CAGAYAN DE ORO CITY

TWENTY-SECOND DIVISION

[CA-G.R. CV NO. 02417-MIN, March 27, 2014]

LOURDESITA T. ESMERO, PLAINTIFF-APPELLEE, VS.SPOUSES MARIO AND MARIETTA D. LUMANAO, DEFENDANTS-APPELLANTS. SPOUSES BERNABE AND EUFEMIA LUMANAO, INTERVENORS-APPELLANTS.

D E C I S I O N

FRANCISCO, J.:

For Review is the Decision[1] dated October 22, 2010 of the Regional Trial Court, Branch 27 of Tandag, Surigao del Sur, in Civil Case No. 1581for Recovery of Possession, Demolition of Building, Damages and Attorney's Fees. The decretal portion of which reads:

> "***WHEREFORE***, *judgment is hereby rendered in favor of the plaintiff and against the defendants and intervenors:*
>
> 1. *Declaring plaintiff as the owner of Lot No. 3329-B, the lot in question and, as such, she is entitled to recover possession thereof from the defendants;*
>
> 2. *Giving plaintiff the option of refunding the defendants the amount of the expenses they incurred in the construction and/or remodelling, up to and until the year 1993, of the house on Lot No. 3329-B, which they used as residence and office during which they were considered possessors/builders in good faith. Until they are reimbursed of said expenses, they can exercise their right of retention.*
>
> *Cost against the defendants."*[2]

This involves a parcel of land covered under Transfer Certificate of Title (TCT) No. T-5894[3] in the name of Lourdesita T. Esmero. TCT No. T-5894 is a derivative of an Original Certificate of Title (OCT) No. O-18316[4] issued in the name of Bernabe D. Lumanao and Lourdesita T. Esmero.

TCT No. T-5894 particularly described the land as follows:

> "A parcel of land (Lot 3329-, Psd-116819-034592 being a portion of Lot 3329, cad. 392-D), situated in the Barrio of Bag-ong Lungsod, Municipality of Tandag, Province of Surigao del Sur, island of Mindanao. Bounded on the NE., along line 1-2 by Lot 3329-A of the subdivision plan; on the SE., along line 2-3 by Donasco Street; on SW., along line 3-4 by Soriano Street; on the NW., along line 4-1 by Lot 3328, Cad. 392-D, Tandag Cadastre. Beginning at a point marked "1" on plan being N. 46

deg. 19'E., 205.70 m. from B.L.L.M. No. 1, Cad. 392-D. Thence....S. 61 deg. 20'E., 13.53 m. to point 2; S. 31 deg. 21'W., 9.60 m. to point 3; N. 60 deg. 41'W., 13.46 m. to point 4; N. 30 deg. 34'E., 9.45 m. to point of beginning and containing an area of ONE HUNDRED TWENTY EIGHT (128) SQUARE METERS, more or less. Xxx" [5]

Plaintiff-appellee, Lourdesita T. Esmero (Lourdesita for brevity), claimed that this 128-square meter property is originally owned by her mother, Concepcion Serina Trinidad (Concepcion). Accordingly, Concepcion sold this 128-sq. m. property to Lourdesita.[6]

Adjoining this 128-sq. m. property is the 179 sq. m. property owned by intervenor Bernabe Lumanao (Bernabe).[7] For purposes of cadastral titling, these two lots were consolidated as one; thus denominated as Lot 3329 Cad 392-D.[8] These lots were eventually decreed in favor of Bernabe and Lourdesita.[9] OCT No. O-18316 was subsequently issued in their names sometime in 1981.[10]

Sometime in 1991, Lourdesita had the land described in OCT No. O-18316 subdivided in order to get her portion thereof. The 128-sq. m subject property was denominated as Lot 3329-B, while the remaining 179 sq. m. was Lot 3329-A.[11] Apropos thereto, an Affidavit of Confirmation[12] was executed by Bernabe on March 22, 1993. Hence, OCT No. O-18316 was cancelled. In lieu thereof, TCTs No. T-5893 and T-5894 were issued for Lots 3329-A and 3329-B, respectively.[13] TCT No. T-5893 for Bernabe and TCT No. T-5894 for Lourdesita.

In the meantime, defendant-appellant Mario Lumanao (Mario), son of Bernabe, had been occupying Lot 3329-B. His occupation thereof was claimed to have been with the consent of Bernabe and his wife intervenor Eufemia Lumanao (Eufemia).[14]

On January 24, 1994, Lourdesita demanded from Mario to vacate Lot 3329-B as she will now need the Lot.[15] But, instead of vacating the area, Mario made some proposal to which Lourdesita declined.[16]

Again, Lourdesita reiterated her demand for Mario to vacate on November 23, 1996. [17] As he did not heed the demands made, Lourdesita brought the matter to the office of the Lupon ng mga Tagapamayapa on January 31, 1997.[18] However, no settlement was reached therein. Hence, on August 29, 1997, a Certificate to File Action was issued.[19]

On September 12, 2003, Lourdesita filed this instant case.[20]

In Answer[21] to the Complaint, Mario averred that Lourdesita's acquisition of Lot 3329-B was fraudulent as she is only entitled to a 10-sq. m. portion thereof.

Mario claimed that the 128-sq. m subject property (Lot 3329-b) is a conjugal property of Concepcion and her husband Sofronio Trinidad. Both now being dead, all their heirs, Lourdesita included, succeeded ownership thereto. According to Mario, the brothers and sisters of Lourdesita had long ago sold their respective shares to his father Bernabe, making his father now the owner of the bigger portion of 128-sq. m subject property (Lot 3329-b).

Also, Mario asseverated that Lourdesita has no cause of action. The action, if there is any, is even barred by estoppel, prescription and laches.

Bernabe and Eufemia filed a Motion for Intervention.[22] A Complaint-in-Intervention [23] was consequently filed. They re-echoed the asseverations of their son Mario. They alleged that Lourdesita through fraud and deception, succeeded in having Lot 3329 subdivided into Lot 3329-A and Lot 3329-B. They claimed that the Extra-judicial Settlement with deed of Sale executed by her co-heirs was tainted with fraud and deceit since there was already a partial partition of that 128-sq. m. property when Lourdesita's co-heirs allegedly sold their shares to them. Allegedly, Lourdesita's brother Antonio Trinidad sold his share to Bernabe sometime in 1962, while Lourdesita's sister Angelita Trinidad waived and relinquished her shares on the property in return for the financial assistance extended to her by Bernabe. Also, they alleged that Lourdesita's other siblings Pablito and Blanquita sold their respective shares to them sometime in 1964. Hence, they prayed for the reconveyance of the 118 sq. m., more or less, portion thereof.

Despite Lourdesita's opposition to Bernabe's Motion for Intervention, the trial court granted the same and admitted the Answer (Complaint)-in-Intervention.[24]

On October 22, 2010, the trial court rendered the assailed Decision.[25] Hence, this instant appeal raising the assigned errors,[26] to wit:

"I

THE COURT A QUO GROSSLY ERRED IN DECLARING PLAINTIFF AS THE OWNER OF LOT NO. 3329-B, THE LOT IN QUESTION, AND AS SUCH ENTITLED TO RECOVER POSSESSION THEREOF FROM THE DEFENDANTS, INSTEAD OF DECLARING PLAINTIFF-APPELLEE AS ENTITLED ONLY TO CLAIM POSSESSION OF AN UNDELINEATED 10.66-SQUARE METER PORTION OF LOT NO. 3329, CAD. 392-D, WHICH UNDELINEATED PORTION NOW FORMS PART OF THE 128-SQUARE METER LOT NO. 3329-B, A SUBDIVISION OF MOTHER LOT NO. 3329, CAD. 392-D.

II

THE COURT A QUO GROSSLY ERRED IN GIVING PLAINTIFFS THE OPTION OF REFUNDING THE DEFENDANTS THE AMOUNT OF THE EXPENSES THEY INCURRED IN THE CONSTRUCTION AND/OR REMODELLING, UP TO AND UNTIL THE YEAR 1993, OF THE HOUSE ON LOT NO. 3329-B, WHICH THEY USED AS RESIDENCE AND OFFICE DURING WHICH THEY WERE CONSIDERED POSSESSORS/BUILDERS IN GOOD FAITH, AND TO EXERCISE THE RIGHT OF RETENTION UNTIL THEY ARE` REIMBURSED OF SAID EXPENSES; INSTEAD OF DISMISSING PLAINTIFF'S COMPLAINT FOR LACK OF CAUSE AGAINST THE DEFENDANTS-APPELLANTS, THE LATTER BEING OCCUPANTS/BUILDERS IN GOOD FAITH OF THEIR BUILDING ON THE LITIGATED LOT, AND AS

SUCH, ANSWERABLE ONLY TO THE TRUE OWNERS OF THE LOT, THE INTERVENORS;

III

THE COURT A QUO GROSSLY ERRED IN ORDERING DEFENDANTS-APPELLANTS TO PAY THE COST OF THE SUIT;

IV

THE COURT A QUO GROSSLY ERRED IN NOT DISMISSING THE CASE ON GROUNDS OF PRESCRIPTION, ESTOPPELS AND LACHES OF PLAINTIFF-APPELLEE'S CAUSES OF ACTION;

V

THE COURT A QUO GROSSLY ERRED IN NOT RECOGNIZING THE INTERVENORS AS THE TRUE OWNER AND THUS ENTITLED TO POSSESSION AND RECONVEYANCE OF TITLE TO THE 117.34-SQUARE METER PORTION OF THE LITIGATED 128-SQUARE METER LOT NO. 3329-B."

As a whole, the main issue at hand is *who between Lourdesita and Bernabe is the true owner of Lot 3329-B.*

Admittedly, the cadastral court granted the decree of registration on Lot 3329 to Bernabe and Lourdesita. It, thus, appears that they co-owned the Lot. The existence of this co-ownership was even buttressed by Bernabe's execution of an Affidavit of Confirmation that Lourdesita owned the 128-square meter portion of Lot 3329. This even paved the way for the subdivision of the subject property into Lot 3329-A and Lot 3329-B.

However, appellants claimed that Lourdesita's ownership thereof pertains only to a portion of 10-square meters. The inclusion of Lourdesita's name in the cadastral proceedings was only for her aliquot share of the 128 sq. m. subject property. It is further claimed that 128 sq. m. (Lot 3329-B) is actually owned by Lourdesita's parents; thus, upon their deaths, the land was inherited by Lourdesita and her siblings. According to the appellants, Lourdesita's siblings had sold their respective shares of the property to Bernabe making him now the owner of the bigger portion thereof - 117. 34 sq. m. more or less.

We find the argument without merit.

Except for the testimony of Mario that his father bought all the aliquot shares of Lourdesita's siblings on the subject lot, no other evidence was ever presented to substantiate their claim. Thus, it stands to reason that there being no substantial evidence, appellants' claim of ownership of 117.34 sq. m. portion of the 128 sq. m. property (Lot 3329-B) must fail. The age-old but familiar rule that he who alleges must prove his allegation applies.

Unsatisfied, appellants lamented that Lourdesita's title – TCT No. T-5894 was fraudulently secured by the latter. She allegedly misled Bernabe into signing the Affidavit of Confirmation and the Subdivision plan of Lot 3329, Cad. 392-D.

Again, this asseveration fails to persuade Us.

At the risk of being repetitive, he who alleges must prove. The allegations of Lourdesita's fraudulent machination in misleading Bernabe into signing the Affidavit of Confirmation as well as the Subdivision Plan must be proved with clear and convincing evidence. Appellants' bare and unsupported allegations are not enough to overthrow the presumption of the validity of the Affidavit of Confirmation. They failed to prove that fraud attended in the execution of said Affidavit.

It must be stressed that contrary to the appellants' allegation, the Affidavit of Confirmation, as it appears, bore the signature of Bernabe and was subscribed before a notary public. It is clear in ***Heirs of Spouses Arcilla v. Teodoro***[27] that a notarized document is executed to lend truth to the statements contained therein and to the authenticity of the signatures. It enjoys the presumption of regularity which can be overturned only by clear and convincing evidence. Thus, the party who impugns its regularity has the burden of proving its simulation.[28]

We likewise found no merit on appellants' averment that Lourdesita's action is already barred by estoppel, prescription and laches.

While it may be true that it was Bernabe who was in possession over the subject lot since 1962 up to 1991, such occupation did not grant him sole ownership through prescription.

The aforesaid defenses are unavailing against a property held in co-ownership as long as the state of co-ownership is recognized; this is the clear pronouncement of the Supreme Court in ***Telesforo v. CA***.[29]

In fact, it has been said:

> "xxx possession of a co-owner is like that of a trustee and shall not be regarded as adverse to the other co-owners but in fact as beneficial to all of them. **Acts which may be considered adverse to strangers may not be considered adverse insofar as co-owners are concerned. A mere silent possession by a co-owner, his receipt of rents, fruits or profits from the property, the erection of buildings and fences and the planting of trees thereon, and the payment of land taxes, cannot serve as proof of exclusive ownership,** if it is not borne out by clear and convincing evidence that he exercised acts of possession which unequivocably constituted an ouster or deprivation of the rights of the other co-owners.
>
> Thus, in order that a co-owner's possession may be deemed adverse to the cestui que trust or the other co-owners, the following elements must concur: **(1) that he has performed unequivocal acts of repudiation amounting to an ouster of the cestui que trust or the other co-owners; (2) that such positive acts of repudiation have been made known to the cestui que trust or the other co-owners; and (3) that the evidence thereon must be clear and convincing.**" [30]