

THIRD DIVISION

[CA-G.R. CV No. 101752, March 16, 2015]

[*] MARY CLAIRE BUKUHAN, REPRESENTED BY HER ATTORNEY-IN-FACT, ROSARIO BUKUHAN OR RICHARD BUKUHAN, PLAINTIFF-APPELLANT, VS. SPOUSES CONRADO BAUTISTA, AND ELIZABETH BAUTISTA DEFENDANTS-APPELLEES.

D E C I S I O N

REYES-CARPIO, A., J.:

Before Us is an appeal under Rule 41 of the Revised Rules of Court, filed by Mary Clare Bukuhan, represented by her attorney-in-fact, Richard Bukuhan, which seeks to reverse and set aside the September 18, 2013 Decision^[1] of the Regional Trial Court, Branch 270 of Valenzuela City, and its November 19, 2013 Order^[2] denying her Motion for Reconsideration, the respective dispositive portions of which read:

"WHEREFORE, the instant action for the grant of right of way with prayer for injunctive relief to be made permanent is hereby **DENIED.**

SO ORDERED."

"WHEREFORE, premises considered, the Motion for Reconsideration filed by the plaintiffs (sic) is hereby **DENIED** for lack of merit.

SO ORDERED."

THE ANTECEDENTS

The trial court synthesized the facts of this case in this wise:

"This dispute involves two adjoining parcels of land. One belongs to plaintiff Mary Clare Bukuhan, represented by her Attorney-in-Fact Richard Bukuhan. The other belongs to Sps. Conrado and Elizabeth Bautista.

As culled from the records, plaintiff is the registered owner of a parcel of land covered by TCT No. V-44264. Plaintiff's aforesaid lot is situated in a compound owned by the Bautista Family. The said compound, as can be gleaned in TCT No. 16275 was subdivided into three (3) lots and subsequently titled to Maxima Bautista, Susana Bautista and Alfredo Bautista. Plaintiff acquired the said property from Maxima Bautista who is the first cousin of Conrado Bautista, in 1996.

Meanwhile, adjacent to plaintiff's property is the property of defendants-

spouses Conrado and Elizabeth Bautista. The aforesaid defendants are the owner thereof since March 1969 as evidenced by TCT No. 108509(7431). Defendants' property is separate from the property of Maxima Bautista from whom the plaintiff had acquired her property.

Since plaintiff's acquisition of the property in 1996, the ingress and egress to the existing Pasong Balite Road is through an alley owned by the herein-defendants, with a previous width of two (2) meters, now only one and a half meters. Plaintiff maintains that defendants have been threatening to close the subject alley. Such would block her access to the nearest public road.

The issue went to the Office of the City Engineer of Valenzuela. In a dialogue held before the said office, the herein defendants gave plaintiff a period of three (3) months to look for alternative outlet to public road. Before the expiration of said period, plaintiff caused the filing of the instant action for Temporary Restraining Order/Preliminary Injunction to restrain defendant from closing the existing right of way. Hence, the instant case was instituted.

Summons was issued to herein defendant and the case was set for hearing on July 12, 2010, On said date, parties were given time to submit their respective position papers. On July 19, 2010, the court issued a Temporary Restraining Order enjoining herein defendants from causing the closure of the subject alley effective for a period of twenty (20) days or until August 10, 2010. On the same date, the court directed the OIC Branch Clerk and the Branch Sheriff to conduct ocular inspection on the subject properties wherein a joint report was submitted in compliance thereto.

On August 10, 2010, the court issued an Order allowing plaintiff to file a bond in the amount of P50,000.00. A writ of preliminary injunction was likewise issued pending the hearing on the merits of the instant case.

Pre-trial conference was held on December 6, 2010. The following stipulations were entered into, to wit:

1. That the plaintiff is the registered owner of a parcel of land located at Pasong Balite, Marulas, Valenzuela covered by TCT NO. V- 44264;
2. That the defendants are the owner[s] of a property covered by TCT No. 108509 (7431) located at Pasong Balite, Marulas, Valenzuela adjacent to the property in question, fronting Pasong Balite;
3. The plaintiff's property is located as stated in the technical description at Barrio Pugad Baboy, Municipality of Valenzuela, Province of Bulacan;
4. That No. 48 Road 5, San Miguel Heights, Marulas, Valenzuela is the forwarding address of the plaintiff, the registered owner of TCT NO. V-44264;
5. The subject alley is existing prior to acquisition by the plaintiff in 1996 of her property covered by TCT No. V-

44264;

6. The subject existing alley is used as ingress and egress for the purpose and use of the plaintiffs (sic);
7. That plaintiff acquired the property from a certain Maxima Bautista and not from Defendants;
8. That the family of the Attorney-in-Fact has a machine shop located in front of the property in question;
9. That the mother of the plaintiff own (sic) the property in front of the property of the plaintiff which is used as a machine shop and has a gate fronting Road 5, Marulas, Valenzuela City.

However, the court noted the Comments to Pre-Trial Order filed by defendants, thru counsel, denying Item No. 1 and No. 6 of the Stipulations/Admission.

Thereafter, trial on the merits ensued.

PLAINTIFF'S EVIDENCE

In support of the herein complaint, the plaintiff presented the following witnesses:

RICHARD BUKUHAN, brother and representative of Mary Clare Bukuhan testified that his sister Mary Clare acquired in 1996 from Maxima Bautista a property covered by TCT No. V-4464 (sic) located in Pasong Balite, Brgy. Marulas, Valenzuela City. His testimony substantiated the allegations in the instant complaint.

On cross-examination, he testified that his sister Mary Clare has been living in the United States for about nine (9) years now. Her (sic) sister brought the property from Maxima Bautista, a relative of defendant Conrado Bautista.

He admitted that he has a machine shop located in his garage and that it operates from Monday to Saturday from 8:00 to 5:00 p.m. He identified, through a photograph shown to him, his garage where machines were located and from where one can see the property of his sister. He likewise identified the back door of the machine shop which can be opened or closed. He admits that his property is fronting Road 5, a public road. However, he asserted that his sister's tenants never used, not even once, the said opening in going to Road 5.

HILARIO PAYAWAL told the court that he is a resident of Pasong Balite, Marulas, Valenzuela City. He knew the defendants Conrado and Elizabeth Bautista who stood as principal sponsor during his wedding. His residence is near defendants' place. Thus, he and the defendants have been neighbors for thirty (30) years. He knows very well the alley, subject alley of this case. He is using the same since he started living there. He also knows Rosario Bukuhan, who is also one of the sponsors in his wedding. He asserts that there is a machine shop owned by Rosario Bukuhan but he had never used the same as passage way because it is a private property and is not open to the public. However, he affirmed that there was a time that he was able to use the machine shop as passage way in going out to a public road. But he was quick to explain that it only happened once. At the time it was raining, it was a Sunday and there was no work. One of the workers opened the gate by chance. Thus, he was able to pass through it in going out to a public road.

SUSANA BAUTISTA ENRIQUEZ, in open court affirmed and confirmed the contents of her Judicial Affidavit and that she owns a parcel of lot located at Pasong Balite, Valenzuela City under TCT No. T-112183.

On cross-examination, she testified that she actually resides at No. 61 R. Valenzuela Street, Marulas Valenzuela City which is just a walking distance from Pasong Balite Street. The adjoining properties next to her property are those owned by her cousin Conrado Bautista and sister Maxima Bautista. The alley, subject of this case, has been in existence since she was sixteen (16) years old and adjoined by the houses of Rosie Bukuhan, Marcelo Bautista, Alfredo Bautista, her brothers' and hers. The alley already existed when the property was still an open space in 1970. When confronted if she had proof that the alley exists (sic) in 1970, she answered that she had none. Likewise, in the titles of the properties adjoining the alley, there was no mention of its existence. She testified further that defendant Conrado Bautista inherited his property from his father Escolastico Bautista while she inherited hers from her father. While on the other hand, plaintiff Mary Clare Bukuhan acquired the property from her family. Although not the present occupant of her property, the existence of the alley benefits her as her property still uses the alley and she wants it to remain for her child's sake.

DEFENDANTS' EVIDENCE

RICHARD BAUTISTA, executed a Judicial Affidavit, the contents of which was (sic) affirmed and confirmed and was adopted to form part of his direct testimony. He took pictures of the property owned by plaintiff Mary Claire (sic) Bukuhan and the alley leading to Road 5. In the picture marked as Exhibit "1-B" which he identified in open court, it depicts an entrance of the property owned by Richard Bukuhan. The picture marked as Exh. "1-C" shows the main road on Road 5. The pictures marked as Exh. "1-D" and "1-E" shows that Road 5 and Pasong Balite were just near each other and that it would not be burdensome to the tenants to exit at Road 5. The property of plaintiff Mary Clare Bukuhan is located at the interior portion of the Pasong Balite. If the tenants of the plaintiff were to use the opening on the property of Richard Bukuhan, it would take between 10 or 5 steps to Road 5 while if they will use the alley subject of this case, it will take about 15 steps to Pasong Balite.

On cross, the same witness testified that he is aware that the property of plaintiff Mary Claire (sic) Bukuhan was bought from his aunt Maxima Bautista. The property of Richard Bukuhan is an open space. Although there is a structure erected therein gated in front and at the back. Since 1966 up to the present, his father enclosed their property with a perimeter fence. But never close, encroach nor fence the pathwalk, the subject alley of this case.

On re-direct examination, the same witness testified that Richard Bukuhan and plaintiff Mary Claire (sic) Bukuhan were siblings. With Mary Claire (sic) Bukuhan presently out of the country, it is Richard Bukuhan who is taking care of the property of his sister.

CONRADO BAUTISTA, executed a Judicial Affidavit which was adopted as part of his direct testimony. He substantially testified that he owns a parcel of land consisting of about 300 square meters, more or less. and registered under TCT No. T-108509. He then brought a copy of the location plan of his property under Psd-99983.

As far as he knows, it was Richard Bukuhan who owns the apartment units located at No. 48 Road 5, San Miguel Heights. He presented rental receipts from the apartment units to show proof that it is Richard Bukuhan who is collecting the monthly rental. He likewise pointed out in the sketch the alley which opened up to the road. The alley was open to the public. He identified the pictures taken by Richard Bautista and attached to his Judicial Affidavit which shows some people standing by and loitering in the place.

On cross-examination, he stated that he acquired the property in 1969 and since that time he had not occupied nor closed the alley even when he erected their conjugal house and the perimeter fence. The pictures attached to the Judicial Affidavit depicts a man who was urinating in the alley and some people playing caray cruz, who would often times ran (sic) towards the house of Richard Bukuhan.

On re-direct, he said that Mary Claire (sic) Bukuhan bought the property from Maxima Baustista sometime in 1996. He describes the factory in the garage to be only an expansion as the other machineries were located and kept below the house but both the steel gate in front and at the back were always open to the public every day. The machines were actually located inside the house of Mr. Bukuhan and the tenants residing in the interior of the property used that passageway in going in and out of their houses to the public road.

On re-cross, he clarified that during the ocular inspection, he was present together with his wife and son, and they all saw equipments (sic), machines and other paraphernalia and an employee at work. The expansion is what is seen in the picture and that there was a passage way before the extension was made. He could not recall when the steel gate was put-up by the (sic) Bukuhan.

He also stated that since 1969, the alley already exists. It was out of "pakikisama" that he allowed the people to use the passage way in fetching water until the Bukuhan family came in.

JOSEPHINE BORGUETA, affirmed and confirmed all the contents of the Judicial Affidavit she executed, which was adopted as part of her direct testimony and testified that the opening in front of the property of Richard Bukuhan fronting Road 5 since 1986 (sic).

On cross-examination, the same witness testified that she was a bonafide resident of No. 2 Pasong Balite St., Marulas, Valenzuela City since 1986. Her lessor was Teresa Narvaez Salazar but the house was owned by a certain dela Cruz. At present however, she already moved and transferred to another place. She testified that every time the tenants of the Bukuhan ask for her service, she uses the place of Richard Bukuhan as her ingress and egress to Pasong Balite. However, she would ask permission from Bukuhan to pass thru the latter's property. Whenever she was being called by Rochelle, wife of one of the tenants, she would pass thru the Bukuhans' property because according to her it is more accessible. The passageway was open, although the gate was put up only sometime in 1996. She had known Rochelle since 1999 and they have been passing that passageway since. However, she does not know when the gate was constructed.

On re-direct examination, she confirmed that she had been using the Bukuhan property since 1996 in going to the inner Road 5 and would pass through only if