

TWENTY-THIRD DIVISION

[CA-G.R. CV NO. 03008-MIN, February 27, 2015]

**HEIRS OF JACINTO AGOSTO, REPRESENTED BY JULIO AGOSTO,
PLAINTIFFS-APPELLEES, VS. PANTALEON PEDROSO, AVELINA
PEDROSO, AND PLACEDA SENABRE, DEFENDANTS-APPELLANTS.**

DECISION

SANTOS, J.:^[1]

Before this Court is an appeal from the Decision^[2] dated 8 August 2012 rendered by the Regional Trial Court, 11th Judicial Region, Branch 28^[3] of Lianga, Surigao del Sur (trial court) in an action for recovery of possession, docketed as Civil Case No. L-937. The dispositive portion of the assailed Decision reads:

WHEREFORE, judgment is hereby rendered, viz:

1. Defendants, their workers or any person acting on their behalf are ordered to vacate [on] the land, subject matter of this case, consisting of 5,000 square meters, a portion of Lot No. 554 and to turn over peacefully the possession thereof to plaintiff;
2. Defendants are jointly and severally liable to pay plaintiffs the coconuts harvested from 2005 up to the time they would actually vacate [on] the said land at the rate of 85 kilograms per quarter pegged at P21.00 per kilo;
3. Defendants jointly and severally liable to pay plaintiffs the abacas they harvested from 2005 up to the time they would actually vacate on the land subject in this case at the rate of 48 kilograms per quarter pegged at P32.61 per kilo;
4. Defendants are likewise ordered to pay, jointly and severally, plaintiffs the sum of Php 40,000.00 and Php 30,000.00, representing attorney's fees and litigation expenses, respectively.

SO ORDERED.

The Antecedents

On 19 January 2009, plaintiffs-appellees filed the instant Complaint^[4] against defendants-appellants for recovery of possession and damages before the trial court.

Plaintiffs-appellees' Complaint alleges the following:

x x x

x x x

x x x

2. Plaintiffs are the only children and surviving heirs of Jacinto Agosto who died intestate on July 22, 1952 at Marihatag, Surigao del Sur;

3. During the lifetime of Jacinto Agosto, he acquired a piece of land located at Cabahian, Bayan, Marihatag, Surigao del Sur consisting of 6.3096 hectares, identified as Lot No. 554, Pls-751 and described as follows:

North by Lot No. 9612, Pls-751; East by Lot Nos. 557, 2618, 2619, all of Pls-751; Southeast by Lot 2620, Pls-751; South by Lot 553 and 2621, all of Pls-751; Northwest by Lot 556, Pls-751; and West by Lot Nos. 555, Pls-751;

4. Jacinto Agosto acquired the said land by actual occupation since 1935 and had continuously occupied and possessed the same until his death in 1952 and after his death plaintiffs continued to occupy and possess the said land continuously, peacefully, adversely, publicly in the concept of owner for a period of 73 years, thus, giving to plaintiffs a vested right on the said property;

5. Plaintiffs and their predecessor-in-interest planted the said land with coconuts and abaca and declared the said land for taxation purposes, the latest of which is Tax Declaration No. 99-14-006-00100 and assessed at P79,110.00. x x x

6. Plaintiffs in order to confirm their incomplete title filed a[n] application for title to the said land with the Department of Environment and Natural Resources Office. x x x

7. In the year 2005 plaintiff Julio Agosto discovered that defendants encroached a portion of the said land consisting of one half hectare (5,000 square meters) located at the Northwestern side when defendants claim ownership thereof by harvesting the coconuts and abaca planted by plaintiffs, hence, plaintiff Julio Agosto wrote a letter complaint against the defendant Pantaleon Pedroso to the Office of the Barangay Captain. x x x

x x x

x x x

x x x

9. Before defendants encroached the said land plaintiffs were the ones harvesting the coconuts and abacas. Plaintiffs used to harvest 85 kilos of copra every harvest and harvested four (4) times a year and harvested 64 kilos of abaca fibers every quarter or 192 kilos per year. Thus, from 2005 plaintiffs have been deprived of the use and enjoyment of the land consisting of 1020 kilos of copra valued at P16,320.00 and 576 kilos of abaca fibers valued at P23,040.00 up to 2008;^[5]

On 5 February 2009, defendants-appellants filed their Answer with Affirmative Defenses, Counterclaim with Damages^[6] alleging among others:

x x x

x x x

x x x

10. That the true and correct names of the plaintiffs which should be incorporated and distinctly mentioned in the complaint are not being done. It only alleges on its general term, "Heirs of Jacinto Agosto", but the said heirs are not named and alleged. It violate (sic) the procedural aspect of the Civil procedure, hence dismissible, under Section 2, Rule 3, Revised Rules of Court as will (sic) as Sections 7 and 8, Rule 3, Revised Rules of Court;

11. The wife of Julio Agosto is not named distinctly and with certainty which is violative of Section 4, Rule 4, Revised Rules of Court;

12. The land of the defendants is a titled property with an area of 32,662 square meters more or less. Since the lifetime of their late father, Liberato and Sofia, they were all the time in the actual cultivation, occupation and possession of the entire property and they were never been disturbed since. Their actual possession and cultivation are inside their titled property and for sure they never occupied any other land outside their titled property. In (sic) the contrary, it is the plaintiff, Julio Agosto, who wanted to usurped (sic) a portion of their titled property.

13. The property of the plaintiff, Jacinto Agosto, is not titled and being not there is a great possibility that this Julio Agosto who claimed a portion of the titled land of the defendants that he may illegally extend his possession already beyond the land of his father being not titled;

14. That it is a must that the Honorable Court will create a committee to relocate the titled property of the defendants using the technical description thereof to determine once and for all who is the actual usurper and it is suggested that the expenses for said relocation shall be shouldered equally half-in-half or a 50-50 bases (sic) by plaintiffs and defendants or shall be part of the damages;

15. That on ocular inspection can also be made to see for itself the real and true situation and condition of the property subject of this case. Defendants, claimed that their coconut trees are old and tall as compared to the plaintiffs' who are still young and had just bear (sic) fruits, meaning that the coconuts found inside the titled property of the late Liberato Enero were planted much ahead than that of the plaintiffs', hence, it become impossible for the defendants to usurped on the other side which is a portion of the plaintiffs' land.

16. That defendants, Avelina and Placida, are sisters, children of the late Liberato Enero and Sofia. Avelina was married to Pantaleon Pedroso and Placida was married to Julio Senabre. The plaintiffs shall and must all be named and included in the complaints who are children of the late Jacinto Agosto and his wife so that they can jointly be included in the charge for damages.

Thereafter, on 26 October 2009, the parties, through their respective counsels, agreed to the conduct of a relocation survey of the land in controversy, the expenses of such survey to be equally shouldered by both parties. Accordingly, the trial court issued an Order^[7] dated 26 October 2009 creating a commission for the purpose of conducting the relocation survey and appointed the trial court's Clerk of Court as chairman, and Engr. Lucio Acedo, along with one representative from each party, as members.

However, the scheduled relocation survey was not conducted upon the manifestation of defendants-appellants that the projected cost thereof, as determined by Engr. Lucio Acedo, was too high.^[8]

On 16 March 2010, counsel for defendants-appellants failed to appear for the scheduled pre-trial of the case. Thus, the trial court issued an Order^[9] allowing plaintiffs-appellees to present evidence *ex-parte*. On 19 April 2010, plaintiffs-appellees presented *ex-parte* the testimonies of Roland Manalang and plaintiff-appellee Julio Agosto.^[10]

Subsequently, on 8 July 2010, the trial court issued an Order^[11] stating as follows:

Atty. Antonio C. Azarcon intimated to the court that there is a need for a relocation survey of the land in dispute, subject matter of this case. The commission that previously created by the court did not push through for the fees asked by Engr. Acido is so big and the defendants could not afford. Atty. Azarcon suggested either Engr. Argucino of CENRO, Tandag City, or Engr. Patagoc of CENRO, Cantilan. Atty. Generoso S. Sansaet representing the plaintiffs welcomes the suggestion of Atty. Azarcon and he agreed for a relocation survey.

Atty. Azarcon promised to the court to prepare a compromise agreement in this case within five (5) from todate (sic) and included therein is the geodetic engineer that will conduct the relocation survey.

The commissioners previously created by the court will stay as it is excluding the geodetic engineer which be (sic) named after the parties would submit the compromise agreement which include the name of the Geodetic Engineer to conduct the relocation survey. Expenses incurred thereto should be shared equally by the parties.

x x x

x x x

x x

x^[12]

On 2 December 2010, the parties submitted before the trial court a Compromise Agreement,^[13] which states:

x x x

x x x

x x x

NOW THEREFORE, the parties hereby agree and stipulate for the following:

1. That relocation survey shall be conducted on the involved properties by Engr. Ardel Joseph Argosino and the expenses thereof be equally

charged between the First Party and Second Party;

2. That the parties agree that they shall be bound by the result of the said survey;
3. That the results thereof shall be considered as a final determination of the instant case;
4. That the parties agree that this Compromise Agreement and the result of the Relocation Survey shall be incorporated and be considered as the Judgment on a Compromise Agreement.

x x x

x x x

x x

x^[14]

On 2 December 2010, the trial court issued an Order^[15] stating as follows:

Counsel of the respective parties have submitted to the court a compromise agreement duly signed by the parties and its respective counsels only today and the counsels jointly moved to the court to render decision on the basis of the compromise agreement after the completion of the survey return by Ardel Joseph Argocino of the Land Management Office, PENRO, Tandag.

Ardel Joseph Argocino is ordered to come to court to take his oath as one of the members of the commissioner tasked by the court to conduct a relocation survey on the land, subject matter in this case, on December 14, 2010, at 8:30 o'clock in the morning. The survey will be conducted immediately thereafter. Furnish Ardel Joseph Argocino a copy of this order.

x x x

x x x

x x x

On 13 June 2011, counsel for plaintiffs-appellees manifested that the relocation survey of the subject property was already finished and that Engr. Argosino would prepare the corresponding report thereon.^[16] The trial court then issued an Order^[17] directing Engr. Argosino to prepare and submit the relocation survey report within fifteen (15) days from notice.

However, it appears that no report on the relocation survey was submitted by Engr. Argosino as directed by the trial court.

Thereafter, on 25 July 2011, counsel for defendants-appellants again failed to appear for the scheduled hearing.^[18] Consequently, in an Order^[19] dated 25 July 2011, the trial court allowed plaintiffs-appellees to continue with the presentation of their second witness, plaintiff-appellee Julio Agosto. In the same Order, the trial court said that defendants-appellants would be given a chance to cross-examine plaintiff-appellee Julio Agosto at the next scheduled hearing on 19 September 2011, otherwise, they will be deemed to have waived their right to conduct their cross-examination.^[20]

On 19 September 2011, counsel for defendants-appellants failed to appear for the