

SECOND DIVISION

[G.R. NO. 155478, April 29, 2005]

**SPOUSES GUILLERMO AND ANDYLYNN HIZO, PETITIONERS, VS.
COURT OF APPEALS AND SAMMIE BACORRO, REPRESENTED BY
ATTORNEY-IN-FACT BENILDA BACORRO, RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

Before us is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 64612 and its resolution denying the motion for reconsideration thereof.

The Antecedents

Maria Tabayoyong acquired from the People's Homesite and Housing Corporation (PHHC) (now the National Housing Authority), a parcel of residential land located at Roxas District in Quezon City, with an area of 200 square meters, covered by Transfer Certificate of Title (TCT) No. RT-120464. The property, identified as Lot 6, Block LCH-28, Subdivision Plan No. Psd-10783, is bounded on the northeast by a road lot, Lot 16 (now Jasmin Street), and by Lot 13 on the southwest. She then had her house constructed on a portion of the property. In 1966, she also allowed her sister, the grandmother of petitioner Andylynn Hizo, to build a house on a portion of the property. There, Linda Noble resided together with her daughter Andylynn and the latter's husband, Guillermo Hizo. In time, Tabayoyong left the Philippines and resided in the United States of America (U.S.A). The grandparents of petitioner Andylynn Hizo also left for the U.S.A., leaving the house in the care of the spouses Hizo, who, in turn, leased a portion of the house to tenants from whom they received rentals.

On March 9, 1999, Tabayoyong sold the property to her nephew, private respondent Sammie T. Bacorro, a Filipino citizen, who later became a naturalized U.S. citizen. Based on the said sale, Bacorro was issued TCT No. N-205447 over the property in his name on April 30, 1999.^[2] He then prepared a contract of lease over a portion occupied by the spouses Hizo for a monthly rental of P2,000.00. The contract was then sent to them for their consideration and approval, but the latter rejected the same. In a Letter dated August 30, 1999, Bacorro wrote to the spouses Hizo and demanded that they vacate the property, but the latter refused to do so.

Bacorro filed a complaint for unlawful detainer against the spouses Hizo in the Metropolitan Trial Court (MTC) of Quezon City. He prayed that, after due proceedings, judgment be rendered in his favor, thus:

WHEREFORE, it is respectfully prayed that this Honorable Court render judgment ordering the defendants, including any and all persons claiming

right under it, to vacate the subject premises and to pay the plaintiff the rentals thereon from June 1999 up to and including those that may accrue hereafter, plus the sum of P75,000.00 as attorney's fees.

The plaintiff also prays for such other measures of relief which are just and equitable under the premises.^[3]

In their Answer to the complaint, the spouses Hizo alleged that Bacorro had no cause of action against them because it was their parents who built their house in 1966 on the property which was owned by the PHHC.^[4] Moreover, a criminal complaint was filed against Tabayoyong and Bacorro for falsification of a public document based on the latter's allegation in the deed of absolute sale that he was a Filipino citizen (when in fact he was a naturalized American citizen).

On March 6, 2000, the trial court rendered judgment in favor of Bacorro, ordering the spouses Hizo and all persons claiming rights under them:

- a) to immediately vacate the subject premises located at No. 92 Jasmin Street, Roxas District, Quezon City, and restore peaceful possession thereof to herein plaintiff;
- b) to pay the plaintiff the amount of TWO THOUSAND PESOS (P2,000.00) as monthly rental, to be computed from June 1999 and every month thereafter, until subject premises shall have been finally vacated;
- c) to pay the plaintiff the sum of TWENTY THOUSAND PESOS (P20,000.00) for and as attorney's fees; and
- d) to pay the costs of suit.

SO ORDERED.^[5]

The spouses Hizo received a copy of the decision on March 27, 2000 and appealed the same on April 4, 2000. The case was docketed as Civil Case No. 00-41612 in the Regional Trial Court (RTC). However, on March 31, 2000, Bacorro filed an Urgent Motion for a Writ of Execution Pending Appeal. The trial court granted the motion in an Order dated April 12, 2000. Apparently unaware of the same, Bacorro filed another motion for the issuance of a writ of execution on April 12, 2000 and set it for hearing on April 24, 2000. The spouses Hizo filed an Omnibus Motion for the recall of the April 12, 2000 Order, with an alternative plea for a stay thereof after the approval of their *supersedeas* bond.^[6] They also prayed for the elevation of the records of the case to the RTC. On May 29, 2000, the MTC denied the Omnibus Motion filed by the spouses Hizo and authorized the sheriff to enforce its decision.^[7]

The spouses Hizo filed a motion for the reconsideration^[8] of the Order, appending thereto the Sketch Plan of Geodetic Engineer Monico Macalindol. It was indicated therein that a 2/3 portion of the house was located in Lot 13, Blk. LCH-28, Psd-10783. Upon the denial of the motion, the spouses Hizo filed a petition for *certiorari* with the RTC, assailing the April 12, 2000 and May 29, 2000 Orders of the MTC. The case was docketed as Civil Case No. 00-41094. The spouses Hizo adduced in

evidence a copy of a Relocation Survey prepared and signed by Renato Obra and Rommel A. Perez, showing that 1/3 portion of their house occupied 18 square meters of Bacorro's property, while a 2/3 portion thereof occupied a portion of the lot between Lot 6 and Lot 13.

The petition was later dismissed.

In the meantime, the spouses Hizo filed their Memorandum on Appeal with the RTC in Civil Case No. 00-41612, and appended a copy of the Relocation Survey Plan of Obra and Perez. They maintained that the 2/3 portion of their house, which was outside Bacorro's property, should not be demolished; the MTC should have dismissed the complaint on the ground that the bigger portion of their house was outside the perimeter of Bacorro's property.

For his part, Bacorro averred in his Memorandum on Appeal that the 2/3 portion of the spouses Hizo's house occupied a portion of Lot 13 – a public alley – and, as such, the same was a nuisance which should be demolished.

In the meantime, Bacorro filed an urgent motion to direct the sheriff to enforce the writ of execution issued by the MTC. The spouses Hizo opposed the motion, contending that the enforcement of the writ on the 2/3 portion of their house located on Lot 13 was illegal. On October 10, 2000, the court issued an Order^[9] granting Bacorro's motion, finding irrelevant the spouses Hizo's contention that only a 1/3 portion of their house occupied the property owned by Bacorro.

On January 29, 2001, the RTC rendered judgment affirming the appealed decision with modification. It ruled that Bacorro's right of possession was limited to only an 18-square-meter area where the house of the spouses Hizo stood.^[10] The RTC further declared that the 2/3 portion of the said house located on a portion of Lot 13 was a public alley, as shown by the Report of Land Registration Authority Surveyor Jonathan Limpiada, appended as Annex H of Bacorro's Memorandum.^[11] The spouses Hizo received a copy of the decision on February 7, 2001.

Upon Bacorro's receipt of the decision on February 28, 2001, he filed a Motion to Clarify the Decision on March 14, 2001^[12] and prayed for the demolition of the entire house owned by the spouses Hizo. The said motion contained the following prayer:

WHEREFORE, plaintiff respectfully prays that the court clarifies to defendants that:

1. Defendants have no right whatsoever to re-occupy the house or any portion thereof as the land on which the house is situated partly on plaintiff's property and on a public alley; and
2. Defendants have no right-of-way over plaintiff's property that will enable them to re-occupy wholly or partly the house in dispute;
3. Plaintiff further moves and prays that he be allowed to demolish the whole house, it being an integral whole and by its very construction and location cannot be partly demolished without causing the total destruction of the whole house.

Plaintiff further prays for such other relief as the Honorable Court may deem just and equitable in the premises.^[13]

The spouses Hizo opposed the motion on the ground that the decision was clear and unambiguous. They also manifested that they would file a motion with the MTC for the execution of the decision as affirmed by the RTC upon the remand of the case records. They also averred that a motion for clarification of the decision was not a motion for reconsideration thereof; hence, did not stop the period for appeal *via* a petition for review with the CA under Rule 42 of the Rules of Court.^[14] As such, they claimed that the decision of the court had become final and executory.

On April 19, 2001, the RTC issued an Order^[15] granting the motion filed by Bacorro. The *falla* of the Order reads:

WHEREFORE, premises considered, the Court finds plaintiff's motion to clarify the decision and cause the demolition of the entire house in order and holds as follows:

- (1) That defendants have no right whatsoever over the subject property, the house and the adjoining public alley;
- (2) That since defendants have no right over the subject property, the house and the public alley, the court finds that there is no basis for them to move for the execution of the decision in their favor; and
- (3) That since defendants have no right over the house, the court will not direct them to demolish any portion of the house that rests on plaintiff's property; and
- (4) That plaintiff is authorized to demolish that portion of the house which rests on his property as well as the part which rests on the public alley.

Further, let the records of this case be remanded to the lower court for the implementation of the decision as modified and the order of demolition.

SO ORDERED.^[16]

The RTC declared that Bacorro had sought a partial reconsideration of its decision when he prayed for the demolition of the spouses Hizo's house on the ground that it partly rested on both Bacorro's property and a public alley immediately adjoining the latter's property. It is also declared that it was established that the public alley was an alternative access through which Bacorro could enter or exit from his property, and as such, the non-demolition of the subject house would block the latter's access; moreover, such structure constituted a fire hazard which endangered the life and property of Bacorro. The RTC went on to declare that Bacorro's actual possession or right to possession would not be fully and sufficiently protected and restored as long as the house or any part of it remained where it was.^[17]

The spouses Hizo filed a petition for review of the April 19, 2001 Order of the RTC before the CA. They alleged that for Bacorro's failure to file a motion for the

reconsideration of the RTC decision or to appeal therefrom via a petition for review, such decision had become final and executory under Rule 42 of the Rules of Court. They further averred that the respondent's motion for clarification of the said decision did not toll the period for appeal; hence, the decision of the RTC could no longer be amended or modified. The spouses Hizo claimed that, as such, the RTC erred in issuing the assailed order modifying its decision. They further averred that even if the motion filed by Bacorro is considered as a motion for reconsideration of the RTC decision, the April 19, 2001 Order was, in effect, an Amended Decision. Moreover, the 2/3 portion of the house located in an alienable public land could not be demolished at the instance of Bacorro.

On July 29, 2002, the CA rendered judgment dismissing the petition, holding that the assailed order of the RTC was an interlocutory one, and that the spouses Hizo should have filed a petition for *certiorari* under Rule 65 of the Rules of Court for the nullification of said order. The CA also held that the RTC treated Bacorro's motion for clarification as a motion for the reconsideration of its decision and, in fact, modified its decision and ordered the spouses Hizo to vacate the subject property. The CA concluded that Bacorro's motion suspended the running of the period for him to appeal the decision. Besides, even if its decision had become final and executory, the RTC had the authority to clarify its decision.

The spouses Hizo filed a motion for a reconsideration of the decision, insisting that:

I

THERE IS NO ANY (*SIC*) EVIDENCE TO SUPPORT RESPONDENT'S POSITION THAT THE 2/3 PORTION OF THE LAND UPON WHICH PETITIONERS' RESIDENTIAL HOUSE IS ERECTED IS A PUBLIC ALLEY; IF AT ALL, WHAT WAS PRESENTED BY THE RESPONDENT IS A MERE SKETCH PLAN, ALLEGEDLY PREPARED BY A PERSON WHO IS NOT AN ENGINEER, NOR A COMPETENT PERSON; ON THE CONTRARY, SAID 2/3 PORTION IS AN OPEN SPACE IDENTIFIED AS LOT NO. 13, BLK. LCH. 28, PSD. 10723 PER THE APPROVED SURVEY/VERIFICATION PLAN, CONDUCTED BY THE LRA, AS COMMISSIONED BY THE COURT, THROUGH ITS LICENSED GEODETIC ENGINEER.

II

GRANTING *ARGUENDO* (WITHOUT HOWEVER ADMITTING), SUBJECT 2/3 PORTION OF LAND IS A PUBLIC ALLEY (THE TRUTH [IS] IT WAS NOT), HAS (*sic*) PRIVATE RESPONDENT SAMMIE BACORRO, THE REQUIRED PERSONALITY TO FILE AN EJECTMENT SUIT AGAINST THE PETITIONER, INSOFAR AS THE 2/3 PORTION OF THE LOT OCCUPIED BY THE PLAINTIFF IS CONCERNED?

III

PRIVATE RESPONDENT'S MOTION FOR DEMOLITION CANNOT TAKE THE PLACE OF A MOTION FOR RECONSIDERATION, AND FOR FAILURE TO [DO] SO FILE THE REQUIRED MOTION FOR RECONSIDERATION, THE TRIAL COURT NOT ONLY SERIOUSLY ERRED BUT EVEN COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT SAID: