

TWENTY-THIRD DIVISION

[CA-G.R. CV NO. 02978-MIN, February 27, 2015]

LORETA SOCO-RIVERA, PLAINTIFF-APPELLEE, VS. LOURDES COLALJO BOLE^[1] AND SPOUSE,^[2] DEFENDANTS-APPELLANTS.

DECISION

SANTOS, J.:^[3]

Before this Court is an appeal from the Order^[4] dated November 6, 2011 of the Regional Trial Court, Branch 4, Panabo City, Davao del Norte (trial court), in Civil Case No. 93-62 for Recovery of Possession, Damages and Attorney's Fees.

The Antecedents

Plaintiff-appellee Loreta Soco-Rivera and her husband Francisco Rivera own a parcel of land known as Lot No. 187, Psd-340049 with an area of 92,252 square meters situated at *Barangay* Nanyo, Municipality of Panabo, Davao del Norte and covered by Original Certificate of Title (OCT) No. P-18322^[5] registered in the name of Francisco Rivera. Defendants-appellants Lourdes Colaljo Bule and her husband, Lucrecio Bule, on the other hand, also own a parcel of land adjacent to the land of plaintiff-appellee known as Lot No. 1777-B, Psd-20436-D with an area of 118,357 square meters and covered by OCT No. P-17232^[6] registered in the name of Florentino Colaljo, the father of defendant-appellant Lourdes Colaljo Bule.

On October 2, 1985, in Sp. Case No. 2811,^[7] the court therein issued an Order which appointed plaintiff-appellee as the administrator of her and her husband's conjugal properties, with the authority to take possession thereof for their preservation.

On September 6, 1993, plaintiff-appellee filed a Complaint^[8] for Recovery of Possession, Damages and Attorney's Fees against defendants-appellants. Plaintiff-appellee claimed that defendants-appellants, without any color of title, willfully and unlawfully intruded into a portion of her land covered by OCT No. P-18322. Based on the sketch plan^[9] prepared by one Engr. Josefino M. Vedula, defendants-appellants occupied a total of 8,024 square meters of plaintiff-appellee's land. However, despite repeated demands, defendants-appellants refused to vacate the area. Plaintiff-appellee added that resort to amicably settle the case before the Office of the *Barangay* Captain of *Barangay* Nanyo, Panabo proved futile. Thus, plaintiff-appellee prayed that a judgment be rendered ordering defendants-appellants to vacate the area, and since plaintiff-appellee is continuously deprived of the right to use such area, she prayed that defendants-appellants be directed to pay her P50,000.00 as damages, P1,000.00 as rent, P20,000.00 as attorney's fees with P500.00 per court appearance of her counsel, and P20,000.00 as litigation expenses.

On October 5, 1993, defendants-appellants filed an Answer^[10] which denied the material allegations of the Complaint and stated that this case is one of overlapping of boundaries of adjoining lands. Defendants-appellants contended that their OCT No. P-17232 was issued on December 14, 1964 while that of plaintiff-appellee's OCT No. P-18322 was only issued on August 8, 1966. Thus, on August 8, 1966 when OCT No. P-18322 was issued as patent to plaintiff-appellee's husband, Francisco Rivera, a portion thereof is already considered a private property because the same has already formed part of OCT No. P-17232, the patent of defendant-appellant Lourdes Colajo Bole's father, Florentino Colaljo. Since defendants-appellants' patent was issued ahead of plaintiff-appellee's, the earlier patent prevails, the same having become indefeasible and incontrovertible after the expiration of one year from its issuance. Moreover, defendants-appellants claimed that they have already informed plaintiff-appellee that the disputed property is within their land as shown in the sketch plan^[11] prepared by one Engr. Mario N. Alaba. As a counterclaim, defendants-appellants averred that plaintiff-appellee should be adjudged to pay P200,000.00 as moral damages due to her unwarranted act of filing the complaint knowing fully well that she has no valid cause of action against them, P300,000.00 as exemplary damages to set an example for other similarly situated persons not to file complaints indiscriminately and P50,000.00 as attorney's fees as defendants-appellants were constrained to engage the services of a counsel to protect their rights.

On January 20, 1994 during the pre-trial conference of the case, the trial court issued an Order^[12] which appointed Engr. Rogelio Trabado (Engr. Trabado) to conduct an immediate relocation survey on the properties of the parties. The Order stated:

During the pre-trial conference, the counsel for the plaintiff appeared together with plaintiff and the counsel for the defendants, together with the defendants also appeared.

Atty. Melchor V. Quitain, counsel for the plaintiff, manifested that his client is willing for the court to issue an order for a relocation survey of the boundaries of the opposing parties who are adjacent owners. Counsel for the defendants, Atty. Faustino C. Fanlo, gave his conformity in open court that his clients are also willing for the court to order a relocation survey.

Both counsel agreed that the issue in this case will rise and fall on the result of the relocation survey.

With their respective suggestions on the geodetic engineer to be hired, it seems that both have their own and **eventually both agreed that the court will appoint a geodetic engineer to act as commissioner coming from Panabo.**

The Court, with the conformity of the opposing counsel, is appointing Engr. Rogelio Trabado to conduct an immediate relocation survey on the properties subject of this case directing the two counsel(s) to submit to the court their respective titles of the

opposing parties which will be the basis of the relocations survey, the date of which will be decided by the counsel(s) or by their respective clients.

The commissioner, if he will accept his commissionership, must take his oath before the Clerk of Court of this court and after the relocation survey in detail, report must be submitted with the technical description of the respective titles to be submitted to the court and which result will be the basis of the decision of the court. The professional fees of the geodetic engineer will be shouldered by the opposing parties on a 50-50 basis.

SO ORDERED. (Emphasis supplied)

On February 23, 1994, Engr. Trabado submitted a Commissioner's Report^[13] with attached sketch plan^[14] which showed that defendants-appellants encroached on plaintiff-appellee's Lot No. 187 by 2,559 square meters.

On March 2, 1994, defendants-appellants filed a Motion to Set for Hearing the Commissioner's Report.^[15] Subsequently, on August 5, 1994, defendants-appellants also filed a Comment on the Commissioner's Report.¹⁶ On August 17, 1994, plaintiff-appellee filed a Comment^[17] on the two pleadings filed by defendants-appellants, to which the latter filed a Reply^[18] on August 23, 1994. On August 12, 1996, the trial court issued an Order^[19] which found that an examination of the Commissioner's Report showed that it fell short of the directive under the trial court's Order dated January 20, 1994. Hence, the trial court set a clarificatory hearing on the Commissioner's Report.

The parties thereafter submitted their respective pleadings and counter-pleadings^[20] as well as their respective formal offers of exhibits^[21] and their respective oppositions^[22] thereto.

On April 14, 2000, the trial court issued an Order^[23] which stated that Engr. Trabado failed to conduct a relocation survey on each of the properties of the parties on the basis of the technical descriptions appearing in their respective certificates of title as required by the Order dated January 20, 1994. The trial court found that Engr. Trabado only made a scientific determination of the property of plaintiff-appellee but not that of defendants-appellants' which rendered his findings and conclusions, as embodied in his Commissioner's Report, "incomplete", hence denied approval. Thus, Engr. Trabado was directed to fully comply with the Order dated January 20, 1994.

On December 19, 2002, Engr. Trabado submitted a "Resumption of Commissioner's Report"^[24] with the latest sketch plan^[25] which showed that defendants-appellants encroached upon the property of plaintiff-appellee by 2,314 square meters through a barb wire installed therein.

After several postponements^[26] of the hearings of the case and even after the case was submitted to the Philippine Mediation Center for mediation^[27] which

subsequently failed,^[28] on November 6, 2011, the trial court issued the assailed Order,^[29] the dispositive portion of which reads:

WHEREFORE, by preponderance of evidence, the Court, hereby, disposes of this long-pending case after finally finding that the plaintiff has substantiated her causes of action in her verified Complaint ordering the defendants:

1. to VACATE and DELIVER POSSESSION of 2,314 square meters of the property of the plaintiffs they encroached upon indicated in "Blue" color in the Sketch Plan made integral part of plaintiff's Memorandum and executed by the court-appointed Geodetic Engineer;
2. to REIMBURSE the plaintiff a total of P50,000.00 as and for litigation expenses, including attorney's fees;
3. all other claims and counterclaims are dismissed for want or insufficiency of evidence.

SO ORDERED.^[30]

On December 14, 2009, defendants-appellants filed a Motion for Reconsideration^[31] to the assailed Order, which was, however, denied in the trial court's Order^[32] dated May 9, 2012.

On July 26, 2012, defendants-appellants filed a Notice of Appeal^[33] which was subsequently granted by the trial court on August 7, 2012.^[34]

The Issues

In their Brief, defendants-appellants raised the following assignment of errors for the Court's consideration:

A.

That the Honorable Judge Jesus Grajeda miserably erred in his appreciation on the issue in this case when he ruled that the present case is one of encroachment and not overlapping of titles.

B.

That the questionable decision of Honorable then presiding judge Jesus Grajeda is factually and legally unfounded and runs counter to the jurisprudence.

C.

That the Honorable then presiding judge Jesus Grajeda erred in relying heavily on the validity of the second Commissioner's Report.

D.

That the award of damages and attorney's fees is factually and legally unfounded.^[35]

On January 28, 2013, plaintiff-appellee filed her Appellee's Brief.^[36] Per the Court's Minute Resolution^[37] dated May 31, 2013, defendants-appellants failed to file a Reply Brief, hence, they are deemed to have waived the filing of the same, and the case was subsequently declared submitted for decision.

This Court's Ruling

Defendants-appellants argue that the trial court erred in taking the Commissioner's Report dated December 19, 2002 hook line and sinker as it was neither submitted to nor approved by the Department of Environment and Natural Resources (DENR). Moreover, such Commissioner's Report was never offered in evidence, thus, according to them, cannot be considered in deciding the case per Section 34,^[38] Rule 132 of the Rules of Court.^[39]

The argument fails to persuade.

It bears stressing that the parties in this case agreed that a relocation survey should be conducted to settle the present controversy. Both parties also agreed to a court-appointed commissioner in the person of Engr. Trabado whose findings will be the basis of the decision of the trial court. The trial court's Order dated January 20, 1994 reads:

Atty. Melchor V. Quitain, counsel for the plaintiff, manifested that his client is willing for the court to issue an order for a relocation survey of the boundaries of the opposing parties who are adjacent owners. Counsel for the defendants, Atty. Faustino C. Fanlo, gave his conformity in open court that his clients are also willing for the court to order a relocation survey.

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The commissioner, if he will accept his commissionership, must take his oath before the Clerk of Court of this court and after the relocation survey in detail, report must be submitted with the technical description