

TWENTY-THIRD DIVISION

[CA-G.R. CV NO. 02988, January 29, 2014]

BENJAMIN DALISAY,^[1] PLAINTIFF-APPELLANT, VS. FERNANDO TUMAMPIL^[2] AND TEODORA TUMAMPIL, DEFENDANTS-APPELLEES. PPELLANT.

D E C I S I O N

LLOREN, J.:

This is an appeal under Rule 41 of the 1997 Rules of Civil Procedure seeking to set aside the April 5, 2011 Decision^[3] of the Regional Trial Court of Alabel, Sarangani Province, 11th Judicial Region, Branch 38, in Civil Case No. 93153, an action for Declaration of Nullity of an Extra-Judicial Agreement with Recovery of Possession to Real Property, Damages and Attorney's Fee. The said Decision dismissed the complaint filed by plaintiff-appellant, the dispositive portion of which reads:

WHEREFORE, considering that (sic) foregoing, for failure of the plaintiffs to establish their case by the preponderance of evidence this case is hereby DISMISSED. Also, for failure of the defendants to prove by preponderance of evidence their claim of compulsory counterclaim, the same is likewise ordered DISMISSED.

SO ORDERED.

The facts as culled from the records:

On December 11, 1997, plaintiff-appellant Benjamin Dalisay filed a Complaint^[4] before the trial court against defendants-appellees Fernando and Teodora Tumampil. The complaint was for the declaration of nullity of an extrajudicial agreement and with the recovery of possession of the real property involved in the said agreement.

In his complaint, Dalisay alleged that he is the registered owner of a parcel of land located in Malungon, Sarangani and covered by Original Certificate of Title No. (V-16912) P-7802.^[5]

On February 28, 1989, Benjamin Dalisay and Fernando Tumampil entered into an Agreement^[6] concerning the said parcel of land. It was agreed that Dalisay will "exchange"^[7] the property for an amount of P60,000.00 to be paid in installments by Tumampil. The agreement reads in full:

AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

That I, BENJAMIN P. DALISAY, SR., of legal age, married, Filipino and resident of Calocan City and FERNANDO TUMAMPIL, also of legal age,

married, Filipino and resident of Malungon, South Cotabato after having sworn to in accordance with law hereby depose and say:

-WITNESSETH-

That for and in consideration of the sum of Pesos Sixty Thousand (P60,000) payable in six years, first down payment of which is to be paid on or before February 28, 1989 and the balance payable every year thereafter at the rate of P10,000.00 per payment after which a certificate of title consisting of 6.022 hectares more or less in exchange of the same.

That in case of default, the amount advance will be forfeited and will give option to resell the property to other interested parties.

That the lot is situated in Biangan, Malungon, South Cotabato under original certificate of title No. (V-16912) P-7892.

That a deed of sale shall be made upon completion of the terms and conditions of the stipulated contract as herein specified.

That the parties hereto signed below at Malungon, South Cotabato this 28th day of February, 1989.

Sgd.
BENJAMIN P.
DALISAY SR.
AFFIANT

(Thumbmark)
FERNANDO
TUMAMPIL
AFFIANT

SIGNED IN
THE PRESENCE
OF:

Sgd.
1. ALBERTO
TUMAMPIL^[8]

Not sgd.
2. LEON
BUENO

By virtue of the said agreement, Fernando Tumampil was able to take possession of the land, tilled and cultivated the same without paying the agreed installments as stipulated in the agreement.

Demands were made for Fernando Tumampil to pay or vacate the land but the same were unheeded. Because of the unjustifiable refusal of Fernando Tumampil to comply with the demands of Benjamin Dalisay, the latter concluded that "there is a need to declare the said extra judicial agreement a nullity after all plaintiff is still the registered owner of the said land".

In their Answer,^[9] spouses Tumampil alleged that they are the true owners and possessors of the subject property since the 1940's up to the present. Since Benjamin Dalisay was never in possession of the land, it is the contention of spouses Tumampil that the former acquired his title through fraudulent means.

It was only in the year 1989 that Benjamin Dalisay came in the land and Fernando Tumampil was made to execute a document which he never understood since he was illiterate.

Spouses Tumampil simply resisted the demands of Benjamin Dalisay to vacate the land as they (spouses Tumampil) firmly believed that they are true owners and possessors of the land.

After the pre-trial, the parties presented their witnesses before the trial court.

Benjamin Dalisay testified that he acquired the subject lot when he applied for a Homestead Patent before the DENR of Buayan, General Santos City way back in 1952; and that, not a single person opposed his application. Eventually, the title was given to him.^[10]

Sometime in 1970, Dalisay authorized a certain Henry Villareal to manage the property and the latter took possession thereof.^[11]

In February 28, 1989, Dalisay and Fernando Tumampil entered into the assailed agreement. A barangay captain read and translated the contents of the agreement before Fernando Tumampil affixed his thumbmark therein. Fernando Tumampil then immediately took possession of the subject property thereafter. Fernando Tumampil was able to pay half of the agreed amount or Php 30,000.00. When Dalisay demanded the remaining balance, Fernando Tumampil, however, refused to pay.^[12]

Benjamin Dalisay admitted however, that when he applied for the title of the land, he was not in actual possession thereof since he was residing in another place.^[13]

Domenciana Dalisay, the wife of Benjamin Dalisay, testified that she was not aware of the written agreement between her husband and Fernando Tumampil; however, she was aware that Fernando Tumampil was instructed to take care of the lot and the latter will give some share of the harvest to them (Dalisay).^[14]

There was an attempt to settle the case with Fernando Tumampil at the office of the barangay captain. The settlement was for the parties to divide the lot into two equal portions. However, Fernando Tumampil refused to agree with such conditions.^[15]

She testified further that when she first visited the area in 1959, Fernando Tumampil and his wife were already staying in the area.^[16] And it was the Tumampils who cut the trees and cleared the area since the latter were working thereon.^[17]

The testimony of the OIC of the Register of Deeds was dispensed with as the defendants-appellees admitted the existence and due execution of the Original Certificate of Title No. P-818.^[18]

During the course of the trial, both Benjamin Dalisay and Fernando Tumampil died on January 12, 2003^[19] and February 11, 2004,^[20] respectively.

The defendants-appellees vehemently denied the allegations of the Dalisays.

Teodora Tumampil, the wife of the late Fernando Tumampil, testified that her husband has been working on the subject land even before they got married in 1953. They and their children lived in the land publicly and exclusively. Teodora Tumampil also testified that she knew Henry Villareal and that the latter never took possession of the land. She claimed that she didn't know the person of Benjamin Dalisay and the alleged agreement with her husband until the case was filed against them. She asserted that Benjamin Dalisay and his wife have neither taken possession nor visited the land since Fernando Tumampil started working thereon way back in 1952. The subject land was then a forest filled with big trees, and it was her husband and their children who cleared the area and converted the land into a rice field.^[21]

Teodora Tumampil further testified that her highest educational attainment was only Grade VI and that her husband does know how to write. They have paid the real property taxes assessed on the subject lot. However, they haven't engaged the services of any Geodetic Engineer to survey the area and they have not undertaken any effort to obtain a title to the land as they are not aware of the procedures to do so.^[22]

The defendants-appellees then presented Editha Tumampil Deloria, the daughter of spouses Tumampil. She testified that since she was born in 1959, she and her family were living in the subject land. Her father owned the land and that she cannot remember any person to whom her father was giving any share of the harvest of the land.^[23] Editha then presented several tax declarations for the years 1972 up to the present showing that her father was the declared owner of the subject land and official receipts showing that they have paid the taxes thereon. She also testified that from year 1998 to 2001, she was paying for three (3) hectares instead of six (6). She went to the Municipal Assessor's Office to inquire as to the discrepancy of the land area but she got no response from the said office. She had not seen any documents relating to the partition of the land and that she had no idea as to whose instance was the partitioning made.^[24]

Editha Tumampil Deloria further testified that Benjamin Dalisay first came to their land in 1987.^[25] Later on, her father and Benjamin Dalisay have a confrontation at the DENR, Malungon, Sarangani Province and at the Office of the Barangay Captain. Benjamin Dalisay was insisting at that time that he has a title in the land so he could take it away from them (the Tumampils).^[26]

Editha Tumampil Deloria also testified that she knew Henry Villareal as the latter was her schoolmate. However, she denied the allegations of Benjamin Dalisay that Henry Villareal was managing the land. She claimed that her father never gave any share of the harvest to the said Henry Villareal.^[27]

Arsenia Buan testified for defendants-appellees. Arsenia Buan was a native B'laan and a resident of Balacayo, Malungon, Sarangani Province. She testified that she has known the Tumampils for more than thirty (30) years as their lands are adjacent to one another. Fernando Tumampil whom he called as "Manong Nandoy" cleared the subject land as it was once filled with big trees and converted it into a rice field. According to her, no other person took possession of the said land except the Tumampils.^[28]