CAGAYAN DE ORO CITY

# TWENTY-SECOND DIVISION

# [ CA-G.R. CV NO. 02909-MIN, March 03, 2014 ]

## EDGARDO HAGORILLES AND ELMA HAGORILLES, PLAINTIFFS-APPELLEES, VS. NESTOR GUBAC AND MARTA GUBAC, DEFENDANTS-APPELLANTS.

## D E C I S I O N

**CAMELLO, J.:**

Spouses Nestor and Marta Gubac file this appeal,[1] assailing the 26 January 2012 Decision of the Regional Trial Court, Branch 6,[2] Prosperidad, Agusan del Sur, in Civil Case No. 1503.[3]

The facts, as briefly narrated by the court *a quo*, are as follows:

> Plaintiffs Edgardo Hagorilles and wife Elma claimed ownership of Lot 5340, Pls-67 with an area of 6.7417 hectares at Borbon, San Francisco, Agusan del Sur, acquired by occupation since 1976 when it was a second-growth forest. He cleared the area and declared it for taxation (Exh. B). Defendant Gubac was then a tenant in the adjoining land of Diosdado Parcon. As plaintiff Edgardo was also driving his own passenger jeepney plying the Borbon-San Francisco route, he let his then struggling brother-in-law, herein defendant Nestor Gubac, to till a portion of the land starting in 1990 without need of sharing his yield. Plaintiff provided them with farm implements like a *Turtle* motorized plow and thresher. He even had a house built for them in the subject land as Gubac had bartered his house for a piece of an adjoining land owned by Gubac's own brother-in-law Vicente Sanchez, which Gubac cultivated with his children, in addition to plaintiffs' subject lot which defendants have occupied up to the present. In 1998 plaintiff applied with the DENR for a patent but learned that the land had an absentee survey claimant, one Paulo Adencia. But then Gubac also filed an adverse claim. After investigation the Regional Director of the DENR rendered a decision on July 30, 2008 cancelling Adencia's claim in favor of plaintiff (Exh. E), and later denied Gubac's motion for reconsideration (Exh. F). Plaintiffs thus applied for a homestead patent (Exh. I) and filed this suit to recover the land and let the Gubacs compensate them for damages.
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> Adjoining owner Diosdado Parcon, Jr. affirmed that Gubac was his former tenant in the 1980s whom he ejected when he started coveting his land, for which Gubac transferred his tillage to plaintiff's lot. Gubac even tilled a portion of the land of Jose Noja which also adjoined plaintiffs' and was able to get a CLOA over it. Hagorilles has a house with G.I. roofing in Borbon across the basketball court, where there are many houses, about a km from Parcon's house.

Defendant Nestor Gubac countered that they owned Lot 5340 which they have tilled since 1990, their occupancy supported by the CENRO Ocular Inspection Report and sketch plan (Exhs. 3 and 6) and certified by the barangay captain (Exh. 7), and that they have already turned over the subject lot to his two sons Gary and Ryman who are now the actual tillers. Adjoining Lot 5342 which he also tilled has in fact been awarded by the DAR to him and four other beneficiaries under TCT T-3232 (Exh. H). Plaintiffs had no house in Borbon and gave him no farm implements for his tillage. He admitted, though, that upon arriving in the area from Iloilo he stayed at plaintiffs' house and even worked as a conductor for plaintiffs' passenger jeepney driven by Hagorilles who facilitated his marriage to his sister. The decision of the DENR Executive Director in favor of plaintiff was not final as he appealed to the DENR Secretary (Exhs. 1 and 2), where it is pending. This action is therefore premature and should be dismissed.

Gubac's claim was corroborated by Charlito Osin, chairman of the Barangay Agrarian Reform Council (BARC) who said that Gubac tilled and owned Lot 5340 since 1990 up to the present, as against plaintiff who never worked on the land.

After trial, the court *a quo* rendered its Decision[4] on 26 January 2012, the *fallo* of which reads:

WHEREFORE, judgment is hereby rendered in favour of the plaintiff-spouses Edgardo and Elma Hagorilles and against the defendant-spouses Nestor and Marta Gubac:

1. Affirming the findings of the DENR Regional Executive Director declaring plaintiffs as having preferential rights under the Public Land Act to the grant of a title over Lot 5340, Pls-67 located at Borbon, San Francisco, Agusan del Sur;

2. Ordering defendants to forthwith vacate Lot 5340 and peacefully turn over possession thereof to plaintiffs; and

3. Ordering defendants to pay to plaintiffs (a) the current equivalent value, land rental, of twenty-four (24) cavans of palay every year from 1998 when he adversely claimed the land as his own up to the filing of this complaint in November 2009, with interest of six percent per annum, plus 12% per annum from the finality of this judgment until fully paid; (b) moral damages of P50,000.00, attorney's fees of P30,000.00 and litigation expenses of P25,000.00.

Costs against defendants.

Aggrieved, defendants-appellants interposed the instant appeal and assigned the following errors:[5]

With due respect, the honorable court below gravely erred in the following findings, to wit:

I. In declaring that the lot which plaintiff-appellee Edgardo Hagorilles installed defendant-appellant Nestor is lot 5340 Pls-67;

II. In affirming the findings of the DENR Regional Executive Director that plaintiff-appellees have preferential rights to the grant of title over lot 5340;

III. In granting land rental equivalent to 24 cavans per year as land rental in favor of the plaintiff-appellees;

IV. In granting moral damages, attorneys (sic) fees and litigation expenses in favir (sic) of the plaintiff-appellees;

V. In finding that there is no forum shopping despite the pendency of administrative case involving the same lot between the same parties;

VI. In not declaring that plaintiff-appellees failed to exhaust administrative remedies;

VII. In not declaring that the cause of action has not prescribed;

VIII. In not declaring that the cause of action is not barred by laches;

IX. In not declaring that defendant-appellees (sic) failed to exert earnest effort towards a compromise.

Defendants-appellants insist that the land that was mortgaged by Jose Noja to Edgardo Hagorilles was Lot No. 5342, but this mortgagee could not claim it because this particular lot was already distributed to qualified beneficiaries (including himself) through the Comprehensive Agrarian Reform Program of the Department of Agrarian Reform. Defendants-appellants likewise allege that it is erroneous to declare plaintiffs-appellees as having preferential rights over Lot No. 5340 which they have never cultivated.

We disagree.

The facts are clear. Defendants-appellants admit that they are tilling two adjacent lots, identified as Lot Nos. 5340 and 5342. However, in order to create confusion and escape liability, they now claim that plaintiffs-appellees installed them in Lot No. 5342, which lot was allegedly mortgaged to the latter by a certain Jose Noja and was already distributed to qualified agrarian beneficiaries. But plaintiffs-appellees never claimed Lot No. 5342. Their evidence shows that the lot they are claiming to be theirs was Lot No. 5340. This is shown in the tax declaration issued in their name and in their homestead application before the Department of Environment and Natural Resources (DENR).

Moreover, plaintiffs-appellees never alleged that they acquired Lot No. 5340 because it was mortgaged to them by Jose Noja. It was defendants-appellants who alleged so. And yet, they failed to prove this as fact. In contrast, plaintiffs-appellees' claim was that they acquired the property by actual occupation in 1976 when the land was still covered with timber and that there was no sign of previous occupation. It was only in 1990 when defendants-appellants entered the property as a brotherly support of plaintiffs-appellees after the former were ejected as tenants of Diosdado Parcon, Jr. Indeed, this allegation coincides with the admission of defendants-appellants that they entered the subject land only in 1990.

On the other hand, if it were true that plaintiffs-appellees acquired the land when Jose Noja mortgaged it to them, it is quite baffling how the name of Jose Noja never entered into the picture. For one, when a certain person is already claiming ownership over a property and mortgage it to another, his name should still appear in the tax declaration even if the taxes are being paid by the mortgagee. But in this case, the tax declaration presented by plaintiffs-appellees clearly show only the name of Edgar Hagorilles. Secondly, when Edgar Hagorilles verified the status of the subject land with the DENR, he discovered that a certain Paulo Adenca, not Jose Noja, was also claiming the land. Third, while defendants-appellants bank on Edgar Hagorilles' alleged forgetfulness as to the lot numbers of his land and the adjacent lots, his testimony is clear that he knew Jose Noja as the owner of the lot adjacent to his. As also testified to by Charlito Osin, one of defendants-appellants' witnesses, the land previously owned by Jose Noja was the same land which already has a title (Lot No. 5342), as compared to Lot No. 5340 which has not yet been issued a title. Thus, plaintiffs-appellees have been firm and consistent that the lot they are claiming is Lot No. 5340 and not 5342.

Defendants-appellants further allege that plaintiffs-appellees failed to exhaust administrative remedies and that they were guilty of forum shopping.

Again, we disagree.

By forum shopping, a party initiates two or more actions in separate tribunals, grounded on the same cause, trusting that one or the other tribunal would favorably dispose of the matter. The elements of forum shopping are the same as in *litis pendentia* where the final judgment in one case will operate as *res judicata* as regards the other. The elements of forum shopping are: (1) identity of parties, or at least such parties as would represent the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[6]

Here, the similarity ends with the identity of parties. The present civil case and the administrative case involve different causes of action and seek different reliefs. In an action for recovery of possession of realty, the relevant question is: who has the better right of possession? While the administrative case pending before the DENR, the issue is limited to who among the claimants has the preferential right to apply for title over the land in question. It is elementary that the right of possession does not automatically mean ownership over the land.

On the other hand, as correctly ruled by the court *a quo*, the doctrine of exhaustion of administrative remedies admits of certain exceptions, as when insistence on its strict observance would be unreasonable, just like in this case. As previously mentioned, the issues in both cases are dissimilar. While the jurisdiction to determine the preferential rights among claimants over a public land lies with the DENR, however, the power to determine who has the better right of possession over disputed lands remains with the regular courts.

Defendants-appellants also argue that plaintiffs-appellees' cause of action has prescribed or that it is barred by laches. They insist on having acquired the subject land through acquisitive prescription, claiming they had been in possession of the subject land for twenty-two (22) years.