

SECOND DIVISION

[G.R. No. 197336, September 03, 2014]

**CORPORATION, PETITIONER, VS. ROLANDO CORDERO,
RESPONDENT.**

DECISION

DEL CASTILLO, J.:

A question of fact cannot be raised in petitions for review on *certiorari*; in such appeals by petition for review on *certiorari* under Rule 45, only questions of law shall be raised.

This Petition for Review on *Certiorari*^[1] seeks to set aside the November 26, 2010 Decision^[2] of the Court of Appeals (CA) in CA-G.R. CV No. 02887 affirming the August 21, 2008 Decision^[3] of the Regional Trial Court of Cebu City, Branch 8 in Civil Case No. CEB-28040, as well as its February 23, 2011 Resolution^[4] denying Meyr Enterprises Corporation's (petitioner) Motion for Reconsideration^[5] of the assailed judgment.

Factual Antecedents

The pertinent facts are as follows:

On August 22, 2002, plaintiff-appellant, Meyr Enterprises Corporation^[6] (hereafter Meyr/plaintiff-appellant) filed a Complaint^[7] for Damages and Attorney's Fees before the Regional Trial Court of Cebu City against Rolando Cordero^[8] (hereafter defendant-appellee/Cordero).

Meyr claims to be the registered owner of a [4,887-square meter parcel of land covered by TCT No. T-1198.]^[9] Plaintiff-appellant alleged that sometime in July 2002, defendant constructed a dike in front of his land. The [dike disrupted] the flow of the waves of the sea causing damages to [his] land. The trees in the land were allegedly in danger of [being uprooted] and the sand [of disappearing further]. Plaintiff-appellant prays for [O]ne Million [P]esos actual damages, [P]600,000[.00] moral damages, [P]200,000.00 exemplary damages.

In his Answer,^[10] dated September 20, 2002, x x x Cordero averred that the construction of the dike began [in] December 2001 through the authority of the Local Government of Guinsiliban, Camiguin pursuant to a resolution^[11] of the Sangguniang Bayan. He added that the alleged interruption of the waves is unfounded and a lie because the dike [does

not encroach] on the plaintiff's land and in no way will [it] interrupt the normal action of the waves.

Cordero argued that plaintiff-appellant has no personality to sue as the area in controversy is a foreshore land, owned by the State and under no circumstances will plaintiff suffer any damage or injury therefrom. The area is covered under the COMMUNITY-BASED FOREST MANAGEMENT AGREEMENT (CBFMA), between the Department of Environment and Natural Resources and the Cantaan Centennial Multi-Purpose Cooperative (CCMPC). Defendant-appellee stated that under the CBFMA Agreement the holder thereof has the exclusive responsibility of protecting the area, thus, he concludes that only CCMPC has the personality to sue in court.

Defendant-appellee alleged that sometime in September 2001, the property caretaker of the plaintiff hired several workers upon the order of Mr. Paul Rodriguez, and clandestinely quarried the white sand and finger gravel along the shore of their land. The people of Barangay Cantaan and the DENR supposedly complained to the Sangguniang Bayan of Guinsiliban[,] Camiguin, [which] then made an ocular inspection on the area. Mr. Deogracias Dagondon, a DENR representative, allegedly caught *in flagrante delicto* three persons quarrying finger gravel and one of them is Mr. Jadman (the property caretaker of the plaintiff), who told the former that they were under orders from Mr. Rodriguez. As a result, the Sangguniang Bayan of Guinsiliban, Camiguin approved Resolution No. 44 informing Mr. Paul Rodriguez to stop quarrying finger gravel.

Defendant-appellee averred that in order to "restore mother nature" without engaging plaintiff in actual court battle, defendant sought assistance from the local government of Guinsiliban, in constructing a dike/sea wall. He contended that the construction thereof should be charged to the plaintiff, as it is the proximate cause of the damage. He postulated that plaintiff filed the baseless suit against him because Meyr wanted to acquire his land. He prayed for moral damages in the total amount of Php2,500,000.00, attorney's fees of Php250,000.00, litigation expenses of Php75,000.00 and exemplary damages of Php5,000,000.00.

Subsequently, on May 28, 2003 the RTC dismissed the complaint of the plaintiff based on defendant-appellee's affirmative defenses, the pertinent portions of which state:

"After weighing the arguments of the contending parties, this Court rules to consider defendant's affirmative defenses which are supported by documentary evidences on the following grounds: firstly, as the records would show, the area under discussion is a foreshore and is a public dominion owned by the State and as such it is the latter who has the exclusive right to file an action. Secondly, the subject area is covered with a Community Based Forest Management Agreement between the DENR and Cantaan Fishermen Association, Inc., now known as Cantaan [Centennial] Multi-Purpose Cooperative per agreement executed by the above-named parties way back [on] May 20, 1998 (Annex "4"-Answer).

Thirdly, defendant's act of constructing [a] dike/seawall in front of his land was duly authorized by the Sangguniang Bayan of Guinsiliban, Camiguin per Resolution No. 38 (Annex "1"-Answer).

PREMISES CONSIDERED, the Court hereby grants the dismissal of the instant case for lack of legal and factual basis.

SO ORDERED."^[12]

Plaintiff's motion for reconsideration of the said order met the same fate and was denied in an Order dated September 8, 2003.^[13]

The dismissal of the case became final and executory as the notice of appeal by the plaintiff-appellant was filed out of time as can be clearly seen from the twin Orders of the trial court respectively dated October 27, 2003 and January 12, 2004.^[14]

Meanwhile, defendant-appellee filed a motion in court to set his counterclaim for hearing. Thus, hearing of defendant-appellee's counterclaim ensued. On August 21, 2008, the Regional Trial Court rendered a decision^[15] in favor of the defendant's counterclaim the dispositive portion of which states:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the defendant-counterclaimant, ROLANDO CORDERO, and against the plaintiff-counterclaim defendant, MEYR ENTERPRISES CORPORATION, ordering the latter to pay the former the amounts of Php50,000.00 for moral damages, Php20,000.00 as attorney's fees, and the costs of the suit.

SO ORDERED."^[16]

In arriving at the above pronouncement on Rolando Cordero's (respondent's) counterclaim, the trial court held in its Decision that –

The Court is inclined to believe that, indeed, there was damage, specifically erosion, in the seashore of Barangay Cantaan. But no sufficient evidence, other than their own allegations which appear to be no more than finger pointing, has been presented by any of the parties as to the cause of said damage. The plaintiff says it is the dike constructed by the defendant, while the latter says it is the quarrying of sand and gravel done by plaintiff's workers. To the mind of the Court, the determination of the cause of such erosion needs the help of experts, especially with the conflicting claims of the parties. The Court wonders why the assistance of the DENR was not sought on this matter, especially so [since] said Office has a Dive Camp at the area.

It must also be noted that, among the reasons relied upon by this Court in dismissing the plaintiff's complaint are that "the area under discussion

is a foreshore and is a public dominion owned by the State and as such it is the latter who has the exclusive right to file an action. x x x, the subject area is covered with a Community Based Forest Management Agreement between the DENR and Cantaan Fishermen Association, Inc. now known as Cantaan Centennial Multi-Purpose Cooperative per agreement executed by the above-named parties way back [on] May 20, 1998.”

Hence, the Court cannot require the plaintiff-counterclaim defendant to reimburse the defendant-counterclaimant of the expenses he incurred in the construction of the dike for the protection of his property.

But indeed, as previously found by this Court, the plaintiff-counterclaim defendant had no basis in filing this case against the defendant-counterclaimant, and considering further that the latter was permitted by the Sangguniang Bayan of Guinsiliban to construct the dike, that plaintiff-counterclaim defendant’s workers themselves quarried said sand and gravel from the seashore and that it showed interest in buying the defendant-counterclaimant’s property, its act has all the hallmarks of a malicious prosecution. Hence, the plaintiff-counterclaim defendant should be sentenced to pay the defendant-counterclaimant moral damages, attorney’s fees and costs of litigation.^[17]

Ruling of the Court of Appeals

Petitioner appealed the trial court’s Decision with the CA. Docketed as CA-G.R. CV No. 02887, the appeal essentially centered on the argument that contrary to the trial court’s findings, petitioner had a valid cause of action against respondent for damages arising from the erosion caused by the latter’s construction of a dike on foreshore land, which petitioner claims is illegal; for this reason, it should not be found guilty of malicious prosecution for instituting Civil Case No. CEB-28040.

On November 26, 2010, the CA issued the assailed Decision which affirmed the trial court’s August 21, 2008 Decision, stating thus:

At the outset, this Court highlights that Meyr is not assailing the dismissal of its complaint but only the award of moral damages, attorney’s fees, and litigation cost by the trial court, which it based on malicious prosecution. “In this jurisdiction, the term ‘malicious prosecution’ has been defined as ‘an action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein.’ While generally associated with unfounded criminal actions, the term has been expanded to include unfounded civil suits instituted just to vex and humiliate the defendant despite the absence of a cause of action or probable cause.” A finding of malicious prosecution requires the following elements:

(1) the fact of the prosecution and the further fact that the defendant was himself the prosecutor, and that the action was finally terminated with an acquittal;

(2) that in bringing the action, the prosecutor acted without probable cause; and

(3) the prosecutor was actuated or impelled by legal malice.

Anent the first element, it is apparent that herein plaintiff-appellant was the one who initiated the present case for damages against the defendant-appellee. It is also crystal clear that the dismissal of the original case has long become final and executory as can be fairly inferred from the twin Orders of the trial court respectively dated October 27, 2003 and January 12, 2004.

Likewise, the second and third element[s] for malicious (prosecution) have been evidently established. The subject in litigation which is the beach is undoubtedly a foreshore land and incapable of private ownership. As such, the only entity that could suffer any damage thereon is the State. This Court is in full agreement with the following factual findings of the trial court and We adopt the same as Our own:

“It must be also noted that among the reasons relied upon by this Court in dismissing plaintiff’s Complaint are that ‘the area under discussion is a foreshore land and is a public dominion owned by the State and as such it is the latter who has the exclusive right to file an action. x x x”

It is already established that herein plaintiff-appellant had no personality to sue. Thus, plaintiff will never have probable cause to file an action against the defendant.

In addition, it may not be amiss to point out that plaintiff-appellant did not deny defendant-appellee’s assertions that the former made an offer to buy defendant’s land, nor did it deny the allegation that it ordered its employees to gather sand and gravel from the seashore which resulted in damage to the beach. In fact, in its appellant’s brief it never made any mention regarding these allegations. Petitioner’s deafening silence on the issue only highlights the fictiveness of their [sic] claim. For failure of the plaintiff-appellant to controvert the testimony of the defendant, the said allegation stands and remains unchallenged. x x x

Incidentally, as found by the trial court the construction of the sea wall/dike was made with the authority of the local government of Guinsiliban. Such authority must have been made public and of public knowledge as it was issued pursuant to a Resolution No. 38. Hence, it is within the power of the plaintiff-appellant to acquire knowledge or information that such construction was made by virtue of the order of the local government and not by the plaintiff. Meyr could not feign ignorance of such authority as it is made through a public resolution of the Sangguniang Bayan of Guinsiliban, which forms part of public record. Therefore, We find no reason for plaintiff corporation to attribute such construction of the dike