

SECOND DIVISION

[G.R. No. 128862, September 30, 1999]

ESTRELLA REAL ESTATE CORPORATION, PETITIONER, VS. COURT OF APPEALS AND HEIRS OF GONZALO TAN NAMELY, CAROLINA TAN, MERLY TAN, MELISSA TAN AND MARITESS TAN, RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

This petition for review on certiorari seeks to annul the 27 November 1996 Decision of the Court of Appeals which affirmed the Decision of the Regional Trial Court, Br. 122, Kalookan City, in its Civil Case No. 15438 declaring the heirs of Gonzalo Tan as true owners of the two-story building standing on Lot No. 285, A. Mabini St., Kalookan City, owned by Estrella Real Estate Corporation (ESTRELLA).

Gonzalo Tan was the absolute owner of a parcel of land located along A. Mabini St., Kalookan City, with an area of 2,020.18 square meters, more or less, as evidenced by TCT No. 22003. In 1952 Gonzalo allowed his brother Cenon Tan to construct a house on a portion thereof facing A. Mabini St. and referred to as House No. 193, now House No. 285, A. Mabini St., Kalookan City. Cenon had House No. 285 declared under Tax Declaration No. 6373 in his name and described the property as a one-story house made of strong materials with an aluminum roofing and a floor area of 37.44 square meters, and built on the land of Gonzalo Tan. Cenon gradually made improvements on the property over the years by extending the floor area of the house and putting up a second floor.

On 15 October 1958 Gonzalo Tan sold the entire lot to Gaw Bros. & Co., Inc., with their Deed of Absolute Sale specifying that the property subject thereof was "a parcel of land together with the improvements thereon (except those belonging to other persons) situated in Caloocan, Rizal, and more fully described in Transfer Certificate of Title No. 22003." Thereafter, TCT No. 22003 was cancelled and TCT No. 62712 was issued in the name of Gaw Bros. & Co., Inc.

Sometime in 1960 Cenon Tan sold House No. 285 in A. Mabini St. to his brother Gonzalo Tan by way of a verbal sale. The latter, together with his family, took possession of the property and made improvements thereon.

On 7 February 1977 Gaw Bros. & Co., Inc., sold the land to its sister company, petitioner Estrella Real Estate Corporation (ESTRELLA), and TCT No. C-4255 was issued in the vendee's name.

On 1 December 1980 Gonzalo Tan through his son Guillermo leased the ground floor of House No. 285 to Amalia Abata and Josephine Catalan. After Abata left in 1983 Catalan continued with the lease, setting up a furniture store on the ground floor

under the name "Jade Furniture."

Meanwhile, on the same parcel of land now owned by ESTRELLA stood another house owned by Francisco Tan with address at No. 1911-Int. 5, Kalookan City. In 1982 Francisco demolished the house for a consideration from ESTRELLA. Thereafter, the lot, which was located at the back of House No. 285 although separated by a vacant lot between them, was left idle.

In December 1983 Josephine Catalan, lessee of the ground floor of House No. 285, entered into a lease contract with ESTRELLA over Lot No. 1911 which was renewed on an annual basis until 1991.

On 14 June 1991 ESTRELLA filed an ejectment suit for non-payment of rentals against Josephine Catalan before the Metropolitan Trial Court of Kalookan City, docketed as Civil Case No. 19962. In its complaint, ESTRELLA represented itself as the owner of a commercial apartment located at and known as No. 1911-Int. 5, A. Mabini St., Kalookan City, the frontage of which is House No. 285 also at A. Mabini St., Kalookan City. The lower court ruled in favor of ESTRELLA and ordered the ejectment of Catalan. Catalan interposed successive appeals to the Regional Trial Court and Court of Appeals but to no avail. ESTRELLA then moved for execution pending appeal which was granted by the Metropolitan Trial Court, Br. 52. Thereafter, a writ of execution was issued and Deputy Sheriff Leonardo Calalang enforced the writ not only against Catalan but also against herein private respondent-heirs of Gonzalo Tan, namely, Manuel, Jaime, Corazon, Dominador Jr., Carolina, Merly, Marissa, Melissa and Maritess, all surnamed Tan, who continued possession of the second floor of House No. 285 after Gonzalo Tan died in 1991.

Fearing that they would be thrown out of House No. 285, respondent-heirs of Gonzalo Tan, except Manuel Tan, filed a complaint for Quieting of Title before the Regional Trial Court of Kalookan City, Br. 122, docketed as Civil Case No. C-15438. Manuel Tan, together with his wife, filed a separate Petition for Prohibition with the Regional Trial Court of Kalookan City, Br. 127, docketed as Civil Case No. C-296. In both cases, the two branches issued a temporary restraining order (TRO) enjoining petitioner ESTRELLA from evicting private respondents from House No. 285.

In the case for Quieting of Title, respondent-heirs of Gonzalo Tan subsequently amended their complaint to implead MTC Judge Delina H. Santiago and Deputy Sheriff Calalang as defendants after the latter served them with a Notice to Vacate pursuant to an alias writ of execution, notwithstanding the effectivity of the TRO. The court *a quo* then caused a copy of the TRO to be served on defendants Judge Santiago and Deputy Sheriff Calalang.

During the preliminary hearing on private respondents' application for the issuance of a writ of preliminary injunction, petitioner corporation, through its President, Enrique Castillo, claimed that it was the registered owner not only of Lot. No. 1911 but of House No. 285 as well. Petitioner alleged that Gonzalo Tan was a tenant of the corporation and paid rentals for the use of the house and lot. Castillo also testified that in 1984 Gonzalo Tan allegedly told him that he was already getting too old to carry on with the lease of the house and could no longer afford the same. Gonzalo allegedly proposed that his sublessee, Josephine Catalan, take over the lease. Castillo agreed and granted Catalan's subsequent request that Lot No. 1911 be also included in the lease. Hence, petitioner contended that private respondents

should also be evicted since they derived their right of possession from Catalan.

After conducting preliminary hearings, both Regional Trial Courts issued a writ of preliminary injunction enjoining petitioner ESTRELLA and all persons acting under it from evicting private respondents. Dissatisfied, ESTRELLA filed a Petition for Certiorari before the Court of Appeals, docketed as CA-G.R. SP No. 19885, which the appellate court however denied.

After trial on the merits, including an ocular inspection on the premises, RTC-Br. 122 rendered a decision in favor of private respondent-heirs of Gonzalo Tan in Civil Case No. C-15438 declaring them as the true and absolute owners of House No. 285; ordering petitioner ESTRELLA to pay P20,000.00 as attorney's fees; declaring permanent the preliminary injunction issued against petitioner; and, dismissing the counterclaim of private respondents against petitioner.

Both parties appealed. On 27 November 1996 the Court of Appeals affirmed the decision of the trial court with the modifications that (a) petitioner should pay private respondents P50,000.00 for moral damages, P20,000.00 for exemplary damages and another P20,000.00 for attorney's fees; (b) the Kalookan City Assessor's Office to issue a tax declaration in the name of private respondents over House No. 285; and, (c) the Register of Deeds of Kalookan City to annotate the fact of ownership of private respondents over House No. 285 on petitioner's TCT No. C-4255 covering the land. The appellate court did not give credit to petitioner's contention that Gonzalo Tan leased House No. 285 from ESTRELLA since it failed to present any lease contract between them. Neither could it show any receipt evidencing payment of rentals by Tan over House No. 285. The only evidence of the alleged lease was the bare assertion of its President Enrique Castillo that there existed a verbal lease between ESTRELLA and Tan, which the appellate court did not sustain.

Moreover, the Court of Appeals found that the lease contracts from 1984 to 1990 between petitioner and Josephine Catalan indicated the subject of the lease as a "certain parcel of land, situated at No. 1911 Interior 5, A. Mabini Street, Kalookan City" and did not include House No. 285. It was only when the contract was renewed on 10 January 1990 that the subject of the lease was described as an apartment building. Most telling was the Deed of Sale between Gonzalo Tan and Gaw Bros. & Co. which identified that "the parcel of land together with the improvements thereon (except those belonging to other persons)" was the property sold. Notwithstanding the fact that House No. 285 was not included in the sale, ESTRELLA's TCT gave the impression that it was the owner of the parcel of land and the improvements thereon. Hence, the appellate court concluded that ESTRELLA knew that House No. 285 was not included in the sale between Gonzalo Tan to Gaw Bros. & Co., Inc., but which fact was not annotated on its TCT.

Hence the instant petition alleging that the Decision of respondent appellate court has no legal and factual basis in holding that House No. 285 was built by Cenon Tan as one of the improvements excluded in the 1958 contract of absolute sale; in ordering the issuance of a tax declaration over House No. 285 in the name of private respondents and the annotation of the ownership of the latter in petitioner's TCT No. C-4255; and, in holding petitioner liable for damages, attorney's fees and costs of suit.