

SECOND DIVISION

[G.R. NO. 158646, June 23, 2005]

HEIRS OF JESUS M. MASCUÑANA, REPRESENTED BY JOSE MA. R. MASCUÑANA, PETITIONERS, VS. COURT OF APPEALS, AQUILINO BARTE, AND SPOUSES RODOLFO AND CORAZON LAYUMAS, RESPONDENTS.

DECISION

CALLEJO, SR., J.:

This is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 53117 affirming the Decision^[2] of the Regional Trial Court (RTC) of San Carlos City, Negros Occidental, which ordered the dismissal of the petitioners' complaint for recovery of possession and damages.

The Antecedents

Gertrudis Wuthrich and her six other siblings were the co-owners of a parcel of land identified as Lot No. 124 of the San Carlos City, Negros Occidental Cadastre, with an area of 1,729 square meters and covered by Transfer Certificate of Title (TCT) No. 1453-R (T-29937)-38.^[3] Over time, Gertrudis and two other co-owners sold each of their one-seventh (1/7) shares, or a total area of 741 square meters, to Jesus Mascuñana. The latter then sold a portion of his 140-square-meter undivided share of the property to Diosdado Sumilhig. Mascuñana later sold an additional 160-square-meter portion to Sumilhig on April 7, 1961. However, the parties agreed to revoke the said deed of sale and, in lieu thereof, executed a Deed of Absolute Sale on August 12, 1961. In the said deed, Mascuñana, as vendor, sold an undivided 469-square-meter portion of the property for P4,690.00, with P3,690.00 as down payment, and under the following terms of payment:

That the balance of ONE THOUSAND PESOS (P1,000.00) shall be paid by the VENDEE unto the VENDOR as soon as the above-portions of Lot 124 shall have been surveyed in the name of the VENDEE and all papers pertinent and necessary to the issuance of a separate Certificate of Title in the name of the VENDEE shall have been prepared.^[4]

On December 31, 1961, Mascuñana and Jose G. Estabillo executed a Deed of Exchange and Absolute Sale of Real Estate,^[5] in which Estabillo deeded to Mascuñana a portion of his property abutting that of Sumilhig on the southeast.

In the meantime, a survey was conducted for the co-owners of Lot No. 124 on July 9, 1962. The subdivision plan of the said lot was approved by the Director of Lands on August 2, 1962. The portion of the property deeded to Sumilhig was identified in the said plan as Lot No. 124-B.^[6]

Meanwhile, Mascuñana died intestate on April 20, 1965 and was survived by his heirs, Eva M. Ellisin, Renee Hewlett, Carmen Vda. de Opeña, Marilou Dy and Jose Ma. R. Mascuñana.

On April 24, 1968, Sumilhig executed a Deed of Sale of Real Property^[7] on a portion of Lot No. 124-B with an area of 469 square meters and the improvements thereon, in favor of Corazon Layumas, the wife of Judge Rodolfo Layumas, for the price of P11,000.00. The spouses Layumas then had the property subdivided into two lots: Lot No. 124-B-2 with an area of 71 square meters under the name of Jesus Mascuñana, and Lot No. 124-B-1, with an area of 469 square meters under their names.^[8] The spouses Layumas took possession of the property and caused the cutting of tall grasses thereon. Upon the plea of a religious organization, they allowed a chapel to be constructed on a portion of the property.^[9] In January 1985, the spouses Layumas allowed Aquilino Barte to stay on a portion of the property to ward off squatters.^[10] Barte and his kin, Rostom Barte, then had their houses constructed on the property.

On October 1, 1985, the spouses Layumas received a Letter^[11] from the counsel of Renee Tedrew, offering to buy their share of the property for US\$1,000.00. For her part, Corazon Layumas wrote Pepito Mascuñana, offering to pay the amount of P1,000.00, the balance of the purchase price of the property under the deed of absolute sale executed by Mascuñana and Sumilhig on August 12, 1961.^[12] However, the addressee refused to receive the mail matter.^[13]

Unknown to the spouses Layumas, TCT No. 8986^[14] was issued over Lot No. 124-B in the name of Jesus Mascuñana on March 17, 1986.

On November 17, 1986, the heirs of Mascuñana filed a Complaint^[15] for recovery of possession of Lot No. 124-B and damages with a writ of preliminary injunction, alleging that they owned the subject lot by virtue of successional rights from their deceased father. They averred that Barte surreptitiously entered the premises, fenced the area and constructed a house thereon without their consent. Attached as annexes to the complaint were TCT No. 8986 and a certification^[16] from the Office of the City Treasurer, Land Tax Division, vouching that the property in question was owned by the petitioners and that they had paid the taxes thereon until 1992.

In his answer to the complaint, Barte admitted having occupied a portion of Lot No. 124-B, but claimed that he secured the permission of Rodolfo Layumas, the owner of the subject property. He added that he did not fence the property, and that the petitioners did not use the same as a passageway in going to Broce Street from their house. Barte raised the following special defenses: (a) the petitioners were estopped from asserting ownership over the lot in question because they did not object when he occupied the said portion of the lot; (b) neither did the petitioners protest when a church was built on the property, or when residential houses were constructed thereon; (c) the petitioners still asked Barte and the other occupants whether they had notified Rodolfo Layumas of the constructions on the property; and (d) the heirs of Mascuñana, through the lawyer of Mrs. Renee M. Tedrew, even wrote a letter^[17] to Rodolfo Layumas on October 1, 1985, expressing her willingness to buy the subject property for US\$1,000.00.

On April 8, 1991, the spouses Layumas filed a Motion for Leave to Intervene,^[18] alleging therein that they had a legal interest in Lot No. 124-B-1 as its buyers from Sumilhig, who in turn purchased the same from Mascuñana. In their answer in intervention,^[19] the spouses Layumas alleged that they were the true owners of the subject property and that they had wanted to pay the taxes thereon, but the Land Tax clerk refused to receive their payments on account that the petitioners had already made such payment. The spouses Layumas further maintained that the petitioners had no cause of action against Barte, as they had authorized him to occupy a portion of Lot No. 124-B-1. The spouses Layumas also averred that the petitioners were estopped from denying their right of ownership and possession of the subject lot, as one of them had even offered to repurchase a portion of Lot No. 124-B via letter. The said spouses interposed a counterclaim for damages, claiming ownership over the property, and prayed, thus:

WHEREFORE, it is most respectfully prayed that this HONORABLE COURT render judgment in favor of the Intervenors and the defendant Aquilino Barte, ordering:

1. That the complaint against Aquilino Barte be dismissed with costs against the plaintiff;
2. That the Intervenors spouses Judge Rodolfo S. Layumas and Corazon A. Layumas be declared as the legal and true owners of Lot 124-B;
3. That the plaintiffs should deliver immediately to the Intervenors, TCT No. 8986 which is in their possession;
4. That the plaintiffs be made to pay to the Intervenors the sum of THIRTY THOUSAND (P30,000.00) PESOS moral damages; TEN THOUSAND (P10,000.00) PESOS attorney's fees plus THREE HUNDRED (P300.00) PESOS as appearance fee per hearing.

Intervenors pray for such other relief and remedies as may be deemed by this Honorable Court as just and equitable in the premises.

At the trial, intervenor Rodolfo Layumas testified that he and his wife bought the subject property in 1968, and that nobody objected to their possession of the land, including the petitioners. In 1970, a religious organization asked his permission to construct a chapel on the disputed lot; he allowed the construction since the same would be used for the *fiesta*. He further declared that part of the chapel still stood on the property. In 1985, a fire razed the town's public market, thereby dislocating numerous people. Barte was one of the fire victims, who also happened to be a good friend and political supporter of Rodolfo. Out of goodwill, Barte was allowed to occupy a portion of the said lot, along with some other fire victims. Rodolfo clarified that the others were to stay there only on a temporary basis, but admitted that Barte's children also stayed in the subject property.^[20]

Rodolfo Layumas further narrated that in 1987, Corazon wrote one of the petitioners-heirs, Pepito Mascuñana, requesting that the title of the lot be transferred in Sumilhig's name so that they could likewise arrange for the conveyance of the title in their names. Pepito failed to claim the letter, and thereafter, filed a case of ejectment against Barte and Rodolfo Layumas' brother-in-

law, Pepito Antonio. The case, the witness added, was dismissed as against the two parties. Offered in evidence were the following: a Sworn Statement on the Current and Fair Market Value of the Real Property issued in 1973 as required by Presidential Decree No. 76, and tax receipts.^[21]

Rodolfo Layumas admitted on cross-examination that at the time they bought the property from Sumilhig, the title was still in the possession of the Wuthrich family. He added that he filed an adverse claim before the Register of Deeds of San Carlos City, Negros Occidental, on Lot No. 124-B in January 1986, or after the case had already been filed in court. Lastly, the witness deposed that he did not fence the property after buying the same, but that his brother-in-law constructed a cocolumber yard thereon upon his authority.^[22]

On January 30, 1996, the trial court rendered judgment in favor of Barte and the spouses Layumas. The *fallo* of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of Intervenors-counterclaimants and defendant and against plaintiffs-counterclaim defendants ordering as follows:

1. The dismissal of the plaintiff's complaint with costs against them;
2. The plaintiffs to jointly pay Intervenors-counterclaimants now RTC Judge Rodolfo S. Layumas and Corazon A. Layumas:

- (a) P10,000.00 for attorney's fees; and
- (b) P30,000.00 as moral damages;

3. The plaintiffs, as counterclaim defendants, to comply with the above-stated obligation of their late father, Mr. Jesus Mascuñana, under the Deed of Absolute Sale, Exh. "3", pp. 92-93, Exp., thru plaintiff Mr. Jose Mascuñana, including the desegregation (sic) survey to desegregate the 469-square-meter portion of said Lot No. 124-B, San Carlos Cadastre, this province, sold to the late Diosdado Sumilhig, if the same has not yet been done despite what has been said herein earlier to said effect, and the execution of the Final Deed of Sale in their capacity as the heirs and successors-in-interest of the late Mr. Jesus Mascuñana, thru Mr. Jose Mascuñana, covering the 469-square-meter desegregated portion of said Lot No. 124-B, within sixty (60) days counted from the finality of this Decision, in favor of the Intervenors-spouses, after which the said Intervenors-spouses shall pay them, thru Mr. Jose Mascuñana, the P1,000.00 balance due to them as successors-in-interest of the late Mr. Jesus Mascuñana;
4. In case plaintiffs fail to comply with what are herein ordered for them to do, the Clerk of Court V of this Court to do all that they were to do as herein ordered in the text and dispositive portion hereof, at the expense of Intervenors spouses to be later reimbursed by plaintiffs, including the desegregation (sic) survey of said 469-square-meter portion of said Lot [No.] 124-B, San Carlos Cadastre, Negros Occidental, if the same has not yet been done and

the execution of the Final Deed of Sale on behalf of all the plaintiffs as heirs and successors-in-interest of the late Mr. Jesus Mascuñana covering the said desegregated portion of 469 square meters of the aforesaid lot, in favor of Intervenors spouses, to the end that separate title therefor may be issued in their names, after they shall have paid the P1,000.00 balance due plaintiffs under said Deed of Absolute Sale, Exh. "3."

SO ORDERED.^[23]

Forthwith, the petitioners appealed the case to the CA, raising the following issues of fact and law:

- a. Whether or not the contract of alienation of Lot No. 124-B in favor of Diosdado Sumilhig in 1961 was a contract to sell or a contract of sale;
- b. Whether or not Diosdado Sumilhig had any right to sell Lot No. 124-B in favor of intervenor Corazon Layumas in 1968.^[24]

On May 5, 2003, the CA affirmed the decision of the trial court. It ruled that the contract between the petitioners' father and Sumilhig was one of sale. Foremost, the CA explained, the contract was denominated as a "Deed of Absolute Sale." The stipulations in the contract likewise revealed the clear intention on the part of the vendor (Mascuñana) to alienate the property in favor of the vendee (Sumilhig). In three various documents, the late Mascuñana even made declarations that Sumilhig was already the owner of the disputed land. The CA added that the admission may be given in evidence against Mascuñana and his predecessors-in-interest under Section 26, Rule 130 of the Revised Rules on Evidence. As to the argument that the contract between Mascuñana and Sumilhig was not effective because it was subject to a suspensive condition that did not occur, the CA ruled that the condition referred to by the petitioners refers only to the payment of the balance of the purchase price and not to the effectivity of the contract.

As to the petitioners' contention that even if the contract were one of sale, ownership cannot be transferred to Sumilhig because Mascuñana was not yet the owner of the lot at the time of the alleged sale, the appellate court ruled that the registration of the land to be sold is not a prerequisite to a contract of sale.

The Present Petition

Aggrieved, the petitioners filed the instant petition for review on *certiorari* with this Court, where the following lone legal issue was raised:

WAS THE SALE OF LOT NO. 124-B MADE BY JESUS M. MASCUÑANA IN FAVOR OF DIOSDADO SUMILHIG A CONTRACT TO SELL OR CONTRACT OF SALE?^[25]

We note that the original action of the petitioners against Aquilino Barte was one for recovery of possession of Lot No. 124-B. With the intervention of the respondents Rodolfo and Corazon Layumas who claimed ownership over the property, and the acquiescence of the parties, evidence was adduced to prove who, between the petitioners (as plaintiffs) and the respondents (as defendants-intervenors) were the