

THIRD DIVISION

[G.R. No. 152319, October 28, 2009]

HEIRS OF THE LATE JOAQUIN LIMENSE, NAMELY: CONCESA LIMENSE, SURVIVING SPOUSE; AND DANILO AND JOSELITO, BOTH SURNAMED LIMENSE, CHILDREN, PETITIONERS, VS. RITA VDA. DE RAMOS, RESTITUTO RAMOS, VIRGILIO DIAZ, IRENEO RAMOS, BENJAMIN RAMOS, WALDYTRUDES RAMOS-BASILIO, TRINIDAD RAMOS-BRAVO, PAZ RAMOS-PASCUA, FELICISIMA RAMOS-REYES, AND JACINTA RAMOS, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision^[1] of the Court of Appeals dated December 20, 2001 in CA-G.R. CV No. 33589 affirming *in toto* the Decision^[2] of the Regional Trial Court of Manila, Branch 15, dated September 21, 1990 in Civil Case No. 83-16128.

The antecedent facts are as follows:

Dalmacio Lozada was the registered owner of a parcel of land identified as Lot No. 12, Block No. 1074 of the cadastral survey of the City of Manila covered by Original Certificate of Title (OCT) No. 7036 issued at the City of Manila on June 14, 1927,^[3] containing an area of 873.80 square meters, more or less, located in Beata Street, Pandacan, Manila.

Dalmacio Lozada subdivided his property into five (5) lots, namely: Lot Nos. 12-A, 12-B, 12-C, 12-D and 12-E. Through a Deed of Donation dated March 9, 1932,^[4] he donated the subdivided lots to his daughters, namely: Isabel, Salud, Catalina, and Felicidad, all surnamed Lozada. The Deed of Donation was registered with the office of the Register of Deeds of Manila on March 15, 1932.

Under the said Deed of Donation, the lots were adjudicated to Dalmacio's daughters in the following manner:

- a. Lot No. 12-A in favor of Isabel Lozada, married to Isaac Limense;
- b. Lot No. 12-B in favor of Catalina Lozada, married to Sotero Natividad;
- c. Lot No. 12-C in favor of Catalina Lozada, married to Sotero Natividad; Isabel Lozada, married to Isaac Limense; and Salud Lozada, married to Francisco Ramos, in equal parts;
- d. Lot No. 12-D in favor of Salud Lozada, married to Francisco Ramos; and
- e. Lot No. 12-E in favor of Isabel Lozada, married to Isaac Limense, and Felicidad Lozada, married to Galicano Centeno.

By virtue of the Deed of Donation executed by Dalmacio Lozada, OCT No. 7036,

which was registered in his name, was cancelled and, in lieu thereof, Transfer Certificates of Title (TCTs) bearing Nos. 40041, 40042, 40043, 40044, and 40045 were issued in favor of the donees, except TCT No. 40044, which remained in his name. These new TCTs were annotated at the back of OCT No. 7036.^[5]

TCT No. 40043, which covered Lot No. 12-C, was issued in the name of its co-owners Catalina Lozada, married to Sotero Natividad; Isabel Lozada, married to Isaac Limense; and Salud Lozada, married to Francisco Ramos. It covered an area of 68.60 square meters, more or less, was bounded on the northeast by Lot No. 12-A, on the southwest by Calle Beata, and on the northwest by Lot No. 12-D of the subdivision plan. In 1932, respondents' predecessor-in-interest constructed their residential building on Lot No. 12-D, adjacent to Lot No. 12-C.

On May 16, 1969, TCT No. 96886^[6] was issued in the name of Joaquin Limense covering the very same area of Lot No. 12-C.

On October 1, 1981, Joaquin Limense secured a building permit for the construction of a hollow block fence on the boundary line between his aforesaid property and the adjacent parcel of land located at 2759 Beata Street, Pandacan, Manila, designated as Lot No. 12-D, which was being occupied by respondents. The fence, however, could not be constructed because a substantial portion of respondents' residential building in Lot No. 12-D encroached upon portions of Joaquin Limense's property in Lot No. 12-C.

Joaquin Limense demanded the removal of the encroached area; however, respondent ignored both oral and written demands. The parties failed to amicably settle the differences between them despite referral to the *barangay*. Thus, on March 9, 1983, Joaquin Limense, duly represented by his Attorney-in-Fact, Teofista L. Reyes, instituted a Complaint^[7] against respondents before the Regional Trial Court (RTC) of Manila, Branch 15, for removal of obstruction and damages.

Joaquin Limense prayed that the RTC issue an order directing respondents, jointly and severally, to remove the portion which illegally encroached upon his property on Lot No. 12-C and, likewise, prayed for the payment of damages, attorney's fees and costs of suit.

Respondents, on the other hand, averred in their Answer^[8] that they were the surviving heirs of Francisco Ramos,^[9] who, during his lifetime, was married to Salud Lozada, one of the daughters of Dalmacio Lozada, the original owner of Lot No. 12. After subdividing the said lot, Dalmacio Lozada donated Lot No. 12-C in favor of his daughters Catalina, married to Sotero Natividad; Isabel, married to Isaac Limense; and Salud, married to Francisco Ramos. Being the surviving heirs of Francisco Ramos, respondents later became co-owners of Lot No. 12-C. Lot No. 12-C has served as right of way or common alley of all the heirs of Dalmacio Lozada since 1932 up to the present. As a common alley, it could not be closed or fenced by Joaquin Limense without causing damage and prejudice to respondents.

After trial on the merits, the RTC rendered a Decision^[10] dated September 21, 1990 dismissing the complaint of Joaquin Limense. It ruled that an apparent easement of right of way existed in favor of respondents. Pertinent portions of the decision read

as follows:

The Court finds that an apparent easement of right of way exists in favor of the defendants under Article 624 of the Civil Code. It cannot be denied that there is an alley which shows its existence. It is admitted that this alley was established by the original owner of Lot 12 and that in dividing his property, the alley established by him continued to be used actively and passively as such. Even when the division of the property occurred, the non-existence of the easement was not expressed in the corresponding titles nor were the apparent sign of the alley made to disappear before the issuance of said titles.

The Court also finds that when plaintiff acquired the lot (12-C) which forms the alley, he knew that said lot could serve no other purpose than as an alley. That is why even after he acquired it in 1969, the lot continued to be used by defendants and occupants of the other adjoining lots as an alley. The existence of the easement of right of way was therefore known to plaintiff who must respect the same in spite of the fact that his transfer certificate of title does not mention the lot of defendants as among those listed therein as entitled to such right of way. It is an established principle that actual notice or knowledge is as binding as registration.^[11]

Aggrieved by said decision, Joaquin Limense filed a notice of appeal. The records of the case were transmitted to the Court of Appeals (CA). During the pendency of the appeal with the CA, Joaquin Limense died in 1999.^[12]

The CA, Seventh Division, in CA-G.R. CV No. 33589, in its Decision^[13] dated December 20, 2001 dismissed the appeal and affirmed *in toto* the decision of the RTC.

Frustrated by this turn of events, petitioners, as surviving heirs of Joaquin Limense, elevated the case to this Court via a Petition for Review on *Certiorari*^[14] raising the following issues:

1. DID THE HONORABLE COURT OF APPEALS COMMIT A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION, IN HOLDING, LIKE THE TRIAL COURT DID, THAT RESPONDENTS' LOT 12-D HAS AN EASEMENT OF RIGHT OF WAY OVER JOAQUIN LIMENSE'S LOT 12-C?
2. DID THE HONORABLE COURT OF APPEALS COMMIT A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION, IN FAILING TO HOLD, LIKE THE TRIAL COURT DID, THAT THE PROTRUDING PORTIONS OF RESPONDENTS' HOUSE ON LOT 12-D EXTENDING INTO JOAQUIN LIMENSE'S LOT 12-C CONSTITUTE A NUISANCE AND, AS SUCH, SHOULD BE REMOVED?

Petitioners aver that the CA erred in ruling that since Lot No. 12-C was covered by two TCT's, *i.e.*, TCT Nos. 40043 and 96886, and there was no evidence on record to show how Joaquin Limense was able to secure another title over an already titled property, then one of these titles must be of dubious origin. According to the CA, TCT No. 96886, issued in the name of Joaquin Limense, was spurious because the Lozada sisters never disposed of the said property covered by TCT No. 40043. The CA further ruled that a co-ownership existed over Lot No. 12-C between petitioners and respondents. Petitioners countered that TCT No. 96886, being the only and best legitimate proof of ownership over Lot No. 12-C, must prevail over TCT No. 40043.

Respondents allege that it was possible that TCT No. 96886, in the name of Joaquin Limense, was obtained thru fraud, misrepresentation or falsification of documents because the donees of said property could not possibly execute any valid transfer of title to Joaquin Limense, as they were already dead prior to the issuance of TCT No. 96886 in 1969. Respondents further allege that petitioners failed to produce proof substantiating the issuance of TCT No. 96886 in the name of Joaquin Limense.

Apparently, respondents are questioning the legality of TCT No. 96886, an issue that this Court cannot pass upon in the present case. It is a rule that the validity of a torrens title cannot be assailed collaterally.^[15] Section 48 of Presidential Decree (PD) No. 1529 provides that:

[a] certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

In the case at bar, the action filed before the RTC against respondents was an action for removal of obstruction and damages. Respondents raised the defense that Joaquin Limense's title could have been obtained through fraud and misrepresentation in the trial proceedings before the RTC. Such defense is in the nature of a collateral attack, which is not allowed by law.

Further, it has been held that a certificate of title, once registered, should not thereafter be impugned, altered, changed, modified, enlarged or diminished, except in a direct proceeding permitted by law. Otherwise, the reliance on registered titles would be lost. The title became indefeasible and incontrovertible after the lapse of one year from the time of its registration and issuance. Section 32 of PD 1529 provides that "upon the expiration of said period of one year, the decree of registration and the certificate of title shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or other persons responsible for the fraud."

^[16] It has, therefore, become an ancient rule that the issue on the validity of title, *i.e.*, whether or not it was fraudulently issued, can only be raised in an action expressly instituted for that purpose.^[17] In the present case, TCT No. 96886 was registered in 1969 and respondents never instituted any direct proceeding or action to assail Joaquin Limense's title.

Additionally, an examination of TCT No. 40043 would readily show that there is an annotation that it has been "*CANCELLED*."^[18] A reading of TCT No. 96886 would

also reveal that said title is a transfer from TCT No. 48866^[19] and not TCT 40043. Thus, it is possible that there was a series of transfers effected from TCT No. 40043 prior to the issuance of TCT No. 96886. Hence, respondents' position that the issuance of TCT No. 96886 in the name of Joaquin Limense is impossible, because the registered owners of TCT No. 40043 were already dead prior to 1969 and could not have transferred the property to Joaquin Limense, cannot be taken as proof that TCT No. 96886 was obtained through fraud, misrepresentation or falsification of documents.

Findings of fact of the CA, although generally deemed conclusive, may admit review by this Court if the CA failed to notice certain relevant facts that, if properly considered, would justify a different conclusion, and if the judgment of the CA is premised on a misapprehension of facts.^[20] As with the present case, the CA's observation that TCT No. 96886 is of dubious origin, as TCT No. 40043 does not appear to have been disposed of by Catalina, Isabel and Salud Lozada, is improper and constitutes an indirect attack on TCT No. 96886. As we see it, TCT No. 96886, at present, is the best proof of Joaquin Limense's ownership over Lot No. 12-C. Thus, the CA erred in ruling that respondents and petitioners co-owned Lot No. 12-C, as said lot is now registered exclusively in the name of Joaquin Limense.

Due to the foregoing, Joaquin Limense, as the registered owner of Lot 12-C, and his successors-in-interest, may enclose or fence his land or tenements by means of walls, ditches, live or dead hedges, or by any other means without detriment to servitudes constituted thereon.^[21]

However, although the owner of the property has the right to enclose or fence his property, he must respect servitudes constituted thereon. The question now is whether respondents are entitled to an easement of right of way.

Petitioners contend that respondents are not entitled to an easement of right of way over Lot No. 12-C, because their Lot No. 12-D is not duly annotated at the back of TCT No. 96886 which would entitle them to enjoy the easement, unlike Lot Nos. 12-A-1, 12-A-2, 12-A-3, 12-A-4, 12-A-5, and 12-A-6. Respondents, on the other hand, allege that they are entitled to an easement of right of way over Lot No. 12-C, which has been continuously used as an alley by the heirs of Dalmacio Lozada, the residents in the area and the public in general from 1932 up to the present. Since petitioners are fully aware of the long existence of the said alley or easement of right of way, they are bound to respect the same.

As defined, an easement is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his property, for the benefit of another person or tenement.^[22]

Easements may be continuous or discontinuous, apparent or non-apparent.

Continuous easements are those the use of which is or may be incessant, without the intervention of any act of man. Discontinuous easements are those which are used at intervals and depend upon the acts of man. Apparent easements are those which are made known and are continually kept in view by external signs that reveal the use and enjoyment of the same. Non-apparent easements are those which show