

## THIRD DIVISION

[ G.R. No. 168902, September 28, 2007 ]

**BARTOLA M. VDA. DE TIRONA, CRISTINA T. DACANAY, ALFREDO M. TIRONA, MANUEL M. TIRONA, FERNANDO M. TIRONA, GLORIA T. LIBANG, MA. LUISA T. OÑAS, EMILIANO M. TIRONA III, MARTINA T. ARNAN, RAMON M. TIRONA, LEONOR M TIRONA, TEODORO D. TIRONA AND GALLARDO D. TIRONA, PETITIONERS, VS. CIRILO ENCARNACION, RESPONDENT.**

### DECISION

**NACHURA, J.:**

This petition seeks the reversal of the November 28, 2003 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 70412 affirming the April 6, 2000 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Imus, Cavite, Branch 22, in Civil Case No. 1193-95 which dismissed the *accion publiciana* filed by petitioners.

Brothers Teodoro and Benjamin Tirona , both now deceased, were co-owners of a tract of land located in Kawit, Cavite, covered by Transfer Certificate of Title (TCT) No. (T-13391) RT-1883, which apparently consisted of two (2) lots, Lot No. 965 and Lot No. 966.

On October 3, 1959, Teodoro Tirona, with the conformity of his wife, petitioner Bartola, ceded to herein respondent, Cirilo Encarnacion, his one-half (1/2) undivided interest in the said land. The Deed of Absolute Sale<sup>[3]</sup> stipulated:

That I, TEODORO T. TIRONA, Filipino, of legal age, married to BARTOLA MARTINEZ, and a resident of Kawit, Cavite, but temporarily staying at Quezon City, am the true and absolute owner of one-half (1/2) undivided interest in that parcel of land located at Kawit, Cavite, covered by Transfer Certificate of Title No. (T-13391) RT-1883 of the Office of the Register of Deeds for the province of Cavite, more particularly described as follows:

“A parcel of land (Lot No. 965 of the Cadastral Survey of Kawit), with the improvements thereon situated in the municipality of Kawit, (Bounded on the NE by Lots (sic) Nos. 962 and 964; on the SE by Lot No. 966; and on the NW by Lot No. 959 and a creek xxx containing an area of Thirty-Two Thousand Eight Hundred Fourteen Square Meters (32,814) more or less xxx [Full technical description appears on (T-13391) RT-1883].”

That for and in consideration of the total amount of FIFTEEN THOUSAND PESOS (P15,000.00), Philippine Currency, of which amount P12,000.00 has (sic) been received by me on January 27, 1959, P2,100.00 had been

received by me on June 15, 1959, and P900.00 received by me on this date from CIRILO V. ENCARNACION, Filipino, of legal age, married to CONSUELO DEL ROSARIO, and a resident of Sta. Isabel, Kawit, Cavite, I, TEODORO T. TIRONA, do by these presents cede, transfer, and convey unto said CIRILO V. ENCARNACION all my rights, participations and interests in the parcel of land above mentioned and described.

The parcel of land above mentioned and described is devoted to fishpond and track gardening. The portion of land herein sold and conveyed consists of one-half of the fishpond and one half of the area devoted to track gardening x x x<sup>[4]</sup>

Upon execution of the Deed, respondent immediately took possession of one-half (1/2) of the parcel of land. He also occupied its other half by virtue of an "Agreement" dated September 14, 1960<sup>[5]</sup> executed by Benjamin Tirona and respondent. Therein, respondent and his wife, Consuelo, for and in consideration of their payment of the advanced rentals, were subrogated to the rights of Emiliano Encarnacion and Lino Loyola, lessees of Benjamin Tirona in the latter's portion of the track garden (locally known as the "Kataasan") and fishpond, respectively. Respondent then received its harvest and gave half of it to Benjamin Tirona.<sup>[6]</sup>

On March 2, 1963, Benjamin Tirona conveyed his share of the parcel of land to respondent's father, Pastor Encarnacion. In the Deed of Absolute Sale,<sup>[7]</sup> the parties had agreed:

That I, BENJAMIN T. TIRONA, of legal age, married to Cornelia Medina, and resident of Kawit, Cavite for and in consideration of the sum of EIGHTEEN THOUSAND PESOS (P18,000.00), Philippine Currency, to me paid by Pastor Encarnacion, also of legal age, Filipino, married to Jacinta Vales, and resident of Sta. Isabel, Kawit, Cavite, do hereby SELL, TRANSFER, and CONVEY and by these presents have SOLD, TRANSFERRED and CONVEYED unto said Pastor Encarnacion all my rights and interests consisting of one-half (1/2) undivided share in a certain parcel of land, the other one-half (1/2) thereof being owned by Cirilo Encarnacion, which is more particularly described as follows:

A parcel of land (Lot No. 965 of the Cadastral Survey of Kawit), with the improvements thereon, situated in the Municipality of Kawit. Bounded on the NE. by Lots (*sic*) Nos. 962 and 964; on the SE. by Lot No. 966; and on the NW. by Lot No. 959 and a creek xxx containing an area of THIRTY-TWO THOUSAND EIGHT HUNDRED AND FOURTEEN SQUARE METERS (32,814), more or less, xxx

which is embraced in a Transfer Certificate of Title No. T-462 of the Register of Deeds of Cavite, and one-half (1/2) thereof subject of this sale is declared for taxation purpose under Tax Declaration No. 4375 with an assessed value of P1,810.00, which I inherited from my deceased father Emiliano T. Tirona and which has been in my possession since his death as exclusive owner free from any lien and encumbrance.

That the aforesaid parcel of land is devoted to fishpond and to planting of rice, corn, tomatoes and other garden products.<sup>[8]</sup>

Upon their father's death, respondent and his siblings inherited the one-half (1/2) share sold to Pastor Encarnacion. Eventually, respondent became the owner of the entire property.<sup>[9]</sup>

In the early 1960s, petitioner Cristina Dacanay, daughter of Teodoro, allegedly came to know of his father's ownership of two adjacent lots, Lot Nos. 965 and 966, upon seeing a *Kasunduan sa Hati-Hatian* executed in 1956.<sup>[10]</sup> She then confronted respondent regarding his occupation of Lot No. 966 and told him that what was conveyed to him was only Lot 965. She added that they (petitioners) will conduct a survey of the tract of land.<sup>[11]</sup> Unfazed, respondent asserted that the said lot was included in the "more or less" phrase stated in the deeds of sale executed in their favor and that he would just see them in court ("*Magkita na lang tayo sa korte*").<sup>[12]</sup> Petitioners, however, did not cause the survey of the property.<sup>[13]</sup>

On October 9, 1973, petitioners (excluding Fernando M. Tirona, Teodoro D. Tirona and Gallardo D. Tirona), together with Emiliano C. Tirona, Jr., Conchita T. Lim, Armando Lim, Antonio C. Tirona, Corazon T. Tirona, Arnaldo C. Tirona, Edgardo Onas, Gaudencio Libang, Francisco Dacanay, Jr., and Benjamin T. Tirona, instituted an ejectment case<sup>[14]</sup> against respondent before the Municipal Trial Court (MTC) of Kawit, Cavite (docketed as Civil Case No. 122), alleging the following:

5. That the plaintiffs are the legitimate heirs of the deceased Emiliano T. Tirona, Alfredo T. Tirona, Teodoro T. Tirona, residents of Kawit, Cavite[,] who died on April 8, 1952, June 23, 1931, and October 18, 1959, respectively;
6. That the said deceased Emiliano T. Tirona, Alfredo T. Tirona, Teodoro T. Tirona, and Benjamin T. Tirona who is represented in this case by his attorney-in-fact, Emmanuel M. Tirona[,] are the registered owner (sic) of a parcel of land known as Lot No. 966 of the Cadastral survey of Kawit, situated in the Municipality of Kawit, Cavite, consisting of 17,049 square meters, more or less, covered by Original Certificate of Title No. (1799) RO-912, Book (A-9) RO-7, Page (229) 12 of the Register of Deeds for the Provinces (sic) of Cavite, which parcel of land is more particularly described and bounded as follows:

A parcel of land (Lot No. 966 of the Cadastral Survey of Kawit), with the improvements thereon, situated in the Municipality of Kawit. Bounded on the NE. by the property of Guillermo Encarnacion of the Municipality of Kawit; on the SE. and SW. by a creek; and on the NW. by Lot No. 965 x x x containing an area of SEVENTEEN THOUSAND AND FORTY-NINE SQUARE METERS (17,049), more or less x x x

7. That the said deceased Emiliano T. Tirona, Alfredo T. Tirona, Teodoro T. Tirona, during their lifetime and also their brother Benjamin T. Tirona, have been in the peaceful possession of the

above-described parcel of land;

8. That plaintiffs Emiliano C. Tirona, Jr., Arnaldo M. Tirona, Alfredo M. Tirona, Emiliano M. Tirona III, Ramon M. Tirona, Leonor M. Tirona, Antonio C. Tirona, Fernando M. Tirona, Martina M. Tirona, Cristina T. Dacanay, Ma. Luisa T. Onas, Gloria T. Libang, and Conchita T. Lim and Bartola Tirona, upon the death of the said deceased Emiliano T. Tirona, Alfredo T. Tirona, Teodoro T. Tirona, on April 8, 1952, June 23, 1931, and October 18, 1959, respectively[,] have been in peaceful possession of the above-described parcel of land;
9. That sometime in February of 1973, the defendant Cirilo V. Encarnacion through strategy and stealth took possession of the above described parcel of land;
10. That when the plaintiffs became aware of the fact that the defendant, through strategy and stealth, took possession of the above-described parcel of land, they demanded upon him to surrender peaceably the possession of the same to them; however, defendant unjustifiably and illegally refused to do so and even threatened the plaintiffs with bodily harm should they attempt to take possession of the above-described parcel of land from him x x x<sup>[15]</sup>

Respondent denied that he took possession of Lot No. 966 through strategy and stealth. He averred that he and his father bought the whole parcel of land from Teodoro and Benjamin Tirona and that they had been in possession of the land as owners; that at the time of the sale, no certificate of title was delivered to them or even presented by the vendors, who alleged, among others, that the land had not been surveyed nor had been the object of any registration proceedings; that respondent introduced and had been making improvements on the property, investing thereon substantial amounts up to the present; that none of the plaintiffs ever disturbed his peaceful possession of the land; and that it was only when OCT No. (1799) RO-912 was annexed to the Complaint that he came to know that Lot No. 966 was titled.<sup>[16]</sup>

After trial, the MTC declared the plaintiffs in the ejectment case as the lawful owners of Lot No. 966. It found no merit in respondent's contention that the parties in the two separate sales actually intended to convey Lot No. 966.<sup>[17]</sup> On appeal, however, the Court of First Instance (CFI) of Cavite dismissed the Complaint. It ruled that the MTC had no jurisdiction to try the case since respondent raised a genuine issue of ownership that was "not merely frivolous but on the contrary appears to be meritorious."<sup>[18]</sup> The plaintiffs, through counsel, then elevated the case to the Court of Appeals, which, on November 13, 1975, denied the Petition for Review for failure to file the same within the reglementary period.<sup>[19]</sup> Petitioners failed to file a motion for reconsideration of the CA resolution, and thus, the CFI decision became final and executory on December 9, 1975.<sup>[20]</sup>

Respondent continued to occupy Lot No. 966. Sometime in the 1970s, he developed one-half (1/2) of the track garden into a fishpond. He bulldozed the land and constructed a dike and added salt beds therein.<sup>[21]</sup>

On the other hand, when the CFI rendered its adverse ruling in the ejectment case, the petitioners left the administration of the land to their counsel, Atty. Antonio Jose F. Cortez. In the years that ensued, they continued with their migration to the United States of America (U.S.A). Petitioners, however, were able to transfer the title of Lot No. 966 in their names when TCT No. T-81513 was issued on March 2, 1976.<sup>[22]</sup> At that time, petitioners Teodoro D. Tirona and Gallardo D. Tirona were still minor children of their now deceased father, Arnaldo C. Tirona, one of the registered owners of TCT No. T-81513.<sup>[23]</sup>

Almost twenty years later, on October 2, 1995, petitioners filed the instant case, docketed as Civil Case No. 1193-1195, for *accion publiciana* against respondent. In the Complaint,<sup>[24]</sup> petitioners, except for brothers Teodoro and Gallardo D. Tirona, who only succeeded to the rights of their father, alleged this time that they are the registered owners of Lot No. 966, which is now covered by TCT No. T-81513. Claiming that respondent has been in possession of Lot No. 966 since 1959 without any title thereto or right to occupy the same, petitioners prayed, thus:

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court that judgment issue (sic) evicting defendant from the property covered by TCT No. 81513 and placing plaintiffs in possession thereof.

It is further respectfully prayed that defendant be ordered to pay plaintiff for his use of their property and/or for unearned profits as follows:

- a. P1,000.00 per month from 1959 up to 1970;
- b. P2,000.00 per month from 1971 to 1980;
- c. P5,000.00 per month from 1981 to 1990;
- d. P10,000.00 per month from 1991 up to the present.

It is likewise respectfully prayed that defendant be ordered to pay exemplary damages of P1,000,000.00, attorney's fees of P100,000.00, appearance fees of P2,000.00 for every court session attended by counsel and costs of litigation.

Plaintiffs pray for such and further relief as may be just and equitable in the premises.<sup>[25]</sup>

Respondent moved to dismiss the Complaint<sup>[26]</sup> arguing in the main that since he has been in actual physical possession of the land for almost thirty-six (36) years, petitioners' action to recover the property is already barred by laches. He asserted that even after deducting the period covered by the ejectment case previously filed, the remaining number of years which had elapsed since 1959 still spanned thirty-four (34) years.

Considering the Motion to Dismiss as well as the Opposition<sup>[27]</sup> thereto, the Reply<sup>[28]</sup> and the Rejoinder<sup>[29]</sup> filed by the parties, the court, on August 20, 1996, resolved to require respondent to file his answer and "defer the final hearing and determination of the motion until the trial, in view of the fact that the ground relied upon does not appear to be indubitable."<sup>[30]</sup>