

## THIRD DIVISION

[ G.R. NO. 160406, June 26, 2006 ]

**SPS. DOLORES MIRANDA PROVOST AND JEAN PROVOST,  
PETITIONERS, VS. THE COURT OF APPEALS AND SPS. VICTOR  
RAMOS AND FE A. RAMOS, RESPONDENTS.**

### DECISION

#### QUISUMBING, J.:

The instant petition seeks the annulment of the Decision<sup>[1]</sup> dated February 13, 2003 of the Court of Appeals in CA-G.R. SP No. 57008 and its Resolution<sup>[2]</sup> dated August 27, 2003, denying the motion for reconsideration. The appellate court reversed the Decision<sup>[3]</sup> dated December 10, 1999 of the Regional Trial Court (RTC) of Mambajao, Camiguin, Branch 28, in Civil Case No. 573, which affirmed the Decision<sup>[4]</sup> dated February 19, 1999 of the Municipal Trial Court (MTC) of Mambajao, Camiguin in Civil Case No. 212.

The antecedent facts are as follows.

Private respondents, spouses Victor and Fe Ramos, are the owners of a parcel of land surveyed as Lot No. 12542, Case 15, Cad. 473 situated in Putingbalas, Tupsan Grande,<sup>[5]</sup> Mambajao, Camiguin. The spouses' lot was donated to them by Nicolasa Yap Vda. de Abao on October 24, 1994. Adjacent to the lot is a parcel of land surveyed as Lot No. 12543, C-15, Cad. 473 owned by petitioner Dolores Miranda Provost. She bought it from Rosario Abanil.

Sometime in May 1992, the Provosts constructed a fence separating the two lots. In 1994, the Ramoses, believing that the Provosts encroached on a portion of their lot, demanded the return of the encroached area but the latter refused. The Ramoses thus had a relocation survey and the relocation survey showed that the fence was indeed on their land.

The Provost spouses disagreed, arguing that the cadastral survey plan used had been disapproved by the DENR Regional Office for being defective and was replaced with a correction survey of *Barangay* Tupsan, Mambajao. Under the correction survey, Lot No. 12542 with an area of 4,402 square meters was surveyed as Lot No. 13436, Cad 473, Module 2, but with a reduced area of 3,845 square meters, and Lot No. 12543 with an area of 1,774 square meters as Lot No. 12769, Cad 473, Module 2 with an increased area of 2,634 square meters. Upon request of petitioners Provosts, another relocation survey was done using the approved cadastral survey plan. This relocation survey showed that the fence was within petitioners' property.

On December 26, 1994, the Ramos spouses filed a complaint for recovery of ownership and possession with damages and with prayer for preliminary injunction

before the MTC. They alleged that the Provosts encroached on 314 square meters of their lot. The MTC dismissed the complaint and held that the Ramoses failed to prove their ownership and possession of the disputed area. On appeal, the RTC affirmed the MTC decision, stating that the claim by the Ramoses over the property sought to be recovered was based on a disapproved survey plan.

Private respondents appealed to the Court of Appeals. The appellate court reversed the RTC decision and ordered the Provosts to vacate the area, remove the fence, and pay damages, to wit:

WHEREFORE, FOREGOING PREMISES CONSIDERED, this petition is GRANTED. The assailed Decision dated December 10, 1999 of the Regional Trial Court, Branch 28, Mambajao, Camiguin in Civil Case No. 573 entitled, "Spouses Victor Ramos, et al. vs. Jean Provost, et al." is reversed and set aside and in lieu thereof, another one is entered:

(a) ordering respondents to vacate and surrender the encroached area of 314 square meters to the petitioners and to remove their fence;

(b) to pay petitioners the following amounts:

- (1) the amount of P6,355.82 as actual damages;
- (2) the amount of P500.00 per annum as reasonable rentals of the encroached area;
- (3) the amount of P35,500.00 as attorney's fees plus P1,500.00 as traveling expenses every hearing;
- (4) the amount of P50,000.00 as moral damages;
- (5) the amount of P500.00 as litigation expenses and to pay the costs of suit.

SO ORDERED.<sup>[6]</sup>

Hence, this petition for *certiorari* where petitioners argue:

1. That respondent Court of Appeals exceeded the limits of its jurisdiction in deciding the appeal of private respondents outside of the issue raised in the decisions of both the Municipal Trial Court and the Regional Trial Court.
2. The respondent Court of Appeals committed grave abuse of discretion amounting to lack of jurisdiction in insisting on the technical description of the erroneous and disapproved survey of private respondents' land as the basis for its findings that petitioners had encroached the land of respondents.
3. That the respondent Court of Appeals committed grave abuse of discretion amounting to lack of jurisdiction in merely denying in a cavalier manner petitioners' Motion for Reconsideration as mere refutation of its own findings, without stating the legal basis for the denial in direct violation of the provisions of the second paragraph, of Section 14, of the 19[8]7 Constitution of the Philippines, that no petition for review or motion for reconsideration of the court shall

be refused due course or denied without stating the legal basis [therefor].

4. That there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law open to petitioners, except this petition for certiorari under Rule 65, of the 1997 Rules of Civil Procedure.<sup>[7]</sup>

At the outset, we note that this case involves an error of judgment and not of jurisdiction. Thus, a petition for *certiorari* under Rule 65 of the Rules of Court is not proper. Nevertheless, we shall give due course to the instant petition as one proper for review under Rule 45.

Simply, the main issue in this case is whether petitioners (Provosts) encroached on the property of private respondents (Ramos spouses).

Private respondents anchor their claim on the deed of donation and an old survey plan, while petitioners base theirs on the deed of absolute sale and the corrected survey plan.

Petitioners aver that the appellate court gravely abused its discretion when it held that they encroached upon the Ramoses' property since the frontage (points 7, 8 and 9) in the old survey plan of the Ramoses' property was the same frontage in the new survey plan and the fence was constructed at point 8 of the cadastral plan. They argue that the points of the frontage of respondents' property in the old and new survey plan are similar but with different technical descriptions on measurements and bearings, thus the location of the frontage in the two surveys cannot be identical. More so, under the approved survey plan, the fence was constructed at point 9, which is point 4 of their lot and clearly within their property. They posit that the Court of Appeals did not bother to check the technical descriptions and instead relied on the testimony of the engineer who conducted the relocation survey using the technical description on the disapproved survey plan. They maintain that private respondents were unable to establish the identity of their property, since they relied on a disapproved survey plan. Moreover, the contested area was previously occupied by Asterio Aboc, a tenant of Rosario Abanil.

Private respondents, on their part, state that they and their predecessors-in-interest have been in continuous and open possession as owners, as evidenced by the tax declarations and that petitioners did not deny points 7, 8 and 9 of respondents' property. They insist that the Provosts encroached on their land as the fence was constructed at point 8.

The Court of Appeals in reversing the RTC decision reasoned that the petitioners had no right to move the common boundary such that the area of the adjoining lot was reduced to 3,552 square meters. It further held that they could not validly claim ownership over the area of 2,327 square meters since they bought only 1,774 square meters, and that the correction survey plan was under protest as it would prejudice private respondents.<sup>[8]</sup>

We stress that regional trial courts have jurisdiction over complaints for recovery of ownership or *accion reivindicatoria*.<sup>[9]</sup> Section 8, Rule 40<sup>[10]</sup> of the Rules on Civil