

FIRST DIVISION

[G.R. NO. 161739, May 04, 2006]

ALFREDO BOKINGO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, THE HEIRS OF CELESTINO BUSA, REPRESENTED BY FELICIDAD BUSA-PANAL AND ERNESTO M. CAMPOS, RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is the petition for review on *certiorari* filed by Alfredo Bokingo seeking to reverse and set aside the Decision^[1] dated December 17, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 71510 which dismissed his petition for *certiorari* filed therewith.

The factual and procedural antecedents are as follows:

Petitioner Alfredo Bokingo is one of the defendants in the complaint for injunction and damages filed by Ernesto Campos, the Heirs of Celestino Busa,^[2] the Heirs of Felicidad Busa-Panal^[3] and the Heirs of Concordia Busa.^[4] The complaint was filed with the Regional Trial Court (RTC) of Butuan City, Branch 3 thereof, and docketed as Civil Case No. 1003. The complaint alleged as follows:

CAUSE OF ACTION

3. Plaintiffs [herein respondents] are co-owners of the land subject matter. By virtue of the right of representation, the heirs of FELICIDAD BUSA-PANAL and CONCORDIA S. BUSA and REYNALDO S. BUSA, respectively;
4. Defendants in this case are heirs of MIGUEL BOKINGO;
5. Defendants ALFREDO BOKINGO [herein petitioner], WENCESLAO B. AMBRAY, JR., ROSA B. AMBRAY, CELIA A. ALMORA and JOSELITO B. AMBRAY, filed an application for titling of a parcel of land before the Department of Environment and Natural Resources, Office of the CENRO, Ochoa Avenue, Butuan City;
6. The land subject matter of the application of defendants is a parcel of land located at Baan (Buhangin), Butuan City, containing an area of 2.1600 hectares, more or less;
7. The land subject matter of the application for titling of defendants is a parcel of land inherited by plaintiffs from their father, the late

CELESTINO BUSA. This parcel of land is described particularly as:

TAX DECLARATION NO. GR.-10-002-0189-A

"A parcel of land covered by Tax Declaration No. GR-10-002-0189-A, situated in Buhangin, Butuan City, containing an area of 2.1600 HAS., more or less. Bounded on the North - Elisa Busa, South - Pastor Ago, East - Ho. Miguel Bokingo and on the West - Baan River."

8. When plaintiffs knew of defendants' application, plaintiffs filed a protest against defendants' application on February 5, 1996. Attached as Annex A is the Protest;
9. On November 24, 1998, the Provincial Environment and Natural Resources Officer, HUGO I. BAÑOSIA, resolved the Protest in favor of Plaintiffs-the protestant in the DENR case. Attached as Annex B is the order;
10. On January 6, 1999, the Provincial Environment and Natural Resources Officer, HUGO T. BAÑOSIA, issued a certification stating that the order dated November 24, 1998 has become final and executory. Attached as Annex C is the machine copy of the Certification;
11. On September 9, 1999, the same DENR Officer HUGO T. BAÑOSIA issued an Order of Execution which states that:

In complying herewith, the Land Management Officer III concerned should be instructed to set forth the whole proceeding in writing signed by the parties and witnesses, if possible, submit and return to this Office within sixty (60) days from receipt hereof, to be used as evidence should it be necessary to institute any action, criminal or otherwise, against any party who may refuse to obey the same.

SO ORDERED, Butuan City, September 9, 1999.

12. Plaintiffs requested on June 23, 1999, for a Survey Authority to survey the land subject matter of this case before the CENRO Office of Butuan City. Attached as Annex D is the Survey Application;
13. On July 30, 1999, A Survey Authority was issued by the CENRO of Butuan City, authorizing plaintiff ENGR. ERNESTO M. CAMPOS, JR., to survey the land subject matter of the DENR case and the case at bar. Attached as Annex E is the Survey Authority;
14. On November 18, 1999 at 11:00 A.M., FELICIDAD BUSA-PANAL, MILAGROS BUSA SIMOGAN, TERESITA BUSA LINAO, JIMMY BUSA-PANAL, son of Felicidad Busa-Panal, ALFREDO BUSA-PANAL, son-in-law of Concordia S. Busa, personnel of the Butuan PNP and the personnel of ENGR. ERNESTO M. CAMPOS went to the area subject matter of this case to survey the land. Unfortunately, Defendant SPO3 FERDINAND B. DACILLO and Defendant ALFREDO BOKINGO,

representatives of defendants, told the survey group to stop and not to enter the area subject matter of this case. Attached as Annex F is the report of CENRO Officer who [was] present during the November 18, 1999 survey which was stopped by SPO3 FERDINAND B. DACILLO and ALFREDO BOKINGO;

15. Plaintiff[s] availed of the *Barangay* Justice System to resolve the controversy regarding the survey but to no avail, defendants still refused to allow plaintiffs to survey the area. Thus, a Certificate to File Action was issued by the *Lupong Tagapamayapa*. Copy of the same is hereto attached as Annex G;
16. The defendants did not exercise honesty and good faith in their acts which is a violation of Article 19 of the New Civil Code, and which entitles the plaintiffs for damages;
17. The acts of defendants constrained the plaintiff[s] to litigate and to incur attorney's fees in the amount of PhP10,000.00 plus litigation expenses estimated at PhP10,000.00.

PRAYER

Wherefore, premises considered, it is respectfully prayed that after hearing, this Honorable Court:

- 1) Enjoin permanently the illegal acts of defendants of preventing the survey of the land subject matter of this case by ENGR. ERNESTO M. CAMPOS;
- 2) Order defendants to pay plaintiffs the sum of P10,000.00 as attorney's fees, P10,000.00 as litigation expenses;
- 3) Order defendants to pay damages to plaintiff;
- 4) Such other reliefs just and reasonable under the circumstances.^[5]

Petitioner Bokingo, as one of the defendants in the above complaint, filed with the court *a quo* a motion to dismiss alleging that the latter has no jurisdiction over the subject matter of the claim. Specifically, petitioner Bokingo contended that it could be gleaned from the complaint that the issue between the parties involved the possession of the land. As such, the assessed value of the land was crucial to determine the court's jurisdiction over the subject matter in accordance with either Section 19(2)^[6] or Section 33(3)^[7] of *Batasang Pambansa Blg. 129*^[8] as amended by Republic Act No. 7691. If the assessed value thereof is P20,000.00 or less, then the Municipal Trial Court (MTC) has jurisdiction over the subject matter. Otherwise, jurisdiction is with the RTC.

Petitioner Bokingo pointed out in his Motion to Dismiss that the assessed value of the land subject matter of the complaint was not indicated. Nonetheless, he proffered that based on his father's tax declaration covering the subject land, its assessed value was only P14,410.00. Consequently, it was allegedly clear that the court *a quo*, a Regional Trial Court, had no jurisdiction over the subject matter of the complaint filed by the respondents. Rather, in view of the assessed value of the

subject land which was allegedly less than the P15,000.00, jurisdiction properly belonged to the MTC.

Petitioner Bokingo thus urged the court *a quo* to dismiss the complaint filed by the respondents for lack of jurisdiction over the subject matter thereof.

Acting thereon, the court *a quo* issued the Order dated March 13, 2002 denying the motion to dismiss. It pointed out that the complaint's allegation is that the respondents, as plaintiffs, are entitled to have the subject land surveyed after petitioner Bokingo's and his co-claimants' application for the titling of the subject land was dismissed by the Provincial Environment and Natural Resources Officer (PENRO) and the respondents were declared to have a better right to file a public land application covering the same. Further, the relief being sought in the complaint is injunction in order that the respondents' right to survey the subject land would not be defeated.

Based on these allegations, the court *a quo* held that it had jurisdiction over the subject matter of the claim under Section 2 of Rule 58 of the Rules of Court which provides in part that "[a] preliminary injunction may be granted by the court where the action or proceeding is pending." It accordingly denied petitioner Bokingo's motion to dismiss the complaint for lack of jurisdiction.

Petitioner Bokingo forthwith filed with the Court of Appeals a petition for *certiorari* alleging grave abuse of discretion on the part of the court *a quo* in denying his motion to dismiss.

On December 17, 2003, the CA rendered the assailed Decision dismissing the said petition for lack of merit, in fact and in law. It ruled that the remedy of *certiorari* is unavailing to petitioner Bokingo because "an order denying a motion to dismiss is interlocutory and cannot be the subject of the extraordinary petition for *certiorari* or mandamus."^[9]

It was noted that the records fail to disclose that petitioner Bokingo filed a motion for reconsideration of the order of the court *a quo*. According to the CA, such omission warranted the outright dismissal of the petition for *certiorari*. Finally, it was not shown or even alleged in the petition that the court *a quo*, in issuing the assailed order, acted with grave abuse of discretion amounting to lack of jurisdiction. The issue raised by petitioner Bokingo, the CA held, was proper for an appeal but not a petition for *certiorari*.

Aggrieved, petitioner Bokingo now comes to the Court seeking the reversal of the said decision of the CA which dismissed his petition for *certiorari* filed therewith. He insists that the complaint filed by the respondents with the court *a quo* is a possessory action. To determine which court, the RTC or MTC, has primary jurisdiction, petitioner Bokingo theorizes that it is necessary that the assessed value of the land be alleged in the initiatory complaint. Absent such allegation, the court where the case was filed should allegedly preliminarily determine the assessed value of the subject property to determine whether or not it has jurisdiction over the subject matter of the claim. In the present case, according to petitioner Bokingo, the assessed value of the subject land is only P14,410.00; hence, jurisdiction thereof properly belongs to the MTC in accordance with Section 19(2) or 33(3) of *BP Blg. 129* as amended by RA 7691.