

## SECOND DIVISION

[ G.R. No. 170189, September 01, 2010 ]

**SPOUSES ELEGIO\* CAÑEZO AND DOLIA CAÑEZO, PETITIONERS,  
VS. SPOUSES APOLINARIO AND CONSORCIA L. BAUTISTA,  
RESPONDENTS.**

### DECISION

**CARPIO, J.:**

G.R. No. 170189 is a petition for review<sup>[1]</sup> assailing the Decision<sup>[2]</sup> promulgated on 17 October 2005 by the Court of Appeals (appellate court) in CA-G.R. CV No. 75685. The appellate court granted the appeal filed by the Spouses Apolinario and Consorcia L. Bautista (spouses Bautista) and dismissed the complaint for the issuance of a writ of demolition with damages filed by the Spouses Elegio and Dolia Cañezo (spouses Cañezo) without prejudice to the filing of the appropriate action with the proper forum. In its Decision<sup>[3]</sup> on Civil Case No. MC-00-1069 dated 25 March 2002, Branch 213 of the Regional Trial Court of Mandaluyong City (trial court) rendered judgment in favor of the spouses Cañezo. The trial court also ordered the issuance of a writ of demolition directing the removal of the structures built by the spouses Bautista on the portion of the land belonging to the spouses Cañezo.

### The Facts

The appellate court narrated the facts as follows:

Spouses Elegio and Dolia Cañezo (hereafter appellees) are the registered owner[s] of a parcel of land with an area of One Hundred Eighty Six (186) square meters, covered by Transfer Certificate of Title (TCT) No. 32911.

Spouses Apolinario and Consorcia Bautista (hereafter appellants) are the registered owners of a parcel of land, containing an area of One Hundred Eighty One (181) square meters, covered by Transfer Certificate of Title (TCT) No. 31727. Both parcels of land are located at Coronado Heights, Barangka Ibaba, Mandaluyong City and registered with the Registry of Deeds of Mandaluyong City. Appellants' lot is adjacent to that of appellees [sic].

Sometime in 1995, appellees started the construction of a building on their lot. During the construction, appellees discovered that their lot was encroached upon by the structures built by appellants without appellees' knowledge and consent.

The three (3) surveys conducted confirmed the fact of encroachment.

However, despite oral and written demands, appellants failed and refused to remove the structures encroaching appellees' lot.

Attempts were made to settle their dispute with the barangay lupon, but to no avail. Appellees initiated a complaint with the RTC for the issuance of a writ of demolition.

For failure to file an Answer within the extended period granted by the court, appellants were declared in default. Appellees were allowed to present their evidence *ex parte* before an appointed commissioner. Thereafter the RTC rendered the assailed decision in the terms earlier set forth.<sup>[4]</sup>

The spouses Cañezos filed their complaint for the issuance of a writ of demolition with damages on 13 April 2000. In an Order dated 15 August 2000, the trial court declared the spouses Bautista in default for failure to answer within the reglementary period. The Public Attorney's Office, which represented the spouses Bautista at the time, filed a Motion to Admit Answer dated 15 June 2000. The trial court denied the motion in its Decision.

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

On 25 March 2002, the trial court promulgated its Decision in favor of the spouses Cañezos. The trial court found that the spouses Bautista built structures encroaching on the land owned by the spouses Cañezos. The spouses Bautista also refused to remove the structures and respect the boundaries as established by the various surveyors. A referral to the Barangay Lupon failed to settle the controversy amicably. The trial court thus ruled that the spouses Bautista are builders in bad faith, such that the spouses Cañezos are entitled to an issuance of a writ of demolition with damages.

The dispositive portion of the Decision reads as follows:

IN VIEW WHEREOF, judgment is hereby rendered in favor of the plaintiffs and against the defendants. Let a writ of demolition be accordingly issued directing the removal/demolition of the structures built by the defendants upon the portion of land belonging [to] the plaintiffs at the former's expense.

Further,

1. the defendant is ordered to pay P50,000.00 (Philippine Currency) as and by way of moral damages[; and]
2. [t]he defendant is hereby ordered to pay P30,000.00 as and by way of attorney's fees.

SO ORDERED.<sup>[5]</sup>

The spouses Bautista filed a notice of appeal dated 29 April 2002 before the appellate court.

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

On 17 October 2005, the appellate court rendered its Decision which reversed the 25 March 2002 Decision of the trial court. The appellate court ruled that since the last demand was made on 27 March 2000, or more than a year before the filing of the complaint, the spouses Cañezó should have filed a suit for recovery of possession and not for the issuance of a writ of demolition. A writ of demolition can be granted only as an effect of a final judgment or order, hence the spouses Cañezó's complaint should be dismissed. The spouses Cañezó failed to specify the assessed value of the encroached portion of their property. Because of this failure, the complaint lacked sufficient basis to constitute a cause of action. Finally, the appellate court ruled that should there be a finding of encroachment in the action for recovery of possession and that the encroachment was built in good faith, the market value of the encroached portion should be proved to determine the appropriate indemnity.

The dispositive portion of the appellate court's Decision reads as follows:

WHEREFORE, premises considered, the instant appeal is GRANTED. The complaint filed by plaintiffs-appellees is hereby DISMISSED without prejudice to the filing of the appropriate action with the proper forum.

SO ORDERED.<sup>[6]</sup>

### **Issues**

The spouses Cañezó enumerated the following grounds to support their Petition:

- I. Whether the Honorable Court of Appeals gravely erred in granting the petition of the [spouses Bautista] and reversing the Decision of the Court a quo; [and]
- II. Whether the Honorable Court of Appeals gravely erred in stating that the petitioners should have filed recovery of possession and not writ of demolition.<sup>[7]</sup>

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

The petition has merit.

The present case, while inaccurately captioned as an action for a "Writ of Demolition with Damages" is in reality an action to recover a parcel of land or an *accion reivindicatoria* under Article 434 of the Civil Code. Article 434 of the Civil Code reads: "In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's