

## FIRST DIVISION

[ G.R. No. 196461, July 15, 2015 ]

**WARLITO C. VICENTE, PETITIONER, VS. ACIL CORPORATION,  
RESPONDENT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated September 30, 2010 and the Resolution<sup>[3]</sup> dated March 18, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 03508-MIN which found no grave abuse of discretion on the part of the Regional Trial Court of Davao City, Branch 8 (RTC) in ordering the execution of judgment in Civil Case No. 22,866-94.

#### The Facts

On December 10, 1985, respondent Acil Corporation (Acil) acquired **Lot 297**, a 9,173-square meter parcel of land situated in Barrio Talomo, Davao City, from the heirs of a certain Ladislawa I. Alcantara, and was eventually issued Transfer Certificate of Title (TCT) No. T-120730 in its name.<sup>[4]</sup>

Adjacent to Lot 297 along Talomo River is **Lot 10375**, measuring 8,619 square meters in area. Petitioner Warlito C. Vicente (Vicente) acquired Free Patent No. 112402-91-1(W) for Lot 10375, and consequently, Original Certificate of Title No. P-13257 was issued on March 27, 1991 in his name.<sup>[5]</sup>

On May 2, 1994, Acil filed a complaint<sup>[6]</sup> for cancellation of title and recovery of possession with prayer for the issuance of a writ of preliminary injunction and temporary restraining order before the RTC, against Vicente, Israel C. Gaddi, Regional Executive Director, Department of Environment and Natural Resources (DENR), and Atty. Aludia P. Gadia, Register of Deeds for Davao City, docketed as Civil Case No. 22,866-94. In the said complaint, Acil alleged that it owned Lot 10375 as it was formed by accretion along the northeastern boundary of Lot 297. Thus, with Lot 10375 assuming the character of private property, the DENR had no authority to issue Free Patent No. 112402-91-1(W) therefor, hence, null and void.<sup>[7]</sup> On a second point, Acil further claimed that Vicente clandestinely encroached upon a portion of Lot 297 by constructing a fence thereon. In this relation, it pointed out that on June 15, 1993, geodetic Engineer Agustin M. Vedula (Engr. Vedula) conducted a survey of Lot 297 and prepared a sketch plan therefor which identified by parallel diagonal lines the extent of Vicente's encroachment on the same.<sup>[8]</sup>

In his answer,<sup>[9]</sup> Vicente maintained the validity of his title over Lot 10375. He pointed out that Lot 297, having been covered by the natural action of the sea and, of late, left dry, assumed the character of foreshore land, and hence, no longer

existent as private property of Acil as it instead, forms part of the public domain.<sup>[10]</sup>

In a Decision<sup>[11]</sup> dated July 5, 1999, the RTC dismissed Acil's complaint on the ground that it failed to prove that Lot 10375 was an accretion to Lot 297.<sup>[12]</sup> Aggrieved, Acil filed an appeal before the CA, docketed as CA-G.R. CV No. 70355.<sup>[13]</sup>

In a Decision<sup>[14]</sup> dated September 12, 2003, the CA upheld Vicente's ownership over Lot 10375, but nonetheless ruled that he was liable for encroaching upon a portion of Lot 297 as shown in the sketch plan stemming from the survey conducted by Engr. Vedula.<sup>[15]</sup> Accordingly, it set aside the ruling of the RTC and ordered Vicente to vacate the encroached portion. The dispositive of the CA's September 12, 2003 Decision reads:

**WHEREFORE**, premises considered, the assailed Decision dated July 5, 1999 of the Regional Trial Court of Davao City, Branch 8, in Civil Case No. 22,866-94 is **SET ASIDE** and a new one is entered declaring appellee Warlito Vicente as the lawful owner of the land formed by accretion, known as Lot 10375. **Appellee Vicente, however, is hereby ordered to vacate and deliver possession of the portion of land consisting of, more or less, 4,237 square meters to appellant Acil Corporation, in so far as it encroaches on Lot 297 registered under the name of the latter.** No pronouncement as to costs.

SO ORDERED.<sup>[16]</sup> (Emphasis and underscoring supplied)

Dissatisfied, both parties filed their respective petitions for review before the Court, docketed as G.R. Nos. 164750 and 164894,<sup>[17]</sup> which were, however, denied in a Resolution<sup>[18]</sup> dated November 14, 2005. Said judgment became final and executory on October 6, 2006.<sup>[19]</sup>

Upon Acil's motion,<sup>[20]</sup> the RTC issued a Writ of Execution<sup>[21]</sup> on May 23, 2008, the dispositive portion of which reads:

NOW THEREFORE, you are hereby commanded to execute the aforequoted Decision and Order **to levy the goods, chattels and real properties of defendants**, except those which are exempt from execution; together with your lawful fees, all in Philippine Currency, and render said sums of money to herein Plaintiff [Acil] aside from your lawful fees in this writ which shall be properly received and turned over to this Court within the same day.

x x x<sup>[22]</sup> (Emphasis and underscoring supplied)

Thereafter, Vicente filed on June 18, 2008 an Urgent Motion to Quash and Enjoin Implementation of Void Writ of Execution,<sup>[23]</sup> asserting that the said writ did not conform to the decision to be executed, *i.e.*, the CA's September 12, 2003 Decision in CA-G.R. CV No. 70355. Particularly, while the said decision ordered him "to vacate and deliver possession of the portion of land consisting of, more or less, 4,237 square meters x x x, in so far as it encroaches on Lot 297,"<sup>[24]</sup> the writ of execution

directed the sheriff "to levy the goods, chattels[,] and real properties of defendants."<sup>[25]</sup> Further, Vicente posited that the CA's September 12, 2003 Decision could not yet be executed since no prior survey has been conducted to determine the encroached portion of Lot 297. As such, he prayed that execution be held in abeyance.<sup>[26]</sup>

In its comment to the motion to quash,<sup>[27]</sup> Acil agreed with Vicente that the writ of execution was in variance with the dispositive portion of the September 12, 2003 Decision, praying that the said writ of execution be amended to conform thereto. Meanwhile, Vicente opposed Acil's prayer for an amended writ of execution, insisting that the area of encroachment must be determined first.<sup>[28]</sup>

On July 14, 2008, Acil filed a motion for the appointment of a geodetic engineer, in the person of Engr. Vedula, to conduct a survey in order to determine the encroached portion of Lot 297.<sup>[29]</sup> Before the motion was acted upon by the RTC, Acil submitted a supplemental motion, this time seeking that a geodetic engineer from the Land Management Services of the DENR lead a surveying team with two (2) engineers separately chosen by Acil and Vicente.<sup>[30]</sup> Vicente opposed the appointment of a surveyor, stating that the DENR, in connection with a separate administrative case for cancellation of Acil's title to Lot 297 filed by him, was poised to survey the area.<sup>[31]</sup> Without waiting for the RTC's action on its motion, Acil conducted the verification survey of Lot 297 through Engr. Vedula, and submitted to the DENR the sketch plan resulting from the survey, which showed that Vicente had encroached upon a portion of Lot 297, consisting of 6,269 square meters, and not merely 4,237 square meters.<sup>[32]</sup>

### **The RTC Ruling**

In an Order<sup>[33]</sup> dated January 14, 2010, the RTC denied Acil 's motion, ruling that there was no need for the appointment of a surveyor for the sheriff to execute the judgment. It observed that in the September 12, 2003

Decision, theCA had already determined that Vicente encroached an area of approximately 4,237 square meters on Acil's property. The CA had also identified such illegally occupied area to be that shaded portion in Acil 's Exhibit "G-4" - a sketch plan prepared by Engr. Vedula who had first conducted the survey on the encroachment.<sup>[34]</sup> Accordingly, the RTC ordered the issuance of a Writ of Execution to implement the dispositive portion of the CA's September 12, 2003 Decision.<sup>[35]</sup>

Vicente filed a motion for reconsideration<sup>[36]</sup> on January 22, 2010, alleging that since the second verification survey conducted by the same surveyor (*i.e.*, Engr. Vedula) showed that the encroached area had increased to 6,269 square meters, and not merely 4,237 square meters as stated in the CA's September 12, 2003 Decision, the order of execution must be reconsidered and set aside to "await the proper determination by the DENR of the exact location and area of the encroached premises."<sup>[37]</sup> In an Order<sup>[38]</sup> dated March 8, 2010, the RTC denied the aforesaid motion for being a mere rehash of previous arguments.

Vicente elevated the matter to the CA by way of a petition for *certiorari*,<sup>[39]</sup>

docketed as CA-G.R. SP No. 03508-MIN, raising the sole issue of whether or not the RTC gravely abused its discretion in ruling that there was no need to appoint a surveyor to execute the September 12, 2003 Decision.<sup>[40]</sup>

### **The CA Ruling**

In a Decision<sup>[41]</sup> dated September 30, 2010, the CA affirmed the RTC's January 14, 2010 Order, finding no need to appoint a surveyor, and upholding its directive to issue a new writ of execution to implement the dispositive portion of the September 12, 2003 Decision.

Unperturbed, Vicente filed a motion for reconsideration,<sup>[42]</sup> arguing that the CA erred in upholding the RTC's ruling on the ground that the May 23, 2008 Writ of Execution, which was clearly at variance with the decision to be executed, *i.e.*, September 12, 2003 Decision, has not been recalled nor quashed.<sup>[43]</sup> Said motion was, however, denied in a Resolution<sup>[44]</sup> dated March 18, 2011; hence, this petition.

### **The Issue Before The Court**

The issue before the Court is whether or not the CA erred in dismissing Vicente's petition for *certiorari*.

### **The Court's Ruling**

The petition lacks merit.

Vicente asserts that the CA erred in dismissing his *certiorari* petition and in ruling that the execution of the September 12, 2003 Decision was not impossible or unjust.<sup>[45]</sup> He proceeds to argue that the RTC's January 14, 2010 Order denying the appointment of a surveyor and directing the execution of the September 12, 2003 Decision should have been set aside by the CA because it failed to order the quashal of the previously-issued May 23, 2008 writ of execution<sup>[46]</sup> which erroneously directed the sheriff "to levy the goods, chattels and real properties of defendants x x x"<sup>[47]</sup> instead of ordering him to take custody and deliver possession of the encroached portion of land in accordance with the terms of the judgment sought to be implemented therein.<sup>[48]</sup>

The argument is untenable.

The wayward manner by which Vicente has been preventing the execution of a final and executory judgment - in this case, the CA's September 12, 2003 Decision has not escaped the Court's attention. In his *certiorari* petition before the CA, Vicente raised only the issue regarding the RTC's non-appointment of a surveyor, mentioning nothing about the erroneously-worded May 23, 2008 Writ of Execution. When the CA upheld the RTC's January 14, 2010 Order denying the appointment of a surveyor, Vicente moved for reconsideration thereof, but took swipe, instead, at the issue concerning the erroneously-worded writ. And now, in this present petition, he seeks to impress upon the Court that what the CA had affirmed as being "not impossible or unjust" to execute was the May 23, 2008 Writ of Execution that erroneously directed the levy of goods, chattels, and real properties, contrary to the dispositive