

## SECOND DIVISION

[ G.R. NO. 158002, February 28, 2005 ]

**SPOUSES AURORA N. DE PEDRO AND ELPIDIO DE PEDRO,  
PETITIONERS, VS. ROMASAN DEVELOPMENT CORPORATION AND  
MANUEL KO, RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

This is a petition for review on certiorari of the Court of Appeals' Decision<sup>[1]</sup> in CA-G.R. CV No. 68424 dated November 29, 2002, as well as its Resolution dated April 11, 2003 denying the motion for reconsideration thereof. The assailed decision affirmed the trial court's order dismissing the petitioners' complaint for damages.

This case proceeded from the following antecedents:

On December 1, 1997, petitioner spouses Aurora and Elpidio de Pedro filed a Complaint for Damages with Prayer for Preliminary Injunction against respondents Romasan Development Corporation and Manuel Ko. The complaint stated, *inter alia*, that the spouses De Pedro were the registered owners of a parcel of land in Barangay San Isidro, now Barangay Inarawan, Antipolo, Rizal, with an area of 50,000 square meters, covered and described in Original Certificate of Title (OCT) No. P-691, issued by the Register of Deeds of Marikina City, Metro Manila on March 26, 1992; that they had been continuously paying the real estate taxes on the said property; that sometime in January 1997, the respondents started putting up a barbed-wire fence on the perimeter of the adjacent property; and that in the course of such construction, the petitioners' farm house was destroyed and bamboos and other trees were cut.<sup>[2]</sup>

The complaint further alleged that the respondents made claims that the petitioners' farm house and the trees were built and planted on a portion of the adjacent property owned by the respondents. The respondents then prevented and refused to allow the petitioners and their families to enter the property, through security guards. The respondents, likewise, threatened to clear the trees and scrape the area owned by the petitioners with the use of a bulldozer. The petitioners also alleged that as a consequence of the illegal and wrongful acts of the respondents, they suffered actual damages and incurred expenses; as such, they were entitled to moral and exemplary damages, and expenses of litigation and attorney's fees.<sup>[3]</sup>

On June 16, 1998, the respondents filed their Answer to the complaint, alleging therein that the respondent corporation was the owner of the land as evidenced by Transfer Certificate of Title (TCT) No. 236044 which was issued by the Register of Deeds on March 5, 1993. By fencing the property in order to determine its metes and bounds, the respondent corporation merely exercised its rights of ownership over the property. The respondents further maintained that the petitioners failed to

establish the metes and bounds of the property which was claimed to have been usurped by them. A counterclaim for damages was, likewise, interposed against the petitioners.

On September 18, 1998, the trial court issued an Order granting the joint motion of the parties to have a relocation survey on the property in order to verify its location.

[4] The survey team consisted of Robert Pangyarihan, Chief of the Department of Environment and Natural Resources (DENR), Region IV, Surveys Division as Chairman of the Survey Team; [5] Engr. Avelino L. San Buenaventura, representing the petitioners; and Engr. Patricio Cabalo, representing the respondents.

On January 30, 1999, the survey team issued a Report on the relocation survey with the following recommendation:

WHEREFORE, this Commission finds that OCT No. P-691 of the plaintiff overlaps TCT No. 236044 of parcel H-162341 of the defendant but finds on the contrary that this land is not the actual area that is being claimed and occupied by the plaintiff but another parcel instead, namely H-164008. The overlapping of titles was brought about by the double issuance of title for H-162341 but the technical descriptions of OCT No. P-691 describing a land different from the actual occupation of the plaintiff was a result of the defective survey. [6]

The survey team made the following findings: (1) TCT No. 236044 originated from OCT No. 438 in the name of Marcelino Santos, which was based on a Homestead Patent. The said OCT was, in turn, based on Plan H-162341 surveyed on March 8, 1935 and approved on June 30, 1937; (2) under the Cadastral Map Sheet of the *Lungsod Silangan* Cadastre or CM 14-38 N., 121-12 E on file with the Records Division of the DENR, Region IV, H-162341, the land covered by the said OCT was reflected as Lot 10455; (3) OCT No. P-691, under the name of petitioner Aurora de Pedro, was based on Plan Cad. 04-0097-63-D which was a subdivision survey of Lot 10455 of the *Lungsod Silangan* Cadastre; (4) Lot 10455 was subdivided into Lots 10455-A to 10455-G; (5) Lot 10455-G was the subject of the petitioners' application for a Free Patent; and (6) the land occupied by petitioner Aurora de Pedro is actually a portion of Lot 10454/H-164008 originally registered on July 2, 1965 under OCT No. 468 based on Homestead Patent No. 99480 under the name of Isidro Benitez. [7] The survey team further declared that:

The nature of this case, however, is one of overlapping titles even if the erroneous technical descriptions rectified because even while it may not fall inside the titled H-162341, the lot of Mrs. de Pedro, et al. given the correct description of the boundary, falls inside another titled parcel under H-164008. Both H-162341 and H-164008 are presently registered in the name of Romasan Development Corporation, the defendant.

The granting of Free Patent to Mrs. de Pedro, et al. over a previously titled property is unwarranted or can be unwittingly an act resulting in double titling by the CENRO, DENR in Antipolo City. [8]

Based on the report, the respondents filed a Manifestation/Motion to Dismiss, averring that there was no legal or factual basis for the complaint as shown by the findings of the survey team; hence, the petitioners had no cause of action against

them.<sup>[9]</sup> The petitioners did not file any opposition to the motion. Thus, on December 22, 1999, the trial court issued an Order granting the motion and ordering the dismissal of the complaint on the ground that the petitioners had no cause of action.<sup>[10]</sup>

The petitioners filed a motion for reconsideration of the order, contending that (1) the findings and conclusions of the survey team were unreliable; (2) the chairman of the team was facing criminal and administrative charges in connection with the performance of his duties; (3) the technical description of the property contained in OCT No. P-691 was conclusive and should prevail over the findings of the team; and (4) the petitioners had a cause of action for damages against the respondents. According to the petitioners, it was premature for the court to dismiss the complaint without affording them the right to adduce their evidence on their claim for damages.<sup>[11]</sup>

The petitioners appended to their motion the counter-affidavit of Jesus Pampellona, Deputy Land Inspector, Office of the Community Environment and Natural Resources Office in Antipolo City. Pampellona alleged that subsequent to the application for a free patent filed by petitioner Aurora de Pedro over Lots 10455-F and 10455-G, he conducted the required ocular inspections to determine the truth of her claim of actual possession over the properties subject of her application. He found out that she was in actual, public, adverse and continuous possession of the lots applied for by her, and that they were with several improvements, like petitioner Aurora de Pedro's house and several fruit-bearing trees with an average age of 20 to 25 years. He averred that, as evidence of her ownership and possession over the lots, petitioner Aurora de Pedro also submitted an Extrajudicial Partition with Waiver of Rights dated May 10, 1991, executed by the heirs of Marcelino Santos, and an Affidavit of Waiver of Rights dated June 6, 1991, which she herself executed. Pampellona declared that there was no overlapping of claims or rights over the subject lot based on a certification from the Lands Management Bureau of the DENR in Manila, and that there was no existing record of a previous Homestead Application applied for by Marcelino Santos. He asserted that he secured another Certification dated January 17, 1991 to the effect that Lot No. 10455, Mcad-585 located in San Isidro, Antipolo, Rizal, was not covered by any public land application and there was no record of the alleged Homestead Application 162341 under the name of Marcelino Santos. Pampellona, likewise, alleged that respondent corporation was the ninth (9<sup>th</sup>) transferee from the alleged original registered owner, Marcelino Santos, in whose favor OCT No. 438 Homestead Patent was issued on August 30, 1937.<sup>[12]</sup>

Also appended to the said motion for reconsideration were Certifications from the Lands Management Bureau, stating that Plan H-164008 was not available on file despite diligent efforts in locating the same, and that H-164008 was not listed in the EDP listing; and Certifications from the Register of Deeds of Rizal and Marikina City that OCT No. 468 issued on July 2, 1965 was not among the records on file with them.<sup>[13]</sup>

The respondents opposed the petitioners' motion, claiming that the petitioners failed to oppose the appointment of the chairman of the team before the relocation survey. Moreover, since according to the report, the land claimed by the petitioners was covered by the title under the name of respondent corporation, the petitioners'

claim for damages had no leg to stand on.<sup>[14]</sup>

On July 11, 2000, the trial court issued an Order denying the petitioners' motion for reconsideration, "without prejudice" to the filing of an appropriate action for the correction or alteration of the technical description of the property covered by OCT No. P-691.<sup>[15]</sup>

The petitioners appealed the order to the Court of Appeals (CA). On November 29, 2002, the CA rendered a Decision affirming the assailed orders. The CA ruled that the result of the relocation survey has the presumption of regularity, such that it must be respected absent any clear showing that it had been irregularly conducted by the survey team. The CA held that the petitioners had every opportunity to question and object to the composition of the survey team before the trial court; since they failed to do so, they cannot now be allowed to do the same on appeal. According to the CA, it could not take judicial notice of the alleged cases filed against the chairman of the survey team since this was not one of the matters which the courts could take judicial notice of, whether mandatory or directory.<sup>[16]</sup>

Finally, the CA ruled that the respondents could not be adjudged liable for the damages allegedly sustained by the petitioners as a consequence of a valid and justified exercise of ownership over the disputed property. The CA reiterated the trial court's holding that the petitioners were not barred from filing the appropriate action where they may seek to correct whatever mistake or irregularity that their title had.<sup>[17]</sup>

On April 11, 2003, the CA issued a Resolution denying the motion for reconsideration filed by the petitioners; hence, this petition for review.

The petitioners rely upon the following grounds in support of their petition:

- I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND DECIDED THE ISSUES IN THE INSTANT CASE IN A MANNER CONTRARY TO ESTABLISHED LAW AND JURISPRUDENCE BY HOLDING THAT THE INSTANT CASE IS A SIMPLE CASE FOR DAMAGES.
- II. THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND DECIDED THE ISSUES IN THE INSTANT CASE IN A MANNER CONTRARY TO ESTABLISHED LAW AND JURISPRUDENCE BY HOLDING THAT THE RESULTS OF THE PRIOR RELOCATION SURVEY ENJOYS THE PRESUMPTION OF REGULARITY THEREBY DISPOSSESSING PETITIONERS OF THEIR OWNERSHIP OVER THE DISPUTED PROPERTY DESPITE CLEAR AND CONVINCING EVIDENCE THAT:
  - A. THE TITLE OF PETITIONER AURORA N. DE PEDRO IS VALID AND INDEFEASIBLE; AND
  - B. THE TITLE OF RESPONDENT ROMASAN DEVELOPMENT CORPORATION IS DEFECTIVE.
- III. THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND DECIDED THE ISSUES IN THE INSTANT CASE IN A MANNER CONTRARY TO ESTABLISHED

LAW AND JURISPRUDENCE IN NOT RULING THAT PETITIONERS HAD BEEN DEPRIVED OF THEIR CONSTITUTIONAL RIGHT TO COUNSEL.<sup>[18]</sup>

The petitioners maintain that petitioner Aurora de Pedro is the registered owner of the subject property as evidenced by OCT No. P-961, and that this title is conclusive of their ownership over the same.<sup>[19]</sup> They aver that their title cannot be the subject of a collateral attack.<sup>[20]</sup>

The petitioners contend that in contrast to their title, the title of the respondents is defective. This can be gleaned from the certifications issued by the Lands Management Bureau attesting to the fact that Survey Plan H-164008, under the name of the respondents does not exist and that its verification is not listed in the EDP listing, as well as the certifications from the Register of Deeds of Rizal and Marikina that OCT No. 468, upon which the respondents' title was allegedly based, does not exist.<sup>[21]</sup>

The petitioners further posit that the relocation survey report cannot prevail over the technical description of the property in their title. They likewise assail the relocation survey report by alleging that Pangyarihan, the chairman of the survey team, is the respondent in a number of criminal and administrative cases relating to the performance of his duties.<sup>[22]</sup>

The petitioners also claim that the CA mischaracterized their complaint as a complaint for damages. They submit that their complaint is not a simple case for damages but one for the recovery of possession over the disputed property on the strength of their ownership over the same. They blame the ambiguity of the complaint on the inadequacies of their former counsel.<sup>[23]</sup>

Finally, the petitioners assert that they were deprived of their right to due process because their previous counsel did not adequately defend them. They aver that their rights were prejudiced by their former counsel's negligence; hence, such negligent acts should not be binding on them.<sup>[24]</sup>

On the other hand, the respondents submit that the petitioners are now in estoppel to assail the veracity and validity of the relocation survey report since they actively participated in its preparation.<sup>[25]</sup> They assert that the survey report is entitled to full faith and credence as it was prepared and made by competent persons who were appointed by the trial court, represented the parties, and were qualified to exact a report based on their expertise.<sup>[26]</sup> They maintain that the petitioners' objection to the appointment of Pangyarihan as chairman of the survey team is a mere afterthought and they should have objected to it from the very start.<sup>[27]</sup>

The respondents aver that since the survey report revealed that there was error in the technical description of the petitioners' property and that it was the petitioners who usurped the respondents' property, the claim for damages can no longer be sustained.<sup>[28]</sup> The private respondents also assert that the fact that the plan and the verification of the survey plan of H-164008 do not exist in the records of the Register of Deeds is not sufficient proof that their title is defective.<sup>[29]</sup>

Further, the respondents submit that the dismissal of the complaint was not due to