

## THIRD DIVISION

[ G.R. No. 192486, November 21, 2012 ]

**RUPERTA CANO VDA. DE VIRAY AND JESUS CARLO GERARD VIRAY, PETITIONERS, VS. SPOUSES JOSE USI AND AMELITA USI, RESPONDENTS.**

### DECISION

**VELASCO JR., J.:**

#### The Case

Petitioners have availed of Rule 45 to assail and nullify the Decision<sup>[1]</sup> dated July 24, 2009, as effectively reiterated in a Resolution<sup>[2]</sup> of June 2, 2010, both rendered by the Court of Appeals (CA) in CA-G.R. CV No. 90344, setting aside the Decision<sup>[3]</sup> dated June 21, 2007 of the Regional Trial Court (RTC), Branch 55 in Macabebe, Pampanga, in Civil Case No. 01-1118(M), an *accion publiciana/reivindicatoria*, which respondents commenced with, but eventually dismissed by, that court.

#### The Facts

At the core of the present controversy are several parcels of land which form part of what was once Lot No. 733, Cad-305-D, Masantol Cadastre (Lot 733 hereinafter), registered in the name of Ellen P. Mendoza (Mendoza), married to Moses Mendoza, under Transfer Certificate of Title No. (TCT) 141-RP of the Registry of Deeds of Pampanga. With an area of 9,137 square meters, more or less, Lot 733 is located in Brgy. Bebe Anac, Masantol, Pampanga.

On April 28, 1986, Geodetic Engineer Abdon G. Fajardo prepared a subdivision plan<sup>[4]</sup> (Fajardo Plan, for short) for Lot 733, in which Lot 733 was divided into six (6) smaller parcels of differing size dimensions, designated as: Lot 733-A, Lot 733-B, Lot 733-C, Lot 733-D, Lot 733-E, and Lot 733-F consisting of 336, 465, 3,445, 683, 677 and 3,501 square meters, respectively.

The following day, April 29, 1986, Mendoza executed two separate deeds of absolute sale, the first, transferring Lot 733-F to Jesus Carlo Gerard Viray (Jesus Viray),<sup>[5]</sup> and the second deed conveying Lot 733-A to spouses Avelino Viray and Margarita Masangcay (Sps. Viray).<sup>[6]</sup> The names McDwight Mendoza, Mendoza's son, and one Ernesto Bustos appear in both notarized deeds as instrumental witnesses. As of that time, the Fajardo Plan has not been officially approved by the Land Management Bureau (LMB), formerly the Bureau of Lands. And at no time in the course of the controversy did the spouses Viray and Jesus Viray, as purchasers of Lots 733-A and 733-F, respectively, cause the annotations of the conveying deeds of sale on TCT 141-RP.

Herein petitioner, Ruperta Cano Vda. de Viray (Vda. de Viray), is the surviving spouse of Jesus Viray, who died in April 1992.

As of April 29, 1986, the dispositions made on and/or the ownership profile of the subdivided lots appearing under the Fajardo Plan are as follows:

Lot No.	Area	Conveyances by Mendoza
Lot 733-A	366 square meters	Sold to Sps. Avelino and Margarita Viray
Lot 733-B	465 square meters	Unsold
Lot 733-C	3,445 square meters	Unsold
Lot 733-D	683 square meters	Proposed Road
Lot 733-E	677 square meters	Unsold
Lot 733-F	3,501 square meters	Sold to Jesus Viray

The aforementioned conveyances notwithstanding, Mendoza, Emerenciana M. Vda. de Mallari (Vda. de Mallari) and respondent spouses Jose Usi and Amelita T. Usi (Sps. Usi or the Usis), as purported co-owners of Lot 733, executed on August 20, 1990 a Subdivision Agreement,<sup>[7]</sup> or the 1st subdivision agreement (1<sup>st</sup> SA). Pursuant to this agreement which adopted, as base of reference, the LMB-approved subdivision plan prepared by Geodetic Engineer Alfeo S. Galang (Galang Plan), Lot 733 was subdivided into three lots, i.e., Lots A to C, with the following area coverage: Lots 733-A, 465 square meters, 733-B, 494 square meters, and 733-C, 6,838 square meters. In its pertinent parts, the 1<sup>st</sup> SA reads:

That the above-parties are the **sole and exclusive owners** of a certain parcel of land situated in the Bo. of Bebe Anac, Masantol, Pampanga, which is known as Lot No. 733 under TCT No. 141 R.P. of the Registry of Deeds of Pampanga, under Psd-No. 03-10-025242;

That for the convenience of the parties hereto that the existing community of the said Lot be terminated and their **respective share be determined** by proper adjudication;

That the parties hereto agreed to subdivided (sic) the above-mentioned property by Geodetic Engineer Alfeo S. Galang, as per tracing cloth and blue print copy of plan Psd-03-025242 and technical description duly approved by the Bureau of Lands, hereto Attached and made internal part of this instrument in the followin[g] manner:

Lot 733-A - - - - - To Emerencia M. Vda. Mallari;

Lot 733-B - - - - - To Sps. Jose B. Usi and Amelita B. Usi;

Lot 733-C - - - - - To Ellen P. Mendoza<sup>[8]</sup> (Emphasis added.)

TCT 141-RP would eventually be canceled and, in lieu thereof, three derivative titles were issued to the following, as indicated: TCT 1584-RP for Lot 733-A to Mallari; TCT 1585-RP<sup>[9]</sup> for Lot 733-B to Sps. Usi; and TCT 1586-RP for Lot 733-C to Mendoza.

On April 5, 1991, Mendoza, McDwight P. Mendoza, Bismark P. Mendoza, Beverly P. Mendoza, Georgania P. Mendoza, Sps. Alejandro Lacap and Juanita U. Lacap, Sps. Nestor Coronel and Herminia Balingit, Sps. Bacani and Martha Balingit, Sps. Ruperto and Josefina Jordan, and Sps. Jose and Amelita Usi executed another Subdivision Agreement<sup>[10]</sup> (2nd SA) covering and under which the 8,148-sq. m. Lot 733-C was further subdivided into 13 smaller lots (Lot 733-C-1 to Lot 733-C-13 inclusive). The subdivision plan<sup>[11]</sup> for Lot 733-C, as likewise prepared by Engr. Galang on October 13, 1990, was officially approved by the LMB on March 1, 1991.

The 2<sup>nd</sup> SA partly reads:

1. That we are the **sole and exclusive undivided co-owners** of a parcel of land situated at Barrio Putat and Arabia, Bebe Anac, Masantol, Pampanga, identified as Lot No. 733-C of Psd-No. 03-041669, containing an area of 8,148 sq. meters and covered by T.C.T. No. 1586 R.P. of the Register of Deeds of Pampanga;
2. That it is for the benefit and best interest of the parties herein that the [sic] their co-ownership relation over the above-mentioned parcel of land be terminated and their respective share over the co-ownership be allotted [sic] to them;

Wherefore, by virtue of the foregoing premises, we have agreed, as we hereby agree to subdivide our said parcel of land x x x.<sup>[12]</sup> (Emphasis added.)

Consequent to the subdivision of Lot 733-C in line with the Galang Plan and its subsequent partition and distribution to the respective allottees pursuant to the 2<sup>nd</sup> SA, the following individuals appeared as owners of the subdivided units as indicated in the table below:

Lot No.	Land area	Partitioned to:
<b>Lot 733-C-1</b>	200 square meters	<b>Sps. Jose and Amelita Usi</b>
Lot 733-C-2	1,000 square meters	Sps. Alejandro & Juanita Lacap
Lot 733-C-3	300 square meters	Sps. Nestor & Herminia Coronel
Lot 733-C-	500 square meters	Sps. Nestor & Herminia Coronel and Sps.

4		Bacani & Martha Balingit
Lot 733-C-5	400 square meters	Sps. Ruperto & Josefina Jordan
Lot 733-C-6	500 square meters	Ellen, McDwight, Bismark, Beverly and Georgia Mendoza
Lot 733-C-7	220 square meters	Ellen, McDwight, Bismark, Beverly and Georgia Mendoza
Lot 733-C-8	1,000 square meters	Ellen, McDwight, Bismark, Beverly and Georgia Mendoza
Lot 733-C-9	500 square meters	Ellen, McDwight, Bismark, Beverly and Georgia Mendoza
<b>Lot 733-C-10</b>	1,000 square meters	<b>Sps. Jose and Amelita Usi</b>
Lot 733-C-11	668 square meters	Ellen, McDwight, Bismark, Beverly and Georgia Mendoza
Lot 733-C-12	550 square meters	Ellen, McDwight, Bismark, Beverly and Georgia Mendoza
[Lot 733-C-13]	[1,310 square meters]	[Allotted for a proposed road]

In net effect, the two subdivision agreements paved the way for the issuance, under the Sps. Usi's name, of TCT Nos. 1585-RP,<sup>[13]</sup> 2092-RP,<sup>[14]</sup> and 2101-RP,<sup>[15]</sup> covering Lots 733-B, 733-C-1 and 733-C-10, respectively.

On the other hand, the subdivision of Lot 733, per the Galang Plan, and the two subdivision agreements concluded based on that plan, virtually resulted in the loss of the identity of what under the Fajardo Plan were Lot 733-A and Lot 733-F. The Sps. Viray and the late Jesus Viray, to recall, purchased Lot 733-A and Lot 733-F, respectively, from Mendoza.

Then came the ocular inspection and survey<sup>[16]</sup> conducted on Lot 733, as an undivided whole, by Geodetic Engr. Angelito Nicdao of the LMB. Some highlights of his findings:

(a) Lot 733-A of the Fajardo Plan with an area of 336 square meters that Sps. Viray bought is within Lot 733-B (Galang Plan) allotted under 1st SA to Sps. Jose and Amelita Usi; and

(b) Lot 733-F of the Fajardo Plan with an area of 3,501 square meters is almost identical to the combined area of Lots 733-C-8 to 733-C-12 awarded to Ellen Mendoza and her children—McDwight, Bismark, Beverly and Georgia, and a portion (1,000 square meters) of Lot 733-C-10 of the Galang Plan awarded to Sps. Jose and Amelita Usi.

As to be expected, the foregoing overlapping transactions involving the same property or portions thereof spawned several suits and counter- suits featuring, in particular, herein petitioners and respondents, viz:

(a) A suit for *Annulment of Deed of Absolute Sale* filed before the RTC, Branch 55 in Macabebe, Pampanga, docketed as Civil Case No. 88-0265-M, in which the Usis and Mendoza, as plaintiffs, assailed the validity and sought the annulment of the deed of absolute sale executed by Mendoza on April 29, 1986 conveying Lot 733-A (Fajardo Plan) to defendants Sps. Viray.

(b) A similar suit for *Annulment of Deed of Absolute Sale* commenced by Mendoza against Jesus Viray before RTC-Br. 55 in Macabebe, Pampanga, docketed as Civil Case No. 88-0283-M, entitled *Ellen P. Mendoza v. Jesus Carlo Gerard Viray*, also seeking to nullify the April 29, 1986 Deed of Absolute Sale conveying Lot 733-F (Fajardo Plan) to Jesus Viray and to declare the plaintiff as entitled to its possession.

The adverted Civil Case Nos. 88-0265-M and 88-0283-M were jointly tried by RTC-Br. 55, which, on August 1, 1989, rendered a Joint Decision<sup>[17]</sup> finding for the Sps. Viray and Jesus Viray, as defendants, and accordingly dismissing the separate complaints to annul the deeds of sale subject of the joint cases.

On appeal, the CA, in CA-G.R. CV Nos. 24981-82, and later this Court, in its Decision of December 11, 1995, in **G.R. No. 122287** in effect affirmed *in toto* the RTC dismissal decision.<sup>[18]</sup> The Court, via its Resolution of April 17, 1998, would eventually deny with finality<sup>[19]</sup> Mendoza and the Usis' motion for reconsideration of the aforesaid December 11, 1995 Decision.

(c) A forcible entry case filed on November 19, 1991 by the late Jesus Viray against the Sps. Usi before the Municipal Circuit Trial Court (MCTC) in Macabebe, Pampanga, docketed as Civil Case No. 91 (13), entitled *Jesus Carlo Gerard Viray v. Spouses Jose Usi and Emelita Tolentino*, to eject the Usis from Lot 733-F (Fajardo Plan).

On July 29, 1998, the MCTC rendered a Decision<sup>[20]</sup> in favor of Jesus Viray, the dispositive portion of which pertinently reads:

WHEREFORE, premises considered, judgment is hereby rendered for the plaintiff [the late petitioner Jesus Viray], and accordingly, the defendants [Sps. Usi] and any other persons claiming under them are hereby ordered to vacate the subject premises, Lot 733-F embraced in T.C.T. No. 141-R.P., Register of Deeds Pampanga, and Lot 733-A, both situated at Bebe Anac, Masantol, Pampanga and to remove at their own expense, all structures or improvements they built and introduced thereon.

Defendants are likewise sentenced to pay plaintiff the amount of THREE HUNDRED (P300.00) PESOS per month from November 19, 1991, until they vacate the premises, as reasonable compensation for the use and occupation thereof x x x.

x x x x

SO ORDERED.<sup>[21]</sup>