

EIGHTEENTH DIVISION

[CA-G.R. CV. NO. 00340, November 28, 2014]

HEIRS OF CELERINA AYING, NAMELY: FLORENCIO A. MALINGIN, ANTERO A. MALINGIN, BERNARDO A. MALINGIN, THE CHILDREN OF MACARIO A. MALINGIN, NAMELY: ALFREDO L. MALINGIN, ORLANDO^[1] L. MALINGIN AND ROGELIO L. MALINGIN AND THE CHILDREN OF VICTOR A. MALINGIN, NAMELY: RUFINO A. MALINGIN, DOROTEA A. MALINGIN, BENEDICTO A. MALINGIN, BERNARDO A. MALINGIN, ROSITA A. MALINGIN AND ALFONSO A. MALINGIN, PLAINTIFFS-APPELLANTS, VS. NICETAS YBAÑEZ, PAULA AMISTAD, SITE TRADERS AND DEVELOPERS INC., OSCAR H. CHUA, CEBU AGRI-BUSINESS INC., AND ELY H. CHUA, DEFENDANTS-APPELLEES.

D E C I S I O N

INGLES, G. T., J.:

Before us is an Appeal^[2] from the April 19, 2004 Decision^[3] of the Regional Trial Court, 7th Judicial Region, Branch 54, Lapu-lapu City in Civil Case No. 4262-L for Declaration of Nullity of Instruments, Quieting of Title and Damages, the dispositive portion thereof reads:

"WHEREFORE, in the light of the foregoing considerations, judgment is hereby rendered DISMISSING the present Complaint filed by the plaintiffs for lack of merit. Likewise, defendants' Counterclaim is, as it is hereby dismiss for insufficiency of evidence.

No pronouncement as to costs.

SO ORDERED."

The facts of the case as culled from the records are as follows:

This case stemmed from a complaint^[4] lodged by plaintiffs-appellants against defendants-appellees for Declaration of Nullity of Instruments, Quieting of Title and Damages. They alleged in the complaint that: the late Celerina Aying is the owner of a parcel of land denominated as Lot 3959 located in Maribago, Lapu-lapu City with an area of 13,691 square meters and covered by Original Certificate of Title (OCT) No. RO-1868;^[5] Celerina died single and without issue thus leaving as only heirs the children and grandchildren of her sister Tomasa Aying namely, Florencio, Antero, Hernando, Macario and Victor, all surnamed Malingin; Macario and Victor are already dead and are survived by the following: Macario's children - Alfredo, Rolando and

Rogelio, all surnamed Malingin and Victor's children - Rufino, Dorotea, Benedicto, Bernardo, Rosita and Alfonso, all surnamed Malingin; plaintiffs and their predecessors-in-interest have been in continuous, actual and physical possession of the subject lot since time immemorial in the concept of owners; sometime in June 1995, plaintiffs discovered that OCT No. RO-1868 was canceled by virtue of an Extra-Judicial Settlement and Absolute Deed of Sale^[6] dated December 24, 1986 in favor of Site Traders and Developers, Inc. represented by Oscar H. Chua, on the basis thereof, Transfer Certificate of Title (TCT) No. 17204 was issued to the latter; subsequently, TCT No. RO-1868 was canceled by virtue of a Deed of Absolute Sale dated May 24, 1998 in favor of Cebu Agri-Business Inc. represented by Ely H. Chua to whom TCT No. 18600^[7] was thereafter issued; that the Extra-Judicial Settlement and Absolute Deed of Sale is null and void because the persons who claimed to be the heirs of Celerina in the said instrument are not in fact heirs of the latter; the signatures of the persons who posed as heirs thereat, particularly Juan and Eugenia Hiyas, were forged or simulated; defendants Ybañez and Amistad who acted as witnesses to the Extra-Judicial Settlement and Absolute Deed of Sale, conspired with the rest of the defendants in perpetrating fraud; that Cebu Agri-Business is not a purchaser in good faith and for value because it is also in conspiracy with the other defendants; that because of the illegal acts of the defendants, plaintiffs suffered damages; plaintiffs then prayed that the Extra-Judicial Settlement and Absolute Deed of Sale and the Deed of Sale in favor of Cebu Agri-Business Inc. be declared null and void; that OCT No. RO-1868 be reinstated and plaintiffs be declared as co-owners of the subject parcel of land; and that the defendants be ordered to pay damages to herein plaintiffs.

In their Answer with Counterclaim,^[8] defendants-appellees denied the material allegations in the complaint and averred that plaintiffs-appellants have no cause of action against them and assuming they have, the same has long prescribed considering that Celerina Aying died before World War II. Plaintiffs-appellants are also guilty of laches. Moreover, their alleged cause of action to the effect that defendants-appellees committed fraud is also barred by the statute of limitations. Defendants-appellees then prayed for the dismissal of the complaint and for damages.

Pre-trial was then conducted and per the Order of Pre-Trial Conference^[9] dated January 10, 1997, the following issues were raised:

1. Whether or not said Extra-Judicial Settlement of Estate and Absolute Deed of Sale binds the plaintiffs who had not participated therein;
2. Whether or not the present action is barred by prescription and/or laches.

Thereafter trial on the merits ensued. The plaintiffs presented Rolando Malingin^[10] and Poilo Pangatungan^[11] as their witnesses. Their testimonies are hereunder summarized as follows:

Rolando testified that she knew the decedent Celerina Aying; that she died single with no children sometime in 1934^[12]; her nearest relative is her only sister Tomasa Aying; Tomasa has since died but was married to Hilarion who is also dead now;

Tomasa and Hilarion had children namely: Florencio, Victor, Macario, Benaldo and Antero, all surnamed Malingin; Victor and Macario are already deceased; Macario's children are Rolando (witness), Rogelio and Alfredo while Victor's children are Rufino, Benedicto, Alfonso, Rosita and Dorotea; witness also knew defendant Nicetas Ybañez and Paula Amistad being his neighbors in Barangay Pajac, Lapa-lapu City; he also knows the defendants-corporations and their owners Oscar H. Chua and Ely H. Chua; sometime during the lifetime of witness' father, Ybañez and Amistad, representing Simon Chuahe of Cebu Agri-Business Inc., approached him regarding the sale of the parcel of land subject of this case which has been occupied by the witness since birth; they asked his father to sign a document of sale but his father refused; they were surprised why, later on, defendants became owners of the subject parcel of land already by virtue of an Extra-Judicial Settlement and Absolute Deed of Sale dated December 24, 1986, which the witness discovered sometime in 1995 when they went to the city hall to pay taxes but found out that it was registered in the name of somebody else already; the document was signed by Juan Diaz, Leo Diaz and Eugenia Diaz who are not related to the heirs of Celerina Aying; the witness knew these persons who died in 1969 (per the Death Certificate of Juan) [13] and 1986 (Leo) although he does not know when Eugenia died; he got worried about this and converting his worries in monetary terms, it would amount to P50,000.00; to teach the perpetrators a lesson, he is asking for P50,000.00 and in instituting this case he agreed to pay his counsel 30% of the value of the lot; he also spent P5,000.00 in litigation expenses.

The testimony of the above witness was corroborated by the testimony of the second witness for the plaintiff Poilo Pangatungan.

The defendants on the other hand presented the followings witnesses: Sergio Amistad, [14] Nicetas Ybañez, [15] Paula Amistad, [16] Simon Chuahe, [17] Gene Chua, [18] and Rory Jon Sepulveda. [19] The version of the defendants is as follows:

The subject parcel of land, Lot 3959, located in Abuno, Maribago, Lapu-lapu City was originally owned by Silvina Aying. Silvina has children namely: Juan, Eusebio and Eugenia Amistad Hiyas. Juan and Eusebio were residing in Compostela while Eugenia was residing in the subject lot with her mother Silvina up to the time of the death of Silvina in 1938. Thereafter, Eugenia continued to reside thereat and sometime in 1965 she decided to sell the lot. Nicetas Ybañez, who used to be a neighbor of Silvina and Eusebia, then undertook to trace the documentary history of the lot and in her research, she found out that in 1949, a portion of the lot was transferred by Silvina to Hilarion Malingin, particularly the portion he was then tilling, per an Affidavit of Transfer [20] dated January 10, 1949. At the time Hilarion executed the affidavit, Silvina was already dead. Nicetas informed Eugenia about the transfer and that only a portion of the original lot remained, the latter told her to proceed to sell the remaining portion (5,000 plus square meters) as she and her brothers already agreed to sell the same and it was eventually sold to Simon Chuahe. Meanwhile, the portion (7,000 plus square meters) that was transferred to Hilarion Malingin as sold by him to a certain Climaco by defendant Paula Amistad. Climaco subsequently sold the lot to defendant Site Traders, the same entity who bought the other portion. Site Traders then consolidated ownership over the two parcels of land. Atty. Gabriel then prepared an extra-jududicial declaration of heirs and summary settlement of the estate of the deceased Celerina (Silvina) Aying [21] which was signed by the heirs of Silvina Aying namely, Eugenia, Juan and Leo, (son

of Eusebio who died already), Nicetas also signed the same as witness together with Paula Amistad. The document erroneously contained the name Celerina but it was actually referring to Silvina and that Clerina and Silvina refer to one and the same person.

The above testimony was corroborated by the next witness Paula Amistad who testified that she also lived near the subject parcel of land sometime in the 70's; that she was the person who processed the transfer of the 7,000 square meter portion from Hilarion Malingin to Climaco, Chiongbian and Canesares because his husband was working with them. Paula testified that the transfer from Hilarion Malingin to Climaco et al. was effected pursuant to an Extra-Judicial Declaration of Heirs with Deed of Absolute Sale^[22] signed by the original transferee Hilarion, together with Macario and Victor, all surnamed Malingin. Macario and Victor were the children of Hilarion Malingin and Tomasa Aying. All three are already dead. Macario was survived by his son Rolando. The said lot was then sold by Climaco et al to Site Traders who now own and possess it and who has hired a care taker in the person of Sergio Amistad. Sergio Amistad has confirmed this fact in his testimony.

Simon Chuahe also testified for the defendants. He stated that he is one of the defendants in the instant case, the other defendants Oscar and Ely are his sons and that he is one of the owners of Site Traders and Developers Inc together with his other children and his wife. He confirmed that he bought 5,000 plus square meters of Lot 3959 from Eugenia Hiyas in July 1967 after the same was offered for sale to him by Nicetas. He also testified that before the purchase, he met with the owners, Eugenia, her husband, Paula Amistad, Juan, Nicetas and one other person whose name he forgot. They agreed that the purchase price shall be P1,800.00 and that Eugenia whose house was located on the said lot, may continue to live thereon until told to vacate. They also agreed that Nicetas will facilitate the transfer. There was a Torrens Certificate of Title covering the parcel of land but it was lost during World War II. Instead, Eugenia presented to him a Certification^[23] issued by the Clerk of Court of the then Court of First Instance (CFI) showing that the decree owner thereof is Celerina Aying. The lot consisted of 13,000 square meters but Eugenia was selling only 5,000 square meters thereof because the rest already belonged to a certain Hilarion Malingin. He paid a downpayment of P300,00 and the balance, per their agreement, was to be paid upon the execution of the document of sale or the extra-judicial declaration of heirs prepared by the vendors. When the said document was delivered to him, the vendors also delivered Tax Declaration No. 01336 covering Lot 3959-part which was already under his name. He then paid taxes thereon continuously as shown by various tax receipts.^[24] Tax Declaration No. 01336 was eventually canceled and a new one issued by the local government which is Tax Declaration No. 00220 which was in turn canceled by Tax Declaration No. 00269 and then by Tax Declaration No. 00263 and finally by Tax Declaration No. 00284.^[25] Eugenia and Leo finally left the land sometime in the middle of the 70's and since then nobody resided nor planted crops thereon. In 1987, he bestowed ownership of the subject parcel of land to Site Traders and Developers Inc by virtue of a Waiver of Rights^[26] executed by him and his wife in favor of Site Traders.

Simon Chuahe also testified that he has in fact, as co-owner thereof, filed a petition^[27] for judicial reconstitution of the lost title of the subject parcel of land sometime in 1971 which was granted in his favor sans the objection of herein plaintiffs. The same was effected by virtue of the extra-judicial settlement which

was duly published in a newspaper of general circulation.^[28] The reconstituted title was under the name of the original owner Celerina Aying per Original Certificate of Title RO-1868.^[29]

Sometime after the issuance of Original Certificate of Title RO-1868, particularly in 1974, he got in touch with the owners of the 7000 square meter portion, Climaco, Chiongbian and Canizares so that the property will be subdivided. Initially, they were not able to agree on a subdivision plan because of the expenses. He proposed to buy the same but they were also unable to agree on a price until sometime in 1987 when he was told by Paula Amistad that Climaco et al. were interested to sell their property again which was then covered by Tax Declaration No. 00277.^[30] This was also the year when Site Traders acquired his portion so he consulted with the board of directors and proposed that they also acquire the other portion which they did pursuant to a Waiver of Right or Claim over Real Property.^[31] To consolidate ownership over the entire parcel of land, they engaged Paula and Nicetas to facilitate the process. A new Extra-Judicial Settlement was executed by the heirs of Celerina for the entire Lot 3959 dated December 24, 1986.

Eventually, Original Certificate of Title RO-1868 was canceled, Transfer Certificate of Title 17204^[32] was issued under the name of Site Traders on the strength of the documents mentioned above.

After that, Site Traders sold the subject parcel of land to Cebu Agri-Business Inc. The President of Cebu Agri-Business Inc., Gene Chua, testified and stated that the corporation purchased the subject parcel of land consisting of 1.3 hectares on May 28, 1988.^[33] At that time it had no structures and no agricultural plants were planted thereon. It was then covered by a TCT in the name of Site Traders and Developers Inc. Upon purchase, they then consistently paid real property taxes thereon. They also hired Sergio Amistad who was living in the adjacent area as caretaker thereof and repaired the fence some time in 1990. At that time, nobody came to complain about it. Only the instant complaint was made which prompted the defendants to hire a lawyer and they are asking for damages because of it. The witness, together with his staff, traced the documentary history of the subject land by going to the Office of the Register of Deeds where they got copies of titles and other pertinent documents like tax declarations. They found out that at that time, there are no records of liens or encumbrances pertinent to the subject land. The witness identified Transfer Certificate of Title No. 18600^[34] covering the parcel of land under the name of Cebu Agri-Business and its Tax Declaration No. 01579^[35] and Tax Declaration No. 00355.^[36]

On cross-examination and re-direct examination, the witness testified that: he is also a member of the board of directors of Site Traders from whom Cebu Agri-Business purchased the subject lot but he is not involved in the day to day operation of Site Traders; the President of Site Traders is his brother who is also a member of the board of Cebu Agri-Business; the purchase price was P24,000.00 paid in cash; Cebu Agri-Business was planning to put up a manufacturing facility for animal feeds in the subject lot.

The defendants also presented Atty. Rory Jon Sepulveda who corroborated the testimonies of the above witnesses by tracing the documentary history of the