

## FIRST DIVISION

[ G.R. NO. 146937, January 23, 2007 ]

**GODOFREDO TORIANO, PETITIONER, VS. GENEROSO TRIESTE, SR., DEVELOPMENT BANK OF THE PHILIPPINES AND REUBEN IBARRETA, RESPONDENTS.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

For our resolution is the instant Petition for Review on Certiorari<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated July 31, 2000 and Resolution dated January 9, 2001 of the Court of Appeals in CA-G.R. CV No. 51341, entitled "GODOFREDO TORIANO, *plaintiff-appellant*, versus GENEROSO TRIESTE, SR., DEVELOPMENT BANK OF THE PHILIPPINES and REUBEN IBARRETA, *defendants-appellees*."

The facts are:

On September 13, 1975, Godofredo Toriano, petitioner, sold to respondent Generoso Trieste, Sr., now deceased, a parcel of land with an area of 669.32 square meters, more or less, located at Laguinbanwa, Numancia, Aklan, covered by Tax Declaration No. 6397.

Three days after, or on September 16, 1975, Trieste purchased from petitioner's sister, Salvacion Toriano, an adjoining 664-square meter lot. Six (6) days later, or on September 22, 1975, Trieste secured Tax Declaration No. 8409 for both lots.

Thereafter, Trieste mortgaged the lots with respondent Development Bank of the Philippines (DBP) to secure a loan. However, he failed to pay his loan, prompting the bank to foreclose the mortgage. The lots then were sold at public auction to respondent Reuben Ibarreta, the highest bidder.

On February 16, 1988, petitioner, who sold the first lot, filed with the Municipal Circuit Trial Court of Malinao, Aklan a complaint for forcible entry against Trieste alleging that sometime in July 1987, the latter forcibly entered a 242-square meter lot outside the 669.32-square meter lot petitioner sold to him. However, the court, in an Order dated July 12, 1990, dismissed the complaint upon petitioner's manifestation that he would file a suit for recovery of possession and ownership.

Accordingly, on September 19, 1990, petitioner filed with the Regional Trial Court (RTC), Branch 6, Kalibo, Aklan a Complaint for Recovery of Possession and Ownership and for Declaration of Nullity of Contracts against respondents Trieste, DBP and Ibarreta.

On July 25, 1995, the RTC rendered a Decision dismissing the complaint, holding that the disputed 242-square meter lot was included in the 669.32-square meter lot