CAGAYAN DE ORO CITY

TWENTY-SECOND DIVISION

[CA-G.R. CV No. 02130, January 22, 2014]

NIXON Q. DELA TORRE, BENHUR Q. DELA TORRE, QUINTIN DELA TORRE (DECEASED) AS REPRESENTED BY HIS WIFE CATALINA DELA TORRE AND HIS CHILDREN STELLA T. NAGDALE, DWIGHT DELA TORRE, VIVIAN T. SUPANGO, NIXON DELA TORRE AND BEN HUR DELA TORRE, PLAINTIFFS-APPELLEES, VS. BUENAVENTURA LUMBAD AND CRESENCIO LABRADOR, DEFENDANTS, CABANGLASAN PUBLIC ELEMENTARY SCHOOL, REPRESENTED BY ITS PRINCIPAL ENRIQUETA LINSAGAN AND HER HUSBAND, SATURNINO LINSAGAN, DEFENDANTS-APPELLANTS.

D E C I S I O N

LOPEZ, J.:

Before Us is an appeal[1] from the Decision[2] dated December 9, 2009 of the Regional Trial Court, Branch 9, Malaybalay City, Bukidnon in Civil Case No. 3056-01 for Recovery of Possession and Damages with Prayer for Preliminary Mandatory Injunction.

The pertinent facts are as follows:

The controversy in this case involves a parcel of land known as Lot No. 340 with an area of 100,024 square meters located at Malaybalay City, Bukidnon, then registered in the name of a certain Maria Penserga (Maria for brevity) covered by Original Certificate of Title (OCT for brevity) No. 0-841.[3] Adjacent to OCT No. 0-841 is Lot No. 982, Cad 982-D with an area of 2,572.94 square meters possessed by appellant Cabanglasan Elementary School (School for brevity).[4]

On January 5, 1998, Maria executed a Deed of Absolute Sale of Registered Land[5] in favor of appellee Nixon Q. dela Torre (Nixon for brevity). OCT No. 0-841 was thereafter cancelled and Transfer Certificate of Title (TCT for brevity) No. T-45891[6] was issued in lieu thereof in the name of appellee Nixon.

On November 15, 1994, appellee Nixon sold a portion of the subject land to his brother appellee Benhur dela Torre (Benhur for brevity) and his father appellee Quintin dela Torre (Quintin for brevity) with an area of 33,341 square meters each. Their respective Deeds of Sale were annotated at the back of TCT No. T-45891.[7]

On June 15, 1995, Maria instituted a Complaint[8] for Annulment of Deed of Sale against appellees Nixon, Benhur and Quintin which sought to annul the Deed of Absolute Sale of Registered Land she executed in favor of appellee Nixon. The case was docketed as Civil Case No. 2443-95 and heard before the Regional Trial Court, Branch 9, Malaybalay City, Bukidnon.

In the meantime, on October 29, 1995, appellee Quintin passed away.[9]

On February 19, 2000, Maria and appellee Nixon executed a "*Kasabutan*"[10] (Agreement) before the Office of the Barangay Captain, Barangay Old Cabanglasan (Poblacion), Municipality of Cabanglasan. The *Kasabutan* stated that Maria will no longer pursue Civil Case No. 2443-95 before the court.

On June 10 and 11, 2000, appellees caused a relocation survey to be conducted on the subject land. Based on the sketch plan[11] prepared by Geodetic Engineer Vicente D. Pepito, it was discovered that appellant School occupied the western portion of the subject land with an area of 10,810 square meters. In the eastern portion, defendant Buenaventura Lumbad (Buenaventura for brevity) possessed and cultivated 12,746 square meters. In addition, appellees claimed that defendant Cresencio Labrador (Cresencio for brevity) also possessed a portion of his land on the eastern part of the land occupied by appellant School.[12]

Thus, on February 23, 2001, appellees Nixon, Benhur and the heirs of Quintin namely his wife Catalina and his children Stella T. Nagdale, Dwight dela Torre, Vivian T. Supangco including Nixon and Benhur filed a Complaint[13] for Recovery of Possession and Damages with Prayer for Preliminary Mandatory Injunction. The case was docketed Civil Case No. 3056-01 and heard before the Regional Trial Court, Branch 9, Malaybalay City, Bukidnon.

In their Complaint, appellees contended that appellant School through its principal Enriqueta Linsagan and her husband Saturnino Linsagan started to expand their possession and cultivation inside the subject land. For his part, defendant Buenaventura constructed an irrigation canal which passes through appellees' land and started collecting membership and rental fees for the use thereof. This prompted appellees to conduct a relocation survey on the subject land and it was discovered that indeed appellant School, Buenaventura and Cresencio encroached on their property.

In the main, appellant School countered in their Answer,[14] that it has a better title over the subject land because it has been possessing the same since the 1950s and had also paid the realty tax[15] thereon, compared to the appellees who have never possessed the land.[16] Moreover, on December 8, 1979, Maria executed a Deed of Donation[17] whereby she donated a portion of her land known as Lot No, 340, Pls No. 10 consisting of 4 hectares to appellant School. The Deed was subscribed before Saturnino Linsagan, then municipal mayor of the Municipality of Cabanglasan.

After appellees presented their testimonial and documentary evidence, they rested their case and on August 24, 2001, the lower court directed the appellant School and defendants to present their evidence.[18]

On April 8, 2005, Atty. Hollis Monsanto, counsel for defendant Buenaventura, manifested to the lower court that her client is no longer staying on the subject land as he has no interest whatsoever over the same.[19]

On May 8, 2007, the parties reiterated their manifestation that defendant Buenaventura and his company have already vacated the subject land and it is only the building of appellant School which remained therein.[20]

The parties subsequently made several manifestations regarding their willingness to enter into a compromise agreement before the lower court but despite the length of time granted to them, no such compromise agreement was executed by the parties.

Due to various reasons on the part of appellant School, it was not able to present evidence. Hence, on January 15, 2008, the lower Court issued an Order which declared appellant School deemed to have waived its right to present evidence, and the case was submitted for decision.[21]

On December 9, 2009, the lower court rendered the assailed Decision,[22] the dispositive portion of which reads:

> "IN VIEW OF ALL THE FOREGOING, Plaintiff Nixon dela Torre is adjudged to have a better right to the possession and is the owner of the litigated area thereof, and for which Defendants Cabanglasan Public Elementary School, Buenaventura Lumbad and Cresencio Labrador, their heirs, privies and successor-in-interest are ordered to remove any structures they have built therein, vacate the area and reconvey possession thereof to Plaintiff Nixon dela Torre, his heirs and/or successors and assigns in interest.
>
> In the alternative, if plaintiff Nixon dela Torre wants to appropriate the buildings and other improvements placed by defendant Cabanglasan Public Elementary School, he will pay the latter of the expenses incurred in placing such buildings and other improvements therein; or plaintiff Nixon dela Torre will sell the area to defendant Cabanglasan Public Elementary School in accordance with the prevailing market value of the portion of the subject parcel of land. The alternative aforementioned is, however without prejudice to any arrangement the parties may enter with.
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> Likewise, Plaintiff Nixon dela Torre is directed to deliver portion of the subject parcel of land to his Ben Hur dela Torre and Quintin dela Torre or to their respective heirs, privies or successors-in-interest in accordance with the deeds of sale they have executed.
>
> SO ORDERED."[23]

Aggrieved, appellant School is now before Us raising the following assignment of errors:

"I.

THE TRIAL COURT ERRED IN NOT APPRECIATING THE CIRCUMSTANCE THAT DEFENDANT-APPELLANT HAS BEEN IN POSSESSION OF THE DISPUTED PROPERTY SINCE THE 1950s AND HAS ATTAINED A PRIOR TITLE THAN PLAINTIFFS-APPELLEES(;)

II.

THE TRIAL COURT ERRED IN NOT DECLARING THAT PLAINTIFFS-APPELLEES' ACTION IS BARRED BY LACHES; (AND)

III.

THE TRIAL COURT ERRED IN ORDERING DEFENDANT-APPELLANT TO VACATE THE DONATED PROPERTY AND TURN OVER THE POSSESSION OF THE SAME TO PLAINTIFFS-APPELLEES, OR, IN THE ALTERNATIVE, TO AVAIL OF THE RIGHTS UNDER THE CIVIL CODE, DESPITE PLAINTIFFS-APPELLEES' CATEGORICAL STATEMENT THAT THEY ARE DONATING THE PROPERTY TO DEFENDANT-APPELLANT."[24]

Again, before this Court, the parties were given opportunities to explore the possibility of amicably settling the case among themselves[25] but efforts to settle the same proved futile.[26]

In proving their better right to possess the subject land, appellees presented the Deed of Absolute Sale of Registered Land executed by Maria in favor of appellee Nixon and TCT No. T-45891[27] subsequently issued in the latter's name. The Deed and certificate of title are sufficient evidence to substantiate appellees' cause of action to recover possession of the subject land. In *Abobon v. Abobon*,[28] the Supreme Court explained:

> "First of all, a fundamental principle in land registration under the Torrens system is that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. *The certificate of title thus becomes the best proof of ownership of a parcel of land;* hence, anyone who deals with property registered under the Torrens system may rely on the title and need not go beyond the title. This reliance on the certificate of title rests on the doctrine of indefeasibility of the land title, which has long been well-settled in this jurisdiction. It is only when the acquisition of the title is attended with fraud or bad faith that the doctrine of indefeasibility finds no application.
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> Accordingly, we rule for the respondents on the issue of the preferential right to the possession of the land in question. *Their having preferential right conformed to the age-old rule that whoever held a Torrens title in his name is entitled to the possession of the land covered by the title. Indeed, possession, which is the holding of a thing or the enjoyment of a right, was but an attribute of their registered ownership.*
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> *It is beyond question under the law that the owner has not only the right to enjoy and dispose of a thing without other limitations than those established by law, but also the right of action against the holder and possessor of the thing in order to recover it.* He may exclude any person from the enjoyment and disposal of the thing, and, for this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property." *(Emphasis Supplied)*

To counter appellees' evidence, appellant School merely presented Maria's Deed of Donation[29] in its favor and two tax declarations.[30] Regrettably for appellant

School however, these pieces of evidence lack probative value and cannot prevail over appellees' evidence for the following reasons:

Appellant School already waived their right to present evidence per lower court's Order dated January 15, 2008[31] which it failed to challenge. Hence, the Order dated January 15, 2008 already became final. Since appellant School waived its right to present evidence, it follows that it failed to offer any, and no evidence can be considered in their favor in accordance with Section 34,[32] Rule 132 of the Rules of Court.

The records show that the lower court granted appellant School so much opportunities to present evidence but it simply failed to avail of them. It bears stressing that appellees already rested their case as early as August 24, 2001 and the lower court directed the defendants including appellant School to start presenting their evidence on October 4 and 5, 2001.[33] In short, the lower court gave appellant School more than 7 years to present evidence before it was declared to have waived such right. For this reason therefore, We find unacceptable appellant School's explanation before Us, now through the Office of the Solicitor General (OSG for brevity), that its failure to present evidence was due to the failure of its former counsel to turn over the records of the case to them.[34] Such explanation is too lame to even merit consideration as the OSG would have done well had it requested photocopies of the records of the case to the lower court instead of waiting for the turn over of the records to its possession.

Even assuming that appellant School's Deed of Donation was duly presented, still, the donation was void because there was no showing that the same had been duly accepted in a public instrument. Article 745 and Article 749 of the Civil Code provides:

> "Article 745. *The donee must accept the donation* personally, or through an authorized person with a special power for the purpose, or with a general and sufficient power; *otherwise, the donation shall be void*."
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> "Article 749. In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.
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> *The acceptance may be made in the same deed of donation or in a separate public document,* but it shall not take effect unless it is done during the lifetime of the donor.
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> *If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments." (Emphasis Supplied)*

In *Sumipat v. Banga*[35] as reiterated in the case of *Arangote v. Spouses Maglunob*, [36] the Supreme Court declared as void a donation not duly accepted by the donee:

> "*Title to immovable property does not pass from the donor to the donee by virtue of a deed of donation until and unless it has been accepted in a public instrument and the donor duly notified thereof*. The acceptance may be made in the very same instrument of donation. If the acceptance