

TWENTY-SECOND DIVISION

[CA-G.R. CV NO. 02194-MIN, May 29, 2014]

THE MUNICIPALITY OF MADRID, DULY REPRESENTED BY THE MAYOR, THE VICE-MAYOR AND ALL THE MEMBERS OF THE MUNICIPAL COUNCIL, PLAINTIFF-APPELLEE, VS. THE MUNICIPALITY OF CARMEN, DULY REPRESENTED BY THE MAYOR, THE VICE-MAYOR, AND ALL THE MEMBERS OF THE MUNICIPAL COUNCIL, AND THE PROVINCIAL GOVERNMENT OF SURIGAO DEL SUR, DULY REPRESENTED BY THE GOVERNOR, THE VICE-GOVERNOR, AND ALL THE MEMBERS OF THE PROVINCIAL BOARD, DEFENDANTS-APPELLANTS.

DECISION

CAMELLO, J.:

This is an appeal from the Decision^[1] dated 22 April 2010 of the Regional Trial Court, Branch 41, Cantilan, Surigao del Sur, in Civil Case No. C-17,^[2] an action for "recovery of Barangay Sayoron and its sitios from Barangay Hinapuyan, annulment of the creation of Barangay Hinapuyan insofar as it encroaches on the territory of San Roque, Madrid, Surigao del Sur" filed by the Municipality of Madrid against the Municipality of Carmen and the Provincial Government of Surigao del Sur.

The antecedent facts are as follows:

On February 2, 1953, then President Elpidio Quirino issued **Executive Order (E.O.) No. 561**,^[3] organizing the eastern part of the Municipality of Cantilan of the Province of Surigao del Sur, into an independent municipality under the name of **Madrid**, composed of the Barrios of Union and Madrid.

On April 26, 1960, then Provincial Governor Constantino Navarro of the Province of Surigao del Sur issued **Executive Order (E.O.) No. 11-60**^[4] creating Barrio San Roque as part of the Municipality of Madrid, composed of Sitios **Sayoron**, Kinaputian, Daan, Cagongcongan, and Cawa.

On August 16, 1971, Republic Act No. 6367^[5] was enacted, creating the **Municipality of Carmen** in the Province of Surigao del Sur, comprising the Barrios of Carmen, Malibho, Santa Cruz, Puyat, Antao, Cancaban, and Esperanza of the Municipality of Lanuza, Surigao del Sur.

On October 6, 1977, the Provincial Board of Surigao del Sur passed **Sangguniang Panlalawigan (SP) Resolution No. 252-A** creating **Barangay Sayoron**, composed of the sitios Sayoron, Gacub, Agasan, Daan, Himamaylan, and Agutayan of Barangay San Roque of Municipality of **Madrid**.

The creation of Barangay Sayoron, triggered a boundary conflict between the Municipality of **Lanuza** and Municipality of **Madrid**. Confronting this conflict, the

Provincial Board of Surigao del Sur created a Committee tasked to investigate and settle the boundary dispute. On October 30, 1978, that Committee came up with a recommendation, the pertinent portion of which reads:

After thorough, careful scrutiny and analysis of the position papers and documentary evidence, the committee came into conclusion that **sitio Sayoron falls within the territorial jurisdiction of the municipality of Madrid.**

IN VIEW OF THE FOREGOING, the Investigating Committee hereby recommends that Sitio Sayoron be created into a separate and independent Barangay of the Municipality of Madrid, Surigao del Sur.

On June 5, 1985, the Municipality of **Madrid** filed a Complaint^[6] for Boundary Dispute against the Municipality of **Carmen** before the Provincial Board of Surigao del Sur, claiming Sitios Sayoron, Gacub, Agasan, Daan, Himamaylan and Agutayan to be within its jurisdiction. The complaint was later withdrawn^[7] by the Municipality of Madrid after the Municipality of Carmen filed an Answer.^[8]

On June 20, 1988, the residents of Sitios **Sayoron, Hinapuyan**, Gacub, Agutayan, Tabianas, Kadilotan, and Agasan, allegedly of Barangay Esperanza, Municipality of **Carmen**, signed a Petition^[9] requesting the Provincial Governor and Members of the Sangguniang Panlalawigan of Surigao del Sur that their sitios be created into a separate and distinct barangay named Barangay Hinapuyan;

On July 4, 1988, the Municipal Council of Carmen passed Resolution No. 53-88,^[10] indorsing the petition to the Provincial Governor and the Provincial Board of Surigao del Sur, for favorable action and approval.

On June 16, 1989, the Provincial Board of Surigao del Sur passed **SP Ordinance No. 70-89**^[11] creating **Barangay Hinapuyan** in the Municipality of **Carmen**, comprising sitio **Hinapuyan** and the adjoining and contiguous sitios of **Sayoron**, Gacub, Agutayan, Tabianas, Kadilotan, and Agasan, allegedly of Barangay Esperanza, Municipality of Carmen, Surigao del Sur.^[12]

On February 18, 1992, the Provincial Board of Surigao del Sur passed **SP Ordinance No. 05-92**^[13] amending certain sections of Ordinance No. 70-89, delineating the boundaries of Barangay Hinapuyan, and directing that a plebiscite be conducted in the sitios involved.

On November 8, 1992, the Commission on Elections (COMELEC), through its Election Officer of Municipality of Carmen, Surigao del Sur, conducted a plebiscite on the proposed creation of Barangay Hinapuyan in the Municipality of Carmen. On even date, the COMELEC issued a Certificate^[14] of Canvas of the Votes Cast in the Plebiscite, showing that out of the 410 votes cast, 407 were in favor, and 2 were against, the creation of **Barangay Hinapuyan**. Accordingly, Barangay Hinapuyan was proclaimed a newly created Barangay in the Municipality of **Carmen**.

On December 17, 1997, the Municipality of Madrid filed the action *a quo*^[15] against the Municipality of Carmen and the Province of Surigao del Sur, seeking, among other things, to declare null and void SP Ordinance No. 70-89, to annul the creation

of Barangay Hinapuyan of the Municipality of Carmen, and to recover Barangay Sayoron and its Sitios.

In answer,^[16] the Municipality of Carmen and the Province of Surigao del Sur alleged that the sitios comprising Barangay Hinapuyan, particularly Sayoron, Gacub, Agasan, and Agutayan are not part of Barangay San Roque of the Municipality of Madrid, but of Barangay Esperanza of the Municipality of Carmen. They contended that the creation of Barangay Hinapuyan in the Municipality of Carmen by virtue of SP Ordinance No. 70-89 did not alter the boundary of the Municipality of Madrid because the sitios comprising Barangay Hinapuyan belonged to Barangay Esperanza of the Municipality of Carmen.

On March 6, 2000, the court *a quo* issued an Order^[17] dismissing the complaint of the Municipality of Madrid on ground of lack of capacity to sue.

On appeal,^[18] this Court reversed the court *a quo* and ordered the remand of the records for adjudication of the case on the merits. This Court also directed the court *a quo* "to take appropriate steps through the assistance of the Bureau of Lands, Department of Environment and Natural Resources (DENR) and other appropriate government agency to locate on the ground, survey by metes and bounds, and to monument the boundary line of the Municipality of Madrid as defined in Executive Order No. 561..."

In compliance, the court *a quo* took efforts to have the boundary of the Municipality of Madrid relocated pursuant to this Court's directive. The DENR declined to conduct the relocation survey, however, because no technical descriptions were detailed in E.O. No. 561.^[19]

After a series of conferences, the parties finally agreed to submit the case for resolution on the sole issue: "*whether or not SP Ordinance No. 70-89, as amended by SP Ordinance No. 05-92, creating Barangay Hinapuyan, has superseded Executive Order No. 11-60 insofar as the inclusion of Sitios Sayoron, Kinaputian, Daan, Cagongcongan, and Cawa is concerned.*"^[20]

On April 22, 2010, the court *a quo* promulgated a Decision^[21] finding for the Municipality of Madrid and against the Municipality of Carmen and the Province of Surigao del Sur, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendants:

1. Annuling SP Resolution No. 70-89 of Surigao del Sur, as amended by SP Ordinance No. 05-92, insofar as it included in the creation of Barangay Hinapuyan in the Municipality of Carmen, the Sitios of Sayoron, Kinaputian, Daan Cagongcongon and Cawa of Barangay San Roque of the Municipality of Madrid, Surigao del Sur; and
2. Ordering the segregation from Barangay Hinapuyan of Carmen and return to Barangay San Roque of Madrid, the aforementioned Sitios.

No pronouncement as to cost.

SO ORDERED.

Dissatisfied, the Municipality of Carmen interposed an appeal before this Court, raising the following issues for consideration: (i) whether or not the creation of Barangay Hinapuyan in the Municipality of Carmen altered the boundary line of the Municipality of Madrid; and (ii) whether or not the court *a quo* has original jurisdiction to settle boundary dispute between the Municipality of Carmen and the Municipality of Madrid.

The Province of Surigao del Sur also appealed to this Court, raising issues similar to those raised by the Municipality of Carmen, to wit: (i) whether or not the court *a quo* erred in annulling SP Ordinance No. 70-89, as amended by SP Ordinance 05-92, insofar as it included in the creation of Barangay Hinapuyan in the Municipality of Carmen, the Sitios of Sayoron, Kinaputian, Daan, Cagongcongan, and Cawa, of Barangay San Roque of Madrid; (ii) whether or not the court *a quo* erred in ordering the segregation from Barangay Hinapuyan of the Municipality of Carmen the Sitios of Sayoron, Kinaputian, Daan, Cagongcongan, and Cawa, and their return to Barangay San Roque of the Municipality of Madrid; and (iii) whether or not the court *a quo* has jurisdiction over the case, which, allegedly, is a boundary dispute case.

Together, the Municipality of Carmen and the Province of Surigao del Sur allege that the trial court erred in ruling that the creation of Barangay Hinapuyan altered the boundary of the Municipality of Madrid. They contend that because the boundary line between the Municipalities of Madrid and Carmen has not yet been properly delineated on the ground, nor was a relocation survey conducted, there is no basis for the trial court to conclude that the creation of Barangay Hinapuyan has altered the boundary of the Municipality of Madrid. They also contend that, since SP Ordinance No. 70-89^[22] creating Barangay Hinapuyan included Sitio Sayoron only, and did not include Sitios Kinaputian, Cagongcongan, and Cawa, the trial court erred in ordering the return of the latter sitios to Barangay San Roque of the Municipality of Madrid. They likewise argue that although Sitio Sayoron was mentioned as one of the sitios to comprise Barangay Hinapuyan, it did not necessarily follow that it was the same sitio referred to in E.O. 11 and SP Resolution No. 252-A. In short, they allege that Sitio Sayoron of Barangay San Roque in the Municipality of Madrid, is not one and same Sitio Sayoron carved out from Barangay Esperanza of Carmen to comprise Barangay Hinapuyan. Lastly, they claim that it is the Sangguniang Panlalawigan, not the court *a quo*, which has primary and original jurisdiction over the case, a boundary dispute, pursuant to the 1991 Local Government Code.

The Court finds the appeals unmeritorious.

At the outset, we note that this is the first time at this late stage that the Municipality of Carmen and the Province of Surigao del Sur allege that there are two sitios, both named Sayoron, that are involved in this case. The records plainly show that this specific issue had never been properly raised in the court below. The fundamental rule in this jurisdiction has always been and still is as we so hold ? that no question shall be entertained unless it has been appropriately raised below,^[23] and that rule precludes us from taking cognizance of this belatedly raised issue.^[24] Besides, no justifying reason has been proffered by either appellant to make us prescind from a strict adherence to the rule. Basic tenets of fair play, justice, and due process dictate that parties cannot raise for the first time on appeal issues which they could have raised but never did during the proceedings below. Thus said the Supreme Court in a catena of cases:^[25] "Points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be,