

## FIRST DIVISION

[ G.R. NO. 157593, March 22, 2007 ]

**SPS. ALBERTO AND JOCELYN AZANA, PETITIONERS, VS.  
CRISTOPHER LUMBO AND ELIZABETH LUMBO-JIMENEZ,  
RESPONDENTS.**

### D E C I S I O N

#### **CORONA, J.:**

In this appeal by certiorari, spouses Alberto and Jocelyn Azana assail the decision<sup>[1]</sup> dated September 17, 2002 and resolution<sup>[2]</sup> dated March 12, 2003 of the Court of Appeals (CA) in CA-G.R. CV No. 60973. After a re-evaluation of the evidence on record, the appellate court held that the trial court's factual findings were contrary to the evidence presented and, on that basis, reversed the latter's ruling.

Originally, respondents filed an action for quieting of title<sup>[3]</sup> in the Regional Trial Court (RTC) of Kalibo, Aklan. The subject matter of the action was a piece of real property located in the island of Boracay, a prime tourist destination. It was designated as Lot 64 during the national reservation survey of Boracay on April 14, 1976.

Respondents alleged that they were the owners of Lot 64. They claimed that, in a deed of absolute sale dated December 1, 1996, the spouses Emilio and Estela Gregorio sold Lot 64 to petitioners. This cast a cloud over their title.

To support their claim of ownership, respondents stated that Lot 64 was originally part of the 8.0488-hectare land bought in a public auction by their parents, which they inherited entirely; that such sale in the public auction was evidenced by a final bill of sale dated September 18, 1939; that Lot 64 was separately designated during the national reservation survey only because it was also being claimed by the spouses Gregorio; and that, if Lots 63 and 64 were combined, the boundaries of the resulting lot coincided with the boundaries of the lot purchased under the final bill of sale.

For their part, petitioners claim that they purchased Lot 64 from the spouses Gregorio in good faith; that the spouses Gregorio became the lawful owners of Lot 64 by virtue of a deed of absolute sale dated March 25, 1976 executed by Ignacio Bandiola in favor of Estela Gregorio whereby Bandiola transferred to Gregorio a parcel of land with an area of 3.4768 hectares; and that Lot 64 was part of this 3.4768-hectare land.

According to the RTC of Kalibo, Aklan, respondents failed to establish the identity of the lot sold under the final bill of sale. Consequently, their claim of title over Lot 64 also had to fail. In the words of the court *a quo*:

Assaying the evidence presented by the parties in relation to their respective submissions, the Court noted that the land acquired by [respondents'] parents at the public auction is not solely bounded on the North and East by [the] Visayan Sea, but also by Anunciacion Gelito and Guillermo Sualog, respectively. Indeed, [respondents] own survey plan discloses that Lots 63 and 64 [are] bounded by Lot 62 and seashore.

Hence, it is not clear that the land acquired by [respondents'] parents at an auction sale includes Lot 64. The Court could probably sustain [respondents'] theory if the said land is solely bounded on the North and East by [the] Visayan Sea or seashore. There would be no space for any intervening lot.<sup>[4]</sup> (citations omitted)

Finding equiponderance of evidence<sup>[5]</sup>, the trial court ruled in favor of petitioners and upheld the validity of the sale of Lot 64 to them.

On review, the CA arrived at a different conclusion. It declared respondents as owners of Lot 64 and nullified the sale by the spouses Gregorio to petitioners. The appellate court agreed with respondents that Lot 64 was part of the 8.0488-hectare property described in the final bill of sale. As opposed to the findings of the trial court, the appellate court was satisfied that the boundaries of the lot resulting from the merger of Lots 63 and 64 coincided with the boundaries of the 8.0488 hectare property. Moreover, the CA noted that the areas of Lots 63 and 64 were 7.0300 hectares and 1.2012 hectares respectively, meaning that the area resulting from the combination of the two lots was equivalent to "8.0000 hectares, more or less, which [was] the total area being claimed by the [respondents]".<sup>[6]</sup>

Aggrieved, the spouses Gregorio and the spouses Azana filed in this Court separate petitions for review on certiorari under Rule 45 of the Rules of Court. The petitions were separately docketed as G.R. No. 157617<sup>[7]</sup> and G.R. No. 157593, respectively. The Court instantly denied both petitions for essentially raising questions of fact which are generally beyond our review.

Thereafter, both the Gregorios and petitioners filed their respective motions for reconsideration. The Court denied the MR<sup>[8]</sup> of the spouses Gregorio, in effect denying G.R. No. 157617 with finality.

Meanwhile, the MR of the spouses Azana was granted. As a general rule, it is not the Supreme Court's function to review, examine and evaluate or weigh the probative value of the evidence presented.<sup>[9]</sup> The factual findings of the trial and appellate courts are binding on this Court and are given great weight and respect.<sup>[10]</sup> However, the rule is not absolute. In instances where there is divergence in the findings and conclusions of the trial court, on one hand, and the appellate court, on the other, the Court may give the petition due course and re-examine the evidence on record.<sup>[11]</sup> Satisfied that the foregoing exception applies to this case, the Court ordered the reinstatement of G.R. No. 157593 (this petition).

Respondents oppose the petition on the ground that it is already barred by prior judgment. They argue that the dismissal of the Gregorios' petition (G.R. No. 157617) was a final judgment constituting a bar to the institution of a similar

petition.

Respondents' position is incorrect. *Res judicata* calls for the concurrence of the following requisites: (1) there is final judgment or order; (2) the court rendering it has jurisdiction over the subject matter and the parties; (3) the judgment or order is on the merits and (4) there is, between the two cases, identity of parties, subject matter and causes of action.<sup>[12]</sup> Here, the first requisite is absent. The Court's resolution denying the spouses Gregorio's petition is not the final judgment contemplated by the first requisite. Rather, "final judgment" entails a decision which perpetually settles the controversy and lays to rest all questions raised. At that point, there was no final judgment because the spouses Azana's appeal of the CA decision was still pending before us. Stated differently, there was yet no final judgment which could be entered and executed.

We now proceed to consider the documents relied upon by the parties.

To prove their claim, petitioners submitted a deed of absolute sale of real property<sup>[13]</sup> dated March 25, 1976 to show that Ignacio Bandiola sold to Estela Gregorio 3.4768 hectares of land located in Manoc-Manoc, Malay, Aklan. The property was particularly described as follows:

THE PORTION SOLD CONSISTS of 3.4768 hectares, more or less, located at the southern side of the whole parcel and with the following pertinent boundaries: on the North by Visayan Sea and Ernesto Bandiola; on the East by Visayan Sea; on the South by Felicitas Lumbo, D. Pelayo, and D. Magapi; and on the West by Teodorica Bandiola.<sup>[14]</sup>

They also presented the corresponding tax declaration<sup>[15]</sup> which reiterated the same property boundaries.

Petitioners point out that a portion of this property was separately declared for realty tax purposes under ARP/TD No. 93-011-1020/1021 as Lot 64 with an area of 1.48 hectares.<sup>[16]</sup> The tax declaration indicated that the boundaries of Lot 64 were:

North: Visayan Sea South: Lot 63  
West: lot 99-pt East: Visayan Sea

In the hope of strengthening their case, petitioners narrated the supposed origin of the disputed property. They claimed that the 3.4768-hectare property was taken from the consolidated lots owned by Ignacio Bandiola, *i.e.*, three contiguous parcels of land with individual areas of 8.7766 hectares, 6550 square-meters and 4994 square-meters.<sup>[17]</sup> From this land mass, Ignacio Bandiola carved out 3.4768 hectares and sold the same to Estela Gregorio. Allegedly, this portion included Lot 64 which Estela Gregorio, in turn, sold to petitioners.

Granting for the sake of argument that petitioners' preceding allegations are true, it follows that Ignacio Bandiola's lots, if taken as one, must have extended to the Visayan Sea in the east to have roped in Lot 64. It also follows that at least one of the lots should have the Visayan Sea as its eastern boundary. However, this conclusion is belied by the tax declarations petitioners themselves presented. Not one of the tax declarations stated that any of Bandiola's lots was bound in the east

by the Visayan Sea. On the contrary, *all* the tax declarations stated that each of the lots was bound in the east by a particular *land mass*:

Tax Declaration No. 3066

Land area: 8.7766 hectares

Boundaries: North - Visayan Sea

**East - Lorenzo Lumbo,  
Vanancio Maming**

West - Conchita Tirol, Visayan Sea

South - Moises Pelayo, Paula

Gelito<sup>[18]</sup>

Tax Declaration No. 3087

Land Area: 0.6550 hectare

Boundaries: North - Visayan Sea

**East - Felicitas Alag de Lumbo**

West - Felicitas Alag de Lumbo

South - Quirica Lumbo<sup>[19]</sup>

Tax Declaration No. 3068

Land Area: 0.4994 hectare

Boundaries: North - Ignacio Bandiola

**East - Anunciacion Gelito and  
F.A. Lumbo**

West - Ignacio Bandiola

South - Gertrudes Casimero

Salvador Magapi<sup>[20]</sup>

Petitioners strained to explain the discrepancy by pointing out that "Lot 64 was but a mere portion of the three parcels of land covered by the [three] tax declarations. xxx. It [was] therefore, quite unlikely that Lot 64 would have the exact same boundaries as any or all of these [three] parcels."<sup>[21]</sup>

We find their explanation wanting. If, indeed, Lot 64 was part of Ignacio Bandiola's mass of properties it would have been in its south-east corner, occupying part of its southern and eastern perimeter. <sup>[22]</sup> Therefore, the parcels of land covered by the three tax declarations must reflect southern and/or eastern boundaries similar to those of Lot 64. But, as explained earlier, none of the lots was enclosed or partly enclosed in the east by the sea. It is highly unlikely that the corner portion of the mother property would not have similar boundaries as those of the latter on at least two sides.

The Court is not inclined to pronounce which of the documents presented by petitioners is true and correct. It is enough to say that the evidence they presented cast doubt on the validity of their claim. Petitioners failed to establish, by preponderance of evidence, the exact perimeters of the land which they claim as their own.

On the other hand, respondents anchor their claim over Lot 64 on a final bill of sale<sup>[23]</sup> dated September 18, 1939. Apparently, the document was executed in favor