

## SIXTH DIVISION

[ CA-G.R. CV NO. 99133, June 27, 2014 ]

**SPOUSES FRANCISCO CUENCO FRESNOZA AND CATALINA MAE MERCADO, REPRESENTED BY THEIR ATTORNEY-IN-FACT, MELANIA MERCADO, PLAINTIFFS-APPELLANTS, VS. EULOGIO TOPACIO, JR. AND EDGAR C. BERMUDEZ, DEFENDANTS-APPELLEES, RICARDO T. DE LEON, JR. AND FERDINAND L. MARTINEZ, REPRESENTED BY HIS ATTORNEY-IN-FACT, ASISTIO MARTINEZ, INTERVENORS-APPELLANTS.**

### DECISION

**CRUZ, R.A., J.:**

#### THE CASE

This is an appeal under Rule 41 of the Rules of Court seeking to reverse and set aside the Decision dated November 18, 2011<sup>[1]</sup> of the Regional Trial Court (RTC) of Imus, Cavite, Branch 20 in Civil Case No. 2373-01, the dispositive portion of which reads:

xxx xxx xxx

**WHEREFORE**, premises considered, judgment is hereby rendered in favor of defendant Euglogio Topacio, Jr., (*sic*) and against plaintiffs Francisco Cenco (*sic*) Fresnoza and Catalina Mae Mercado and Intervenor Ricardo T. De Leon, Jr., and Ferdinand L. Martinez as follows, *viz*:

1. DISMISSING the complaint of plaintiffs Francisco Cenco (*sic*) Fresnoza and Catalina Mae Mercado for lack of factual and legal basis;
2. DISMISSING the complaint-in-intervention of intervenors Ricardo T. De Leon, Jr., and Ferdinand L. Martinez for lack of factual and legal basis;
3. ORDERING plaintiffs Francisco Cenco (*sic*) Fresnoza and Catalina Mae Mercado and intervenors Ricardo T. De Leon, Jr. and Ferdinand L. Martinez to jointly and severally pay defendant Euglogio Topacio, Jr., (*sic*) the sum of One Hundred Thousand Pesos (Php100,000.00) as an (*sic*) by way of attorney's fees; and
4. ORDERING plaintiffs Francisco Cenco (*sic*) Fresnoza and Catalina Mae Mercado and Intervenor Ricardo T. De Leon, Jr. and Ferdinand L. Martinez to jointly and severally pay defendant Euglogio Topacio, Jr.,(*sic*) the costs of suit.

**SO ORDERED.**

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## THE ANTECEDENTS

On July 24, 2001, Spouses Francisco Cuenco Fresnoza and Catalina Mae Mercado, represented by their Attorney-in-fact, Melania Mercado, as plaintiffs, filed a complaint for recovery of possession of real property with damages against Eulogio Topacio (Topacio) and Edgar Bermudez (Bermudez), as defendants, before the Regional Trial Court of Imus, Cavite, Branch 20 docketed as Civil Case No. 2373-01.

In their complaint,<sup>[2]</sup> plaintiffs alleged the following material facts:

" xxx xxx xx

3. Plaintiffs are the registered owners of parcel of land identified as Lot 7569-J of subdivision plan, Psd-04-034208 situated at Bo. Paliparan, Municipality of Dasmariñas, Province of Cavite, containing an area of Four Thousand Six Hundred Twenty (4,620) square meters, covered by Transfer Certificate Title No. T-289613 of the Registry of Deeds for the Province of Cavite, more particularly described as follows:

"A parcel of land (Lot 7569-J) of the subd.. Plan, Psd-04-034208, being a portion of Lot 7569, Imus Estate; LRC Rec. No. ), situated in Bo. of Paliparan, Mun. of Dasmariñas, Province of Cavite. Bounded on the NW., along line 1-2 by Lot 7569-M; along line 2-3 by Lot 7569-A; along line 3-4 by Lot 7569-, all of the subdivision Plan; on the NE., along line 4-5 by Paliparan St., (10.00m wide); on the SE., and SW., along lines 5-6-7-8 by Aguinaldo St., (10.00m wide) and on the SW., along line 8-1 by National Road (20.00 m. wide). Xxx containing an area of Four Thousand Six Hundred Twenty (4, 620) square meters xxx"

xxx xxx xxx

4. Sometime on 08 November 1993, the defendants filed a complaint for quieting of title against Villa Esperanza Development, Inc. alleging that xxx Ildefonso Malicsi is the owner of a parcel of land known as Lot No. 7402, Fls-2285, Imus Estate, covered by TCT No. TG-107929, Cavite.

Lot No. 7402 covered by said TCT No. TC-107929 was subdivided into several lots. One of which was Lot No. 7402-E with an area of 9,878 square meters which was the one purportedly sold to defendant Topacio to whom TCT No. 348422 was issued.

xxx xxx xxx

5. After trial, the Honorable Cesar A. Mangrobang, Presiding Judge, Branch 22 of the Regional Trial Court, Cavite, Imus Branch rendered a judgment in favor of the herein defendants (plaintiffs in Civil Case No. 828-93) xxx xxx

xxx xxx xxx

6. On 21 August 2000, a Writ of Possession was issued by the Branch Clerk of Court of said court. xxx xxx

7. On the basis of the said Writ of Possession, defendant Sheriff IV Edgar C. Bermudez served a Notice to Vacate upon the heirs of Joaquin Vina and other persons claiming rights under them. xxx xxx

8. The said Notice to Vacate was served upon Purificacion Vina, Evelyn Vina and Percival Vina, who upon the tolerance of the plaintiffs occupied the said parcel of land covered by TCT No. T-289613.

9. After the notice to vacate was served upon the occupants of plaintiffs' property, plaintiffs through counsel sent a letter to defendant Bermudez dated 11 November 2000 informing him that the land occupied by plaintiffs' occupant is different from the parcel of land subject of the controversy in Civil Case No. 828-93 and asked him not to pursue the eviction of their occupants, xxx xxx

10. The plaintiffs and their occupants were not impleaded as parties in Civil Case No. 828-93 as the lot subject of the controversy in said case was different from that of the plaintiff's considering that the property indicated in the Notice to Vacate was Lot No. 7402-E covered by TCT No. 348422 while that of plaintiff is Lot No. 7569-J covered by TCT No. 289613.

11. Despite the letter dated 11 November 2000 addressed to defendant Bermudez, the latter still proceeded with the eviction of plaintiffs' occupants.

11.1 xxx defendants are now in actual possession of the subject parcel of land, despite the knowledge of the fact that they have no right whatsoever over the said parcel of land.

12. The assessed value of the aforesaid property is more than PESOS: TWENTY THOUSAND (P20,000.00) xxx xxx

13. On 04 December 2000, the plaintiff through counsel sent a demand letter to defendant through Mr. Eulogio Topacio demanding the vacation of the premises by them and the surrender of the same to the plaintiffs.

13.1 However, despite repeated demands, both oral and written, defendants refused and failed and still continue to refuse and fail to vacate the same. xxx xxx

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" Defendant Topacio moved for the dismissal of the complaint<sup>[3]</sup> on the ground of failure to state a cause of action but the RTC denied the motion in the Order October 8, 2001.<sup>[4]</sup>

Defendant Topacio filed his Answer<sup>[5]</sup> and by way of affirmative defenses, averred that, the complaint states no cause of action because plaintiffs already admitted that the parcel of land owned by them is different from his land and he must be sued jointly with his wife.

During pre-trial, the parties manifested that there is a need for a relocation survey of the properties to determine the respective locations. By Order dated December

14, 2001,<sup>[6]</sup> the RTC directed the Community Environment and Natural Resources Office (CENRO) at Trece Martires, Cavite to designate a government surveyor who shall conduct a relocation survey. The parties were likewise ordered to submit the names of their respective surveyors.

In compliance thereto, CENRO designated Engr. Abner R. Remolar as the government surveyor.<sup>[7]</sup> Plaintiffs' chose Engr. Romeo L. Durante, a licensed geodetic engineer, as their surveyor,<sup>[8]</sup> while Defendant Topacio designated Engr. Juanito Galang as his representative in the relocation survey.<sup>[9]</sup> Thereafter, the RTC issued an Order dated February 12, 2002<sup>[10]</sup> directing the parties to submit certified true copies of their respective titles and blue print copies of the survey plans of their lots to Engr. Abner Remolar and proceed with the survey.

On February 2, 2003, Engr. Abner R. Remolar submitted to the RTC the Sketch Plan and Survey Report.<sup>[11]</sup> Pertinent portions of the Survey Report read:

" xxx xxx xxx

### **FINDINGS**

Upon plotting and comparing the results, we have found the following:

a. Sub lot A with an area of 3,743 sq.m. is a portion of Lot 7402-E. It has a concrete house inside and planted with different kinds of vegetables.

b. The existing Molino-Paliparan Road traverses Lot 7402-E (Sub lot C)

i. The remaining portion of Lot 7402-E is being occupied generally for commercial/residential and industrial uses.

c-1: Sub lot C (A=393 sq.m.) - industrial

c-2: Sub lot E (A=2,467 sq.m.) - commercial – residential

c-3: Sub lot F (A=442 sq.m.) - commercial

d. Sub lot B with an area of 2,190 sq.m. is a vacant space.

e. Portion of Lot 7569-J, Fls-2701 was traversed by existing road (Governors Drive) and the remaining portion overlaps with Lot 3853-N, Fls 2285.

f. The existing concrete house inside sub Lot A is allegedly owned by the defendants.

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In the interim, Ricardo De Leon, Jr. and Ferdinand Martinez, represented by his Attorney-in-Fact, Asistio Martinez, as intervenors, filed a motion for intervention on March 4, 2003, alleging that, they have a legal interest in the subject matter in litigation because they are the registered owners of one-half portion of Lot 7569 (one-half belonging to the plaintiff).<sup>[12]</sup> In the Order dated April 1, 2003, the RTC<sup>[13]</sup> granted the motion for intervention.

On June 18, 2003, Defendant Topacio, in his *Ex-parte* Manifestation and Motion, stated that intervenors' failure to submit a complaint-in-intervention constitutes a

waiver and prayed that the case be submitted for decision.<sup>[14]</sup> The RTC issued an Order dated September 2, 2003 granting defendant's motion.<sup>[15]</sup>

Intervenors filed an Urgent Motion for Reconsideration and Motion to Admit Complaint-in-Intervention.<sup>[16]</sup> The RTC issued an Order dated November 17, 2003<sup>[17]</sup> granting the intervenors' motion for reconsideration and admitting the complaint-in-intervention. Thereafter, trial ensued.

On November 18, 2001, the RTC issued a Decision<sup>[18]</sup> in favor of defendants. It ruled that plaintiffs and intervenors failed to adduce evidence to prove that the fences put up by Defendant Topacio encroached upon their property. Moreover, as shown in the Survey Report prepared by Engr. Abner Remolar, Lot 7569-J covered by TCT No. T-289613 of the Registry of Deeds of Cavite, which is owned by the plaintiffs, is separate and distinct from Lot 7402-E formerly covered by TCT No. 348422 of the Registry of Deeds of Cavite and owned by Defendant Topacio. In fact, the division between the two (2) lots is the twenty meter (20 m) wide road denominated as Governor's Drive which clearly separates the two (2) lots. It also noted that the intervenors failed to interpose any objection to the Sketch Plan and Survey Report prepared by Engr. Abner Remolar within the period granted to them.

Hence, the RTC decreed:

“ xxx xxx xxx

**WHEREFORE**, premises considered, judgment is hereby rendered in favor of defendant Euglogio Topacio, Jr., (*sic*) and against plaintiffs Francisco Cenco (*sic*) Fresnoza and Catalina Mae Mercado and Intervenors Ricardo T. De Leon, Jr., and Ferdinand L. Martinez as follows, *viz*:

1. DISMISSING the complaint of plaintiffs Francisco Cenco (*sic*) Fresnoza and Catalina Mae Mercado for lack of factual and legal basis;
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3. ORDERING plaintiffs Francisco Cenco (*sic*) Fresnoza and Catalina Mae Mercado and intervenors Ricardo T. De Leon, Jr. and Ferdinand L. Martinez to jointly and severally pay defendant Euglogio Topacio, Jr., (*sic*) the sum of One Hundred Thousand Pesos (Php100,000.00) as an (*sic*) by way of attorney's fees; and
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SO ORDERED.

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“ Aggrieved, plaintiffs and intervenors jointly filed a Notice of Appeal<sup>[19]</sup> which the RTC gave due course in its Order dated January 30, 2012.<sup>[20]</sup>