On the part of [respondent] Medina, she alleged that she was the owner of the parcel of land on which the family residence was erected. Although she admitted that her family had encroached on a nearby lot, such lot was not the lot allegedly owned by Lupena since the adjoining lot was a public alley which was used by the community way back in the 1950's. It used to be a trail utilized by the farmers. [Respondent] Medina further argued that assuming that the encroached portion was indeed the lot of Lupena, the same cannot be reverted to the latter, since in September 1988, Lupena had ceded and transferred to her an aliquot portion of the lot with an area of 100 square meters for and in consideration of P40,000.00. She had already made a partial payment of P12,000.00, but she had not received from Lupena the 100 square meters of land. She asserted that the partial payment could be applied to the alleged encroached area with reservation on her part to ask for specific performance. Finally, [respondent] Medina argued that she was a builder in good faith because the former lot on which she had erected her family dwelling was owned by Lupena herself and the latter did not warn her that she had allegedly encroached on the subject lot.

Engr. Ervin Boado testified, among others, that he was a licensed geodetic engineer. He knew about the boundary, dispute between Lupena and the [respondents] Pagsisihan and Dionisio because the Mediation Office referred the survey of their lots to him. On 9 October 2004, he conducted a verification survey of the three lots of Lupena, [respondent] Dionisio and [respondent] Medina in order to identify their boundaries. All adjoining parties witnessed his survey. In the first field survey, the geodetic engineer of Lupena, Engr. Tenazas, was not in the area. But the second time around, when he submitted all the final drawings and results of the survey, Engr. Tenazas appeared. He conducted his survey using the following as reference: TCT-2825 in the name of Melchor Medina and Pastora Medina; TCT No. 268143 in the name of Spouses Bernardo Dionisio and Delicia Leuterio and Spouses Victor Santos and Carmen Dionisio; the approved LRC Subdivision Plan in the name of Regina

Gutierrez; and the approved survey relocation plan of the lot of Marsella Lupena, Relocation Survey No. 0000094. He placed his findings in a report dated 12 October 2004. In the body of his report, he stated that as per actual land survey of the properties, it was found out that Lot 1 LRC PSD-56868 of [respondents] Dionisio, *et al.* did not encroach on Lot 4-D PSD-007607- 026227-D and Lot 3 LRC PCS-24759, but Lot 4-B was totally encroached by [respondent] Medina. He explained that the sketch/special plan did not bear the approval of the LMB because he prepared the same upon the request of the Mediation Office and not for the purpose of submission to the LMB. He also explained that when he used the relocation plan prepared by Engr. Tenazas in his first computation, the tie lines of the approved plans did not conform with each other but rather strayed from the nearest adjacent lot. He told Engr. Tenazas that these tie lines should be corrected.

On cross-examination, Engr. Boado testified that albeit the verification survey he was tasked to conduct did not include the relocation of the lots, it was, however, necessary to verify the overlapping of lots that were shown to him by the Mediation Office. He submitted the final plan to the Mediation Office, and there he compared the result of his survey with that of the survey done by Engr. Tenazas. Based on his survey, the lot of Regina Gutierrez, the original owner of the lot of [respondents] Dionisio and Pagsisihan, was intact and in good position. According to him, his verification survey need not bear the approval of the LMB because the lots subject thereof were already titled. In fact, he based his verification on the inscriptions on the land titles approved by the LMB and Land Registration Authority (LRA). He actually talked to the Chief of the Survey Division of LMB and inquired about these things and he was told to go on with the survey so that the division can look into his findings because they are the ones who would approve all the plans.

On redirect examination, Engr. Boado explained that there was a discrepancy in his survey and that of Engr. Tenazas because the LMB and the LRA used different tie lines. In the second paragraph of his report, he recommended that the resurvey of [L]ot 4-B and [L]ot 3 must be made in order to check the technical errors of the lot.

[Respondent] Pagsisihan x x x identified his judicial affidavit in court which stated, among others, that Lupena's allegation that his property encroached on hers was not true. The lot on which his house stood was covered by TCT No. 268143 in the name of spouses Bernardo and Delicia Leuterio and spouses Victor Santos and Carmen Dionisio, with an area of 241 square meters located at Bagumbayan, Taguig. He and Mrs. Dionisio were relatives and in 1970, they partitioned the 241 square-meter lot. Thus, his home stood on the front portion of the lot. He and Mrs. Dionisio obtained a copy of TCT No. 268143 because there was already an ejectment case filed with the Metropolitan Trial Court, Branch 74, docketed as Civil Case No. 1612 entitled *Marcella T. Lupena v. Pastora Medina and Jovito Pagsisihan*. The case was dismissed on the ground that the dispossession exceeded one (1) year. Further proof that he rightfully owned the lot where his house stood was the Tax Declaration No. FL-001-012264 issued by the Taguig City Assessor in the name of spouses Victor Santos and Carmen Dionisio and spouses Bernardo and Delicia Leuterio.