

## **TWENTY-SECOND DIVISION**

**[ CA-G.R. SP NO. 04232-MIN, June 13, 2014 ]**

**SPOUSES JULIANA AND JOSE D. ESCARLOS, SR., PETITIONERS,  
VS. SPOUSES ROLAND AND ENRIQUITA S. LIBANTE,  
RESPONDENTS.**

### **D E C I S I O N**

**INTING, J.:**

This a Petition for Review<sup>[1]</sup> filed under Rule 42 of the Rules of Court assailing the Judgment<sup>[2]</sup> dated May 2, 2011 of the Regional Trial Court, Branch 10, Malaybalay City in Civil Case No. 4436-10 for "Recovery of Ownership with Prayer for Preliminary Mandatory Injunction".

The facts of the case are as follows:

The property subject of this controversy pertains to a parcel of land identified as Lot No. 427, Pls-9, containing an area of 1,052 square meters, more or less, and located at Batangan, Valencia, Bukidnon.

Petitioners alleged that they have been in open, adverse and continuous possession of the subject land as early as 1962. They allegedly bought it from a certain Melchor Tepait by virtue of a private document denominated as a deed of sale on November 13, 1962. Although what was designated in the deed was Lot 424, Pls-9, petitioners alleged that what was actually occupied, cultivated and delivered to them was Lot 427, Pls-9. Believing in good faith that what was actually delivered was Lot 424, petitioners filed a Miscellaneous Sales Application on January 27, 1965. They also secured a tax declaration on November 5, 1969.

Subsequently, petitioners changed their miscellaneous sales application to a free patent application. However, upon investigation and verification of the exact and correct lot number actually possessed by them, it was found out that the correct lot number is Lot 427, Pls-9. Thus, the patent application was amended to cover the correct lot number.

Notwithstanding the correction of the lot number, petitioners discovered in November 1999 that Lot No. 427, Pls-9 is already covered by Original Certificate of Title (OCT) No. P-29581 in the name of herein respondents by virtue of a free patent issued on October 8, 1997. Petitioners further alleged that on November 24, 1999, respondent Rolando Libante came to the subject lot and drove away petitioners' workers and laborers threatening to shoot them. On December 15, 1999, respondents destroyed the fence of the lot in question and enclosed the lot with two (2) strands of barbwire, thus depriving petitioners and their workers possession.

Hence, on December 16, 1999, petitioners herein filed a Complaint<sup>[3]</sup> for recovery of ownership with prayer for preliminary mandatory injunction before the Municipal Trial Court (MTC). In their Answer<sup>[4]</sup>, respondents countered, *inter alia*, that the subject property was acquired by them from Melchor Tepait by virtue of a waiver of rights executed by the latter on February 6, 1998. On September 1, 2003, the case was scheduled for pre-trial conference. The parties however failed to settle amicably. Trial ensued.

On October 2, 2010, the MTC rendered a Decision dismissing the complaint, the dispositive portion of which provides:

WHEREFORE, in view of the foregoing, judgment is hereby rendered dismissing the complaint for failure of the plaintiffs to prove their claim by preponderance of evidence. The court likewise dismisses the counterclaim, for lack of merit.

No pronouncement as to cost.

SO ORDERED.

The MTC ratiocinated:

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After careful evaluation and appreciation of the evidence thus far presented by both parties, the court finds, holds, and so declares that plaintiffs had miserably failed to establish by preponderance of evidence their claim of ownership over the land in question.

The unnotarized Deed of Sale presented by plaintiffs as the basis for the recovery of ownership of the land in dispute has no probative value and carries no weight. The person, Melchor Tepait, who appeared to be the vendor in the Deed of Sale denied the execution of such document. Xxx He vehemently denied having sold the property in question to plaintiffs. He mentioned that Rita Tepait adverted to in the deed of sale as his wife is not his wife. The correct name of his wife is Edilberta Torina and not Rita Tepait as reflected in the Deed of Sale.

The signatures appearing as the signature of Tepait and wife are not their signatures. It is safe to conclude that there was no sale transaction that transpired between plaintiffs and Melchor Tepait. Regrettably, plaintiffs offered no rebuttal evidence to refute and to discredit the declarations of Melchor Tepait.

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It appearing from the record that the execution of waiver of rights by Melchor Tepait took place only after the issuance of title of the property in the name of Libante. However, this court rules that it cannot be the

basis for declaring the waiver of rights void ab initio. The date of execution of such document is immaterial and this does not affect the status of defendants' ownership over the land. It will not change the uncontroverted fact that Melchor Tepait really transferred his rights over the area in dispute to defendants.

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There is nothing to reconvey to herein plaintiffs, in the first place there was no transfer of ownership of the property in dispute from prior owner, Melchor Tepait, to plaintiff Escarlos, thus, the recovery of ownership of property fails.

With regard to the validity of OCT No. 29581, this court has no jurisdiction to declare that said title is void ab initio. The main issue of the case on hand is accion reivindicatoria and not an annulment of certificate of title. If the court would entertained (sic) the issue on validity of the aforementioned title, proceedings would be tantamount to a collateral attack on the title which is not allowed by the law.

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Aggrieved, petitioners filed an appeal before the RTC. On May 2, 2011, the court *a quo* rendered a Judgment affirming the decision of the MTC, the *fallo* of which reads:

WHEREFORE, with the foregoing facts and arguments at hand the court has no cogent reason to reverse the findings of the lower court and hereby AFFIRMED IN TOTO, the latter's ruling.

SO ORDERED.

Hence, the instant petition.

Petitioners now come before Us raising the following assignment of errors<sup>[5]</sup>:

I.

THE HONORABLE TRIAL COURT ERRED IN HOLDING THAT THE PLAINTIFF "MISERABLY" FAILED TO ESTABLISH BY PREPONDERANCE OF EVIDENCE THEIR CLAIM OF OWNERSHIP OVER THE LAND IN DISPUTE.

II.

THE HONORABLE TRIAL COURT ERRED IN GIVING CREDENCE TO THE UNSUBSTANTIATED DENIAL OF MELCHOR TEPAIT THAT HE DID NOT SELL THE SUBJECT LAND TO THE PLAINTIFFS.

III.

THE HONORABLE TRIAL COURT ERRED IN HOLDING THAT THE DEFENDANTS ACQUIRED OWNERSHIP OVER THE PROPERTY BY VIRTUE OF THE DEED OF WAIVER EXECUTED AFTER THE ISSUANCE OF THE FREE PATENT TITLE IN THEIR FAVOR.

### **Our Ruling**

The petition is bereft of merit.

Prefatorily, petitioners raise a procedural issue in the instant appeal. They contend that in respondents' Answer to the Complaint before the MTC, the latter did not specifically deny the genuineness of the deed of sale executed between petitioners and Tepait. Hence, it amounts to an admission of the allegations in the complaint.

The contention must fail. It is only at this late stage that petitioners are raising this point. It was not raised before the MTC or the RTC. Well-settled is the rule that issues not raised timely in the proceedings before the trial court cannot be considered on review or appeal as to do so would be to trample on the basic rules of fair play, justice, and due process.<sup>6</sup> Questions raised on appeal must be within the issues framed by the parties; consequently, issues not raised before the trial court cannot be raised for the first time on appeal.<sup>[7]</sup>

Anent the other issues raised in the assignment of errors, petitioners contend that the trial court failed to consider the tax declarations issued in their name which are good indicia of possession in the concept of an owner. Coupled with actual possession, which, in their case is more than thirty years, constitute evidence of ownership. Petitioners also argue that the fact that the sale in favor of petitioners was done in a private writing is of no moment. Granting *arguendo* that there was indeed no sale, the fact that plaintiffs have occupied the subject land for more than thirty (30) years continuously, publicly, peacefully, and adversely in the concept of an owner only proves that they already acquired ownership thereof by acquisitive prescription.

*Accion reivindicatoria* or *accion de reivindicacion* is an action for the recovery of ownership of real property.<sup>[8]</sup> Article 434 of the New Civil Code provides that to successfully maintain an action to recover the ownership of a real property, the person who claims a better right to it must prove two (2) things: first, the identity of the land claimed, and; second, his title thereto<sup>[9]</sup>. As to *the first requisite, the person who claims that he has a better right to the property must first fix the identity of the land he is claiming by describing the location, area and boundaries thereof. Anent the second requisite, i.e., the claimant's title over the disputed area, the rule is that a party can claim a right of ownership only over the parcel of land that was the object of the deed.*<sup>[10]</sup>

In the case at bar, petitioners based their claim of ownership over the subject property from the deed of sale allegedly executed between them and Melchor. It must be noted, however, that although what was designated in the deed was Lot 424, Pls-9, it is petitioners' allegation that what was actually occupied, cultivated,