

## FIRST DIVISION

[ G.R. NO. 162037, August 07, 2006 ]

**HEIRS OF ENRIQUE DIAZ, REPRESENTED BY AURORA T. DIAZ,  
PETITIONER, VS. ELINOR A. VIRATA, IN HER CAPACITY AS THE  
ADMINISTRATRIX OF THE ESTATE OF ANTENOR VIRATA,  
RESPONDENT.**

### D E C I S I O N

#### **CHICO-NAZARIO, J.:**

The instant case involves a protracted controversy which has seen the demise of the patriarchs of two conflicting families, and is now being pursued by their respective heirs.

In this Petition for Review on *Certiorari*, petitioners Heirs of Enrique Diaz, represented by Aurora T. Diaz, seek the reversal of the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> of the Court of Appeals in CA-G.R. CV No. 72907, dated 27 August 2003 and 4 February 2004, respectively, which affirmed with modification the Decision<sup>[3]</sup> of the Regional Trial Court (RTC), Branch 22, Imus, Cavite, in Civil Case No. 1399-96, dated 25 May 2001.

#### *The Antecedents*

On 13 September 1996, respondent Elinor Virata, in her capacity as Administratrix of the Estate of Antenor Virata (Antenor), filed with the RTC a Complaint<sup>[4]</sup> with Application for Temporary Restraining Order and/or Preliminary Injunction against Enrique Diaz (Enrique), John Doe, Richard Doe, and all others taking rights or title under him, praying for the declaration of the validity of Transfer Certificates of Title (TCTs) No. 4983,<sup>[5]</sup> 4984,<sup>[6]</sup> 4985,<sup>[7]</sup> 4986,<sup>[8]</sup> 5027,<sup>[9]</sup> 5028,<sup>[10]</sup> 5029,<sup>[11]</sup> 5030,<sup>[12]</sup> 5031,<sup>[13]</sup> 5032,<sup>[14]</sup> and 5033,<sup>[15]</sup> all issued in the name of Antenor S. Virata (Antenor) and registered with the Registry of Deeds of the Province of Cavite. The case was docketed as Civil Case No. 1399-96.

In her Complaint, respondent averred, *inter alia*, that: sometime in 1959, the deceased Antenor purchased from Miguela Crisologo, in good faith and for consideration, two parcels of land located in Palico, Imus, Cavite, covered by TCTs No. (T-3855) RT-2633 and NO. (T-11171) RT-1228, and registered with the Registry of Deeds of Cavite;<sup>[16]</sup> by virtue of the sale, the specified titles were cancelled, and in its place were issued TCTs No. 517 and No. 518, likewise, in the name of Antenor;<sup>[17]</sup> the two lots covered by the aforementioned titles were thereafter subdivided by Antenor into several lots, and titles were issued thereon in Antenor's favor, viz: TCTs No. 4983, 4984, 4985, 4986, 5027, 5028, 5029, 5030, 5031, 5032, and 5033;<sup>[18]</sup> and that sometime in March 1992, Enrique filed a claim with the Department of Environment and Natural Resources (DENR), alleging that he and his predecessors-

in-interest had been in continuous possession of the same lots owned by Antenor. Respondent further proffered that the claim of Enrique over the subject properties created a cloud which may be prejudicial to the titles issued in the name of Antenor, and now managed by his Estate.

In support of her application for restraining order and/or a writ of preliminary injunction, respondent alleged, *inter alia*, that: Enrique had fenced the subject properties and had constructed a driveway thereon; despite respondent's demand to desist from fencing the properties and using the same as driveway, Enrique persisted in his occupation of the subject properties; and respondent will suffer irreparable injury by the continued occupation, use, and construction of the driveway traversing the subject properties.

In sum, respondent prayed that Enrique be ordered to pay jointly and severally with the other defendants (herein petitioners), reasonable rental for the use of the subject properties from the time the suit before the DENR was filed in April 1992, moral damages, exemplary damages, attorney's fees, and cost of suit.<sup>[19]</sup>

On 23 October 1996, Enrique filed his Answer with Counter-Claim,<sup>[20]</sup> and asserted, among others, that he filed with the DENR a protest action to enforce his valid and legitimate rights over the subject properties.<sup>[21]</sup> He denied respondent's allegation that the subject properties were purchased by Antenor.<sup>[22]</sup> Moreover, he interposed that his ancestors and predecessors-in-interest had been in actual and continuous possession of the subject properties since time immemorial.<sup>[23]</sup> In opposition to respondent's application for preliminary injunction, Enrique argued that the driveway and the fence are within the boundaries of the lots exclusively owned by him and his heirs, and covered by TCTs No. T-304191 and No. T-66120, respectively.

By way of special and affirmative defense, Enrique averred that the subject properties, since time immemorial, was publicly recognized as their family's ancestral land;<sup>[24]</sup> that their actual and peaceful occupation over the subject property was uninterrupted until sometime in 1962, when Antenor claimed a portion of the same, on the ground that he purchased said portion from one Miguela Crisologo, who acquired the same from a certain Simeon Marcial;<sup>[25]</sup> and that both Miguela Crisologo and Simeon Marcial recognized and respected his ownership over the subject properties.<sup>[26]</sup>

Enrique contended further that the legal battle between the parties commenced when respondent filed an action for recovery of possession of the subject property with the then Court of First Instance (CFI) of Cavite, docketed as Civil Case No. N-501 entitled, "*Antenor Virata v. Fortunata Diaz.*" However, in 1969, during the pendency of the said civil case, Antenor died. Following the development, the CFI ordered for the substitution of party-plaintiff, but the heirs of Antenor, including herein respondent, failed to comply therewith. By reason of their non-compliance, the CFI rendered an Order,<sup>[27]</sup> dated 6 October 1969, dismissing the case.<sup>[28]</sup>

Further, Enrique raised the argument of laches and *res judicata* in his favor. Anent the claim of laches, Enrique posited that for a period of almost 27 years after the dismissal of Civil Case No. N-501, the heirs of Antenor were silent, while he was in actual and continuous possession of the subject properties in the character and

concept of an owner, until again, his peaceful possession is being disturbed by the present suit. It is the contention of Enrique that respondent's failure or neglect for an unreasonable and unexplained length of time to assert her right, created a presumption that she had abandoned or declined to assert said right. In raising the ground of *res judicata*, Enrique posited that the instant suit, while clothed to appear as an action for quieting of title, partakes the nature of an action for a recovery of possession. According to Enrique, there is *res judicata* as the present action and Civil Case No. N-501 involve similar parties, subject matter, and cause of action.<sup>[29]</sup>

Consequently, Enrique sought for the dismissal of the Complaint, and prayed that respondent be ordered to pay attorney's fees, including moral, exemplary and actual damages.<sup>[30]</sup>

On 15 November 1996, the RTC issued an Order<sup>[31]</sup> allowing respondent to survey the property subject matter of the case. In answer thereto, Enrique filed a Motion<sup>[32]</sup> dated 15 November 1996, praying that the survey be conducted in the presence of his representative, which was accordingly granted by the court *a quo*.<sup>[33]</sup>

A relocation survey was conducted on 3, 6, 7, 10, and 13 of January 1997<sup>[34]</sup> by Geodetic Engineer Severino Raymundo, who testified in open court that the driveway was outside Antenor's property line.<sup>[35]</sup> Thus, respondent sought a withdrawal of their application for preliminary injunction, which was granted by the court *a quo* in the Order<sup>[36]</sup> dated 13 February 1997. Respondent's motion to file an appropriate pleading was similarly granted by the court without objection from Enrique.<sup>[37]</sup>

Subsequent thereto, respondent filed an Amended Complaint<sup>[38]</sup> dated 19 February 1997, deleting from the original Complaint, the allegations in support of the application for restraining order and/or writ of preliminary injunction. Further, respondent alleged anew that: she discovered that Enrique had fenced the subject properties; and constructed therein one concrete house of about 30 square meters, more or less; the unauthorized construction was done despite Enrique's full knowledge of the invalidity of his claim; and despite demand to desist from fencing the subject properties, Diaz refused to take heed of the same and continued to usurp the subject properties under a feigned claim of right.<sup>[39]</sup>

Thus, respondent sought the following additional reliefs, to wit: (1) an order directing Enrique, his representatives, or any other person claiming right, title, or interest from him, to vacate the subject properties and/or to voluntarily surrender possession thereof to respondent; and (2) the removal and demolition of the barbed wire fence, concrete fence, concrete house, and other improvements Enrique had erected thereon.<sup>[40]</sup>

Holding that the merits of the case would be served by the Amended Complaint, and finding that Enrique and his co-defendants would not be prejudiced by the allowance thereof, the court *a quo* admitted the same, in the Order of 22 May 1997.<sup>[41]</sup> The same Order gave Enrique, ten (10) days from receipt thereof within which to file a new Answer. However, no new Answer was filed by Enrique within the time provided

for.

On 5 August 1997, respondent filed a Manifestation and Motion,<sup>[42]</sup> stating therein that for the failure of Enrique to file an Answer to the Amended Complaint within the period provided for under the 1997 Rules of Civil Procedure,<sup>[43]</sup> the previous Answer shall stand as the Amended Answer; hence, the issues having been joined, the case is ripe for pre-trial. Acting on the respondent's Motion and Manifestation, the court *a quo* set the case for pre-trial.<sup>[44]</sup> Following thus, respondent filed her Pre-trial Brief,<sup>[45]</sup> dated 8 September 1997. On 11 September 1997, Enrique filed a Motion for Leave to File Amended Answer with Counter-Claim,<sup>[46]</sup> alleging, *inter alia*, that: he had deemed convenient to adopt the Answer previously filed, as the same had already substantially confronted the issues in the Amended Complaint; however, he discovered a certification issued by the Register of Deeds of Cavite, signifying that TCT No (T-11171) RT-1228, in the name of Miguela Crisologo, appeared to have been reconstituted but there existed no record in the Primary Entry Book of said Registry, relative to such administrative reconstitution, which is a vital defect, affecting not only the validity of the reconstitution of Miguela Crisologo's title but also Antenor's title, which was derived therefrom; and said certification is being sought to be adopted as part of his defense. An Opposition<sup>[47]</sup> to the foregoing Motion was filed by respondent, contending in the main, that the allegation therein as to the absence in the records of the administrative reconstitution of TCT No. (T-11171) RT-1228, constituted a collateral attack on the validity of the title, as well as other titles emanating therefrom, which cannot be allowed in the instant proceedings.

After an exchange of pleadings between the parties, the court *a quo* rendered an Order,<sup>[48]</sup> dated 14 January 1998, denying Enrique's Motion for Leave to File Amended Answer, ratiocinating that Enrique's allegation of the absence of any record in the Primary Entry Book of the Register of Deeds of Cavite, relative to the reconstitution of TCT No. (T-11171) RT-1228, is a collateral attack to the decree of registration and the certificate of title which had long been issued in favor of Antenor. The validity of a certificate of title can be attacked only in an action expressly filed for the purpose.<sup>[49]</sup>

On 27 February 1998, Enrique filed his Pre-Trial Brief but failed to appear before the court *a quo* for the pre-trial proceedings set on 4 June 1998.<sup>[50]</sup> On 16 April 1998, the court *a quo* rendered an Order,<sup>[51]</sup> declaring Enrique and his co-defendants in default for their failure to appear in the pre-trial despite notice. On further motion of respondent's counsel, the case was referred to the Branch Clerk of Court for the *ex-parte* reception of evidence. Enrique filed a Motion for Reconsideration<sup>[52]</sup> praying for the lifting of the order declaring him in default. Finding the same to be satisfactory, the court *a quo* granted reconsideration in its Order<sup>[53]</sup> dated 20 April 1998.

In the Pre-Trial Order, dated 4 June 1998, the definition of issues were determined, viz.:

#### I.

WHETHER OR NOT PLAINTIFF'S TITLE[S] ARE VALID AND WERE THE

ONLY ONES ISSUED OVER THE SUBJECT PROPERTIES;

II.

WHETHER OR NOT PLAINTIFF IS ENTITLED TO RECOVER POSSESSION OF SAID PROPERTIES;

III.

WHETHER OR NOT PLAINTIFF IS ENTITLED TO CLAIM DAMAGES;

IV.

WHETHER OR NOT THE PRESENT ACTION IS BARRED BY *RES JUDICATA*;

V.

WHETHER OR NOT THE PRESENT ACTION IS BARRED BY LACHES; *AND*

VI.

WHETHER OR NOT DEFENDANT IS ENTITLED TO CLAIM DAMAGES. [54]

Trial thereafter ensued. Following respondent's offer of exhibits, and at the time when Enrique was scheduled to present evidence, he filed a Motion to Dismiss<sup>[55]</sup> dated 13 October 1998, assailing the jurisdiction of the court *a quo* to entertain the action. Enrique submitted that as the suit is in the nature of recovery of possession and quieting of title, the issues of ownership and possession cannot be resolved without determining the correctness of the technical description of the plans, and the *bona fide* occupants of the subject properties. It was further contended that as the subject properties originated from friar estate, the sole body which can determine the rights and interest of the parties is the DENR. An Opposition<sup>[56]</sup> thereto was filed by respondent, maintaining that the court *a quo* has the competence to hear and resolve the case. Respondent, likewise, asserted that the subject properties having been titled in the name of Antenor on 22 October 1959, the same are deemed no longer part of the public domain.

On 12 February 1999, the trial court promulgated an Order<sup>[57]</sup> denying Enrique's Motion to Dismiss, and setting the hearing dates for the presentation of his evidence. According to the court *a quo*, Enrique and his co-defendants were no longer in a position to challenge the jurisdiction and authority of the court, after having actively participated in the proceedings therein, and repeatedly asking reliefs therefrom. It further opined that Batas Pambansa Blg. 129 mandates that questions in the nature of ownership and possession belong exclusively to the RTC.

Aggrieved, Enrique and his co-defendants sought relief from the Order of 12 February 1999 *via* a Petition for *Certiorari* and Prohibition with the Court of Appeals, and docketed as CA-G.R. SP No. 51602.<sup>[58]</sup> They interposed therein that the court *a quo* lacked jurisdiction to entertain the issues raised in Civil Case No. 1399-96; hence, the denial by the trial court of their Motion to Dismiss constituted a grave abuse of discretion amounting to lack or excess of jurisdiction. A writ of preliminary