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THIRD DIVISION

[G.R. No. 153736, August 12, 2010]

SPOUSES NICANOR TUMBOKON (DECEASED), SUBSTITUTED BY: ROSARIO SESPEÑE AND THEIR CHILDREN, NAMELY: NICANOR S. TUMBOKON, JR., NELIA S. TUMBOKON, NEMIA T. SEGOVIA, NOBELLA S. TUMBOKON, NABIGAIL T. TAAY, NAZARENE T. MONTALVO, NORGEL S. TUMBOKON, NEYSA S. TUMBOKON, SILVESTRE S. TUMBOKON, NORA T. MILCZAREK, NONITA T. CARPIO, NERLYN S. TUMBOKON, AND NINFA T. SOLIDUM, PETITIONERS, VS. APOLONIA G. LEGASPI, AND PAULINA S. DE MAGTANUM, RESPONDENTS.

D E C I S I O N

BERSAMIN, J.:

The question presented in this appeal is whether the ruling in a criminal prosecution for qualified theft (involving coconut fruits) bound the complainant (petitioners herein) and the accused (respondents herein) on the issue of ownership of the land, which was brought up as a defense, as to preclude the Regional Trial Court (RTC) or the Court of Appeals (CA) from adjudicating the same issue in a civil case filed prior to the promulgation of the decision in the criminal case.

Under contention herein are the ownership and possession of that parcel of land with an area of 12,480 square meters, more or less, situated in Barangay Buenavista (formerly Barangay San Isidro, in the Municipality of Ibajay, Province of Aklan. The land - planted to rice, corn, and coconuts - was originally owned by the late Alejandra Sespeñe (Alejandra), who had had two marriages. The first marriage was to Gaudencio Franco, by whom she bore Ciriaca Franco, whose husband was Victor Miralles. The second marriage was to Jose Garcia, by whom she bore respondent Apolonia Garcia (Apolonia), who married Primo Legaspi. Alejandra died without a will in 1935, and was survived by Apolonia and Crisanto Miralles, the son of Ciriaca (who had predeceased Alejandra in 1924) and Victor Miralles; hence, Crisanto Miralles was Alejandra's grandson.

The ownership and possession of the parcel of land became controversial after Spouses Nicanor Tumbokon and Rosario Sespeñe (petitioners) asserted their right in it by virtue of their purchase of it from Cresenciana Inog, who had supposedly acquired it by purchase from Victor Miralles. The tug-of-war over the property between the petitioners and the respondents first led to the commencement of a criminal case. The Spouses Nicanor Tumbokon and Rosario Sespeñe filed a criminal complaint for qualified theft against respondents Apolonia and Paulina S. Magtanum and others not parties herein, namely: Rosendo Magtanum, Antonio Magtanum, Ulpiano Mangilaya, charging them with stealing coconut fruits from the land subject of the present case.[1] The criminal case, docketed as Criminal Case No. 2269, was assigned to Branch III of the erstwhile Court of First Instance (CFI) of Aklan.[2]

After trial, the CFI found the respondents and their co-accused guilty as charged in its decision dated June 10, 1972. The respondents appealed (C.A.-G.R. No. 13830-CR), but the CA affirmed their conviction on February 19, 1975, whereby the CA rejected respondent Apolonia's defense of ownership of the land.[3]

In the meanwhile, on September 21, 1972, or prior to the CA's rendition of its decision in the criminal case, the petitioners commenced this suit for recovery of ownership and possession of real property with damages against the respondents in the CFI. This suit, docketed as Civil Case No. 240 and entitled *Spouses Nicanor P. Tumbokon and Rosario S. Sespeñe v. Apolonia G. Legaspi, Jesus Legaspi, Alejandra Legaspi, Primo Legaspi, Jose Legaspi, and Paulina S. de Magtanum*, was assigned also to Branch III of the CFI, and involved the same parcel of land from where the coconut fruits subject of the crime of qualified theft in Criminal Case No. 2269 had been taken.

On February 17, 1994, the RTC, which meanwhile replaced the CFI following the implementation of the Judiciary Reorganization Act,[4] rendered its decision in favor of the petitioners herein, holding and disposing thus:

> After a careful study of the evidence on record, the Court finds that the plaintiffs were able to establish that plaintiff Rosario Sespeñe Tumbokon purchased the land in question from Cresenciana Inog on December 31, 1959 (Exh. "C"). Cresenciana Inog, in turn, acquired the land by purchase from Victor Miralles on June 19, 1957 (Exh. "B"). Seven (7) years before, on May 8, 1950, the land was mortgaged by Victor Miralles to Cresenciana Inog as shown by a Deed of Pacto de Retro (Exh. "A"), and from 1950 up to 1959, Cresenciana Inog was in continuous and peaceful possession of the land in question. xxx
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> x x x x
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> WHEREFORE, finding preponderance of evidence in favor of the plaintiffs, judgment is hereby rendered as follows:
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> 1. The plaintiffs are hereby declared the true and lawful owners, and entitled to the possession of the parcel of land of 12,480 square meters in area, declared in the name of plaintiff Rosario S. Tumbokon, under Tax Declaration No. 29220, situated in Barangay Buenavista (formerly San Isidro), Ibajay, Aklan;
>
> 2. The defendants are ordered and directed to vacate the land in question, and restore and deliver the possession thereof to the plaintiffs; and
>
> 3. No pronouncement as to damages, but with costs against the defendants.
>
> SO ORDERED.[5]

The respondents appealed to the CA.

On May 15, 2001, the CA reversed the decision of the RTC and dismissed the complaint,[6] opining and ruling thus:

> The appellees trace their acquisition of the subject lot to the admitted primal owner Alejandra Sespeñe through her supposed sale of it to her son-in-law Victor Miralles, who sold this to Cresenciana Inog, and who in turn sold it to the appellees. In the process, they presented the *Deed of Absolute Sale* (Exh. "B", June 19, 1957) executed by Victor Miralles in favor of Cresenciana Inog but wherein it is provided in the said instrument that:
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> > That this parcel of land abovementioned was inherited from the deceased Alejandra Sespeñe, by the party of the First Part being the sole heir of the said Alejandra Sespeñe, having no other brothers or sisters.
>
> This claim of being the sole heir is obviously false and erroneous for Alejandra Sespeñe had more than one intestate heir, and Victor Miralles as a mere son-in-law could not be one of them.
>
> This also damages and puts to serious doubt their other and contradictory claim that Victor Miralles instead bought the lot from Alejandra Sespeñe. This supposed sale was oral, one that can of course be facilely feigned. And it is likely to be so for the claim is sweeping, vacuous and devoid of the standard particulars like what was the price, when and where was the sale made, who were present, or who knew of it. The record is bereft too of documentary proof that Victor Miralles exercised the rights and performed the obligations of an owner for no tax declarations nor tax receipt has been submitted or even adverted to.
>
> The testimonial evidence of the appellants as to ownership, the sale and possession is inadequate, with even the appellant Nicanor Tumbokon stating that:
>
> > Q Did you come to know before you purchase (*sic*) the property from whom did V. Miralles acquired (*sic*) the land?
> > A No, sir.
> >
> > x x x
> >
> > Q And you did not come to know out (sic) and why V. Miralles came to possess the land under litigation before it was sold to C. Inog?
> > A All I was informed was V. Miralles became automatically the heir of A. Sespeñe after the death of the wife which is the only daughter of A. Sespeñe.

> Q How did you know that V. Miralles became automatically the heir of the land after the death of his wife?
> A He is the only son-in-law. (TSN, pp. 2-3, Feb. 26, 1974; emphasis supplied)

While Victor Miralles may have been in physical possession of the lot for a while, this was not as owner but as mere Administrator as was clearly appearing in tax declaration no. 21714 ("Exhs. "J", "1").The corroboration in this by Lourdes Macawili (TSN, June 7, 1973) does not help the appellees (herein petitioners) any for she never knew the source of the property. Neither does the testimony of Crisanto Miralles succor the appellees (petitioners). He was the son of Victor Miralles and the husband of the said Cresenciana Inog, the supposed buyer, owner and possessor of the land in question from 1950-1957, and yet Crisanto Miralles could only say:

> Q Are there improvements on the land in question?
> A I do not know because I did not bother to go to the land in question. (TSN, p. 4, Aug. 18, 1973; emphasis supplied)]

These strongly suggest that the sales and claim of possession were shams, and are further demolished by the following testimonies:

> Q After the death of Alejandra Sespeñe who inherited this land in question?
> A Apolonia.
>
> Q At present who is in possession of the land in question?
> A Apolonia Legaspi.
>
> Q From the time that Apolonia Legaspi took possession of the land up to the present do you know if anybody interrupted her possession?
> A No sir. (tsn, Urbana Tañ-an Vda. de Franco, p. 7, Nov. 24, 1977)
>
> x x x
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> Q Now, since when did you know the land in question?
> A Since I was at the age of 20 yrs. old. (TSN; Crispina Taladtad, p. 3; Jan. 20, 1977; [she was 74 yrs. old at the time of this testimony]).
>
> x x x
>
> Q And for how long has Apolonia Garcia Legaspi been in possession of the land in question?
> A Since the time I was at the age of 20 yrs. old when I was

been (sic) invited there to work up to the present she is in possession of the land.

Q You said that you know Cresenciana Inog, do you know if Cresenciana Inog has ever possessed the land in question?
A Never.

Q You also said that you know Nicanor Tumbokon and his wife Rosario Tumbokon, my question is do you know if this Nicanor Tumbokon and his wife Rosario have ever possessed and usufructed this land under litigation?
A No, sir.

Q You also stated a while ago that you know Victor Miralles, do you know if Victor Miralles had ever possessed this under litigation?
A No, he had not. (p. 9, ibid; emphasis supplied)

Thus neither do We buy the appellee's contention that ownership of the disputed land was acquired by their predecessors-in-interest thru lapse of time. Acquisitive prescription requires possession in the concept of owner, and they have not been able to prove even mere possession.

As proponents it was incumbent upon the appellees to prove that they were the owners of the lot and that they were being unlawfully deprived of their possession thereof. But this they failed to do. *It is a basic rule in evidence that each party must prove his affirmative allegation. Since the burden of evidence lies with the party who asserts the affirmative allegation, the plaintiff or complainant has to prove this affirmative allegations in the complaint and the defendant or the respondent has to prove the affirmative allegation in his affirmative defenses and counterclaim*. (AKELCO vs. NLRC, G.R. No. 121439, Jan. 25, 2000)

But this hoary rule also cuts both ways. Appellants too must also prove the allegations to support their prayer to declare the litigated lot *the exclusive property of the defendants Apolonia G. Legaspi and Paulina S. Magtanum;* (Answer, p. 6, record). Apolonia Legaspi however is only one of the putative intestate heirs of Alejandra Sespeñe, the other being Crisanto Miralles who stands in the stead of Ciriaca, his predeceased mother and other daughter of the decedent. But then no judgment can be made as to their successional rights for Crisanto Miralles was never impleaded. Neither is there a proof that can convince that Paulina S. Magtanum who is merely a niece of the decedent, should also be declared a co-owner of the inherited lot.

Because of said inadequacies, We cannot rule beyond the holding that the appellees (petitioners) are not the owners and therefore not entitled to the recovery of the litigated lot.

WHEREFORE, the appealed Decision is REVERSED and SET ASIDE and in its place judgment is rendered DISMISSING the Complaint.