

## FIRST DIVISION

[ G.R. No. 102833, February 09, 1996 ]

**LOLITA AMIGO AND ESTELITA VDA. DE SALINAS, PETITIONERS,  
VS. THE HONORABLE COURT OF APPEALS, HONORABLE  
AUGUSTO V. BREVA, AS JUDGE, RTC OF DAVAO, BRANCH X, THE  
SHERIFF OF THE RTC REPRESENTED BY ALFONSO M. ZAMORA,  
DEPUTY SHERIFF OF BRANCH X, AND JESUS WEE ENG,  
RESPONDENTS.**

### DECISION

**VITUG, J.:**

Challenged in the petition for review on certiorari is the decision of the Court of Appeals rendered on 12 November 1991<sup>[1]</sup> dismissing the petition to annul the writs of execution and demolition issued by the Regional Trial Court of Davao City, Branch 10,<sup>[2]</sup> in the implementation of its final judgment of eviction against herein petitioners in Civil Case No. 10363.

Petitioners Lolita Amigo and Estelita vda. de Salinas leased in 1961 from Mercedes Inigo, a parcel of land, also known as Lot 502-C-9, Psd-I0752, located along Leon Garcia St., Agdao District, Davao City, registered in the lessor's name under TCT No. T-5454. Petitioners constructed their houses on the lot. Mercedes Inigo later sold and transferred her ownership of the land to Juan Bosquit and herein private respondent Jesus Wee Eng. TCT No. T-5454 was cancelled and another title, TCT No. 13659, was issued on 28 May 1964 jointly in the names of the two vendees.

On 17 December 1966, Bosquit and Wee entered into a deed of exchange with the City Government of Davao. Bosquit and Wee exchanged a portion of their Lot 502-C-9 for also a portion of Lot No. 502-C-11 under TCT No. T-5788 in the name of the city. The transaction was authorized and approved by the City Council of Davao.<sup>[3]</sup>

In order to delineate the portion of Lot 502-C-9 ceded to the city government, Bosquit and Wee caused the preparation of plan Psd-i 1-00025 8 subdividing the property into Lot 502-C-9-A and Lot 502-C-9-B. For its part, the city government caused the subdivision of Lot 502-C-11 into Lot 502-C-11-A and Lot 502-C-11-B. In consonance with the agreement, TCT No. T-13659 held by Bosquit and Wee was cancelled and in lieu thereof, two separate certificates of title were issued: TCT No. 46656 in the name of the City Government of Davao covering Lot 502-C-9-A, and TCT No. 46657 in the names of Bosquit and Wee corresponding to Lot 502-C-9-B. In turn, TCT No. T-5788 in the name of the city government, was cancelled and two separate titles were issued: TCT No. T-51826 in the names of Bosquit and Wee for Lot 502-C-11-A and TCT No. T-51827 in the name of the city government over Lot 502-C-11-B.

On 01 October 1969, Bosquit and Wee instituted an action for unlawful detainer

against petitioners before the City Court of Davao (Civil Case No. 1561-A). After almost seven years, or on 19 July 1976, the city court finally dismissed the action on the technicality that the plaintiffs did not observe the required 15-day period from the sending of the letter of demand before filing the action, the letter having been sent instead on 19 September 1969 or only twelve days before the filing of the action.<sup>[4]</sup>

On 25 October 1976, Bosquit sold his rights and interests over Lots 502-C-9-B and 502-C-i 1-A to Wee. The titles over the property were thereupon cancelled and TCT No. T-53041 and TCT No. T-53042 were issued solely in the name of Wee.

On 22 July 1977, Wee, herein private respondent, filed a complaint (docketed Civil Case No. 10363) against petitioners in the then Court of First Instance of Davao, Branch III, for recovery of the real property in question. On 08 September 1978, after the petitioners had filed their answer, the court appointed Orville O. Bueno, a duly licensed geodetic engineer, its commissioner to conduct a relocation survey of the boundaries of the land. In his report, dated 27 November 1978, Bueno stated that -

"x x x portions of about two-thirds (2/3) of the houses of Lolita Amigo and that of Estelita Vda. de Salinas is inside of Lot 502-C-9-B, Psd-i 1-000258, covered by TCT No. T-53041, issued in the name of Jesus Wee Eng; the remaining one-third of it lies on the road widening and the creek respectively."<sup>[5]</sup>

Whereupon, private respondent sought an amendment of his complaint which was allowed by the lower court on 13 November 1979.<sup>[6]</sup> As so amended, the complaint prayed not only for the recovery of real property and damages but also for an abatement of nuisance<sup>[7]</sup> over the portion of the improvements introduced by petitioners that encroached on the sidewalk of Leon Garcia Street.

In their amended answer, petitioners denied the material allegations of the amended complaint. Petitioners stressed that their houses stood neither on private respondent's land nor on the sidewalk or shoulders of Leon Garcia Street but along the banks of the Agdao Creek.

Parenthetically, in 1982, during the pendency of Civil Case No. 10363, petitioners Amigo and Salinas were designated census-beneficiaries of their respective areas (Tag No. 82-A-0342 and Tag No. 82-A-0341)<sup>[8]</sup> under a so-called City of Davao RCDP-NHA Agreement.

After a full reception of the evidence, the trial court, on 23 September 1983, rendered its decision which held:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff:

**"UNDER THE FIRST CA USE OF ACTION**

"1. Ordering the defendants to vacate the portions of land occupied by them as appearing in the Commissioner's Report (Exhibits 'C' and 'D')

and to deliver the same to the plaintiff; and

"2. To pay the plaintiff the amount of THIRTY (P30. 00) PESOS each per month for the use of plaintiff's land, to be reckoned from the date of judicial demand on July 22, 1977 until defendants shall have vacated the premises in question.

**"UNDER THE SECOND CA USE OF ACTION**

"1. The defendants are hereby ordered to demolish the portions of their houses constructed on the road widening of Leon Garcia Street which constitute a nuisance per se;

"2. To pay plaintiff the amount of TWO THOUSAND (P2,000.00) PESOS for and as attorney's fees; and

"3. To pay costs.

"All other claims and counterclaims are hereby DISMISSED.

"SO ORDERED."<sup>[9]</sup>

Petitioners appealed the decision to the Court of Appeals (AC-G.R. CV No. 02405). In its resolution of 29 November 1984, however, the appellate court dismissed the appeal for the failure of petitioners to file an appeal brief.<sup>[10]</sup> A petition for relief from the order of dismissal was denied by the appellate court, in a resolution of 09 July 1985, for having been filed beyond the reglementary period)<sup>[11]</sup>

In due time, private respondent moved for execution of the judgment. The lower court, in its order of 28 October 1988, granted the motion and ordered the issuance of the corresponding writ.<sup>[12]</sup> An omnibus motion to quash the writ of execution<sup>[13]</sup> filed by petitioners was denied by said court on 27 January 1989.<sup>[14]</sup> Private respondent, forthwith moved for a special order of demolition which the court granted on 13 March 1989.<sup>[15]</sup>

Meanwhile, on 02 March 1989, petitioners filed with the Court of Appeals an action (docketed CA-G.R. SP No. 16979) for the annulment of the trial court's decision of 23 September 1983, as well as all orders and proceedings subsequent thereto, including the various writs of execution and demolition.<sup>[16]</sup> Petitioners contended that the judgment rendered by the lower court was void for want of jurisdiction.

On 08 March 1989, the Court of Appeals granted petitioners' prayer for a temporary restraining order.<sup>[17]</sup> The restraining order was lifted when, on 12 November 1991, the appellate court ultimately dismissed the petition.<sup>[18]</sup>

Petitioners instituted the instant petition for review on certiorari raising several questions:

1. Whether or not the court a quo acquired jurisdiction over the subject matter and their person in the case at bench;