

## THIRD DIVISION

[ G.R. No. 118744, January 30, 1998 ]

**IRENEO V. GUERRERO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, JOSEFA VDA. DE ALMEDA, ANGELITA A. CRUZ, ERLINDA A. CHIKIAMCO, FREDESVINDA A. CONSUNJI, ZENAIDA A. ROXAS, EMMANUEL M. ALMEDA, ERMELO M. ALMEDA, DOMINADOR M. ALMEDA AND BENJAMIN M. ALMEDA, RESPONDENTS.**

### DECISION

**ROMERO, J.:**

Petitioner Ireneo Guerrero seeks to set aside the resolution<sup>[1]</sup> of the Court of Appeals which awarded to private respondents the ownership of two lots in Camarines Sur.

The facts, as found by the Court of Appeals, are as follows:

On August 12, 1971, the then Court of First Instance of Camarines Sur issued a decision in Cadastral Case No. N-4, LRC Cadastral Record No. 81, adjudicating Lots Nos. 735 and 742 situated in Naga City to Felipa Balandra (Balandra) on the basis of which, Decree No. N-138629 was issued. Consequently, on February 29, 1972 the Registry of Deeds of Naga City issued Original Certificate of Title No. 396 to Balandra which covered the two (2) lots.

On February 17, 1973, Balandra sold the lots to petitioner. Subsequently, Transfer Certificate of Title No. 6864 was issued to him.

On August 14, 1973, petitioner filed a complaint against Josefa Almeda (Almeda) with the then CFI of Camarines Sur (presided over by Judge Delfin Vir. Sunga who had earlier issued the decision in the cadastral case) for quieting of title and recovery of possession of real property with damages. Petitioner alleged that the agents of Almeda had driven him and his men out of the lots by force, threats and intimidation and has since been gathering the fruits thereof.

Almeda, in her answer, claimed ownership and long-standing possession over the lots. She stated that petitioner acquired the lots from Balandra in bad faith knowing that Almeda was the real owner, and that Balandra obtained OCT No. 396 by means of fraud.

During the trial of the case, Almeda showed that the lots were bought by a certain Fidel Pascua from one Rosario Villareal, which he later sold to Almeda's husband Dominador and two other persons, namely Macario Guballa and Gregorio Sison per a Deed of Absolute Sale registered in the Registry of Unregistered Property on June 24, 1953. When Dominador died on April 13, 1965, his heirs (herein private

respondents) and Guballa and Sison partitioned the property they owned in common and the two subject lots were allotted to the heirs of the Almeda couple. The latter has since been paying the taxes on the property.

The trial court rendered a decision in the case, the dispositive portion of which states:

"WHEREFORE, premises considered, decision is hereby rendered in favor of plaintiff and against defendant:

(1) Quieting the plaintiff's title to the two parcels of land described in the complaint and/or removing the cloud cast thereon by the defendant, by declaring the plaintiff the lawful owner thereof and entitled to their possession;

(2) Ordering the defendant to vacate said property and to restore the possession thereof to the plaintiff;

(3) Ordering the defendant to pay the plaintiff the value of the fruits of said property at the rate of P50,000.00 a year or P450,000.00 for nine years covering the periods 1973 to 1982, inclusive, with interest until paid; P25,000.00 expenses for labor and construction materials; P10,000.00 as moral damages; and P2,000.00 as attorney's fees and other expenses incident thereto;

(4) Ordering defendant to pay the costs of suit. The counterclaim of defendant is hereby dismissed.

SO ORDERED."

Almeda then went to the Court of Appeals which affirmed in toto the decision of the trial court on January 31, 1981. On March 1, 1986, the appellate decision became final and executory. Entry of judgment was made on May 19, 1986 and the records were remanded to the trial court.

On July 17, 1986, petitioner filed a Motion for Execution and the court issued a writ of execution which was served on Almeda on August 4, 1986. By virtue of the said writ, some real properties of Almeda were attached and levied on execution.

On August 1, 1986, Almeda filed a Motion to Vacate Entry of Judgment and Set Aside Order of the RTC dated July 23, 1986, as well as the Writ of Execution and to Recall Records of the Case. She also asked for Leave to File Motion for Reconsideration on the ground that a copy of the appellate court's decision was not personally received by Almeda's then counsel Atty. Jacobo Briones because he was in the States at that time. The same was received instead by one Mrs. Brigida M. Pangiliwan, Atty. Briones' former clerk.

On August 15, 1986, the appellate court denied Almeda's motion to vacate entry of judgment.

Meanwhile, private respondents Angelita, Erlinda, Fredesminda, Zenaida, Emmanuel, Ermelo, Dominador and Benjamin, the children of Josefa and Dominador Almeda,

filed an urgent ex-parte motion to be allowed to file a third party claim and to lift the levy on execution on their properties.

On September 9, 1986, Almeda filed a Motion for Reconsideration of the resolution which denied her Motion to Vacate Entry of Judgment.

The appellate court, in a resolution dated September 23, 1986, required petitioner to comment on the said motion and ordered the sheriff to desist from implementing the writ of execution in order that the motion for reconsideration would not become moot and academic.

The appellate court required the transmittal of the records back to it to resolve the Motion for Reconsideration.

On June 8, 1989, the Almeda children filed a petition with the same court seeking the annulment of the judgment in Cadastral Case No. N-4, LRC Cadastral Records No. 81, CFI Camarines Sur, Branch I, and of the judgment rendered in Civil Case No. R-176 (7259), CFI Camarines Sur, Branch I, for damages, and with motion for the issuance of a temporary restraining order and/or writ of preliminary injunction. The respondents in the petition were herein petitioner, Balandra and Judge Sunga.

Considering that the appeal in one case and the petition in the other were both filed by private respondents against petitioner and involving the same facts, the appellate court consolidated the two cases. An amended petition was later filed substituting Alfredo Balandra Balo for Balandra upon the latter's death.

In their petition for annulment of judgment, private respondents traced their title and claim of ownership to their father Dominador T. Almeda and stated that Balandra, by means of fraud, obtained a decree in her name in the cadastral case. They further claimed that Judge Delfin Vir. Sunga and his staff were involved in the fraud.

On May 22, 1991, Judge Sunga and Balo were declared by the appellate court in default for their failure to file their respective Answers.

The case was set for hearing and the appellate court scheduled a pre-trial conference. It issued a resolution on November 24, 1993 containing a pre-trial statement with the following partial stipulation of facts:

1. On August 12, 1971, then Presiding Judge, Hon. Delfin Vir. Sunga of the Court of First Instance of Camarines Sur rendered judgment in Cad. No. N-4, LRC No. N-81 (Exh. 'C').
2. By virtue of the August 12, 1971 Decision of Judge Delfin Vir. Sunga, the then Commissioner of Land Registration Gregorio Bilog, Jr. issued Decree No. N-138629 in favor of Felipa Balandra (Exh. 'B-2').
3. Based on Decree No. N-138629, Rolando G. Alberto, then Register of Deeds for Naga City, issued OCT No. 396 to Felipa Balandra on April 12, 1972 (Exh. 'B').
4. OCT No. 396 covers the subject Lots 735 and 742, situated in Barrio Cararayan, Naga City, Camarines Sur.