

THIRTEENTH DIVISION

[CA-G.R. CV NO. 101792, November 19, 2014]

EUBERTO F. CASALO,* PLAINTIFF-APPELLANT, VS. ESTELA H. ARMSTRONG, DEFENDANT-APPELLEE.

D E C I S I O N

DIAMANTE, J.:

On appeal are the Orders dated May 22, 2013^[1] and September 9, 2013^[2] of Olongapo City Regional Trial Court (RTC), Branch 72, in Civil Case No. 39-0-2011.

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

" xxx xxx

In his complaint, plaintiff Euberto Casalo alleges that he is the owner of a parcel of land located at Sitio Malinta, Asinan Proper, Subic, Zambales, consisting of One Thousand Two Hundred Seventy Nine (1,279) square meters, more or less, covered by Tax Declaration No. 003-1574 in his name and with an assessed value of Forty Eight Thousand Pesos (P48,000). He has been in open, continuous, adverse possession and in the concept of owner of the above described parcel of land since the year 2002, when he bought the same from its previous owner, Annabelle Toledo Bedonia. There is a house built on the property described above, which the plaintiff has been renting out to individuals since 2002. Sometime on October 2009, the plaintiff went to the aforesaid property to check the same but he was surprised to discover that the defendant, by means of strategy and stealth, and taking advantage of the plaintiff's absence, had fenced with barbed wire the four-meter wide private access road of the plaintiff leading to the barangay road, and had a metal gate installed thereat, thus denying the plaintiff access to the said barangay road. The four-meter private road fenced by the defendant is part of the lot of the plaintiff as shown in the survey plan issued by the Department of Environment and Natural Resources (DENR), CENRO, Olongapo City. He then lodged a complaint before the Lupon Tagapamayapa of Asinan Proper, Subic, Zambales against the defendant for said intrusion, but no settlement was reached, hence, he was issued a certificate to file action. His counsel then sent a demand letter to the defendant asking her to remove the barbed wire fence and the gate, but this demand was unheeded.

Plaintiff further alleges that in view of the refusal of the defendant to remove the barbed wire fence and gate and surrender the area she encroached on plaintiff's lot, plaintiff was forced to litigate and engaged the services of counsel for an agreed sum of fifteen thousand pesos

(P15,000) and appearance fees of one thousand pesos (P1,000) for every hearing attended. He likewise suffered sleepless nights and humiliation from defendant's unjustified refusal to remove said gate and fence, that if quantified into monetary terms, should be at least thirty thousand pesos (P30,000).

In her verified answer, the defendant claims that the subject property was titled in the name of another person. She has acquired her property consisting of 979 square meters, more or less, of the Subic Cad. 547-D which is Lot 5014 by way of 'Waiver of Rights Over a Real Property' on September 21, 2000. The alleged possession by the plaintiff of the 4-meter wide private access road which is allegedly forming part of his 1,279 square meters was on the year 2002 while she acquired the right on the property consisting of 979 square meters in the year 2000. She acquired the 4-meter wide area on September 21, 2000 from the same sellers of her lot consisting of 979 sq. meters. Since then, she started her occupancy of the lot including that which was allegedly a private road, a 4-meter wide area, which is her area plus 979 square meters is 1.168 square meters owned by her. She then constructed the road for her use leading to the barangay road on the same year 2000 and erected a fence and a steel gate thereat. She bought the 4-meter area, now her private road with the steel fence thereon as stated above, from the same sellers of the 979 square meters. The said private road used to be the placed (sic) where the hut of the parents of the sellers (Lorenzo and Teresita Asis) was located.

Defendant also claims that the DENR CENRO survey plan is without basis. She argues that when the title is already issued to another person the administrative authority of DENR on that parcel of land ceased. Hence, her refusal to remove her fence and gate within the perimeter of the 4-meter wide access road which she bought the (sic) spouses Lorenzo Asis and Teresita Asis is with valid and legal basis.

xxx xxx"

Series of pre-trial conferences were held and the pre-trial was eventually terminated on February 7, 2012.^[3] Trial on the merits thereafter ensued.

Plaintiff-appellant presented himself as witness, as well as Eduardo C. Eito. Defendant-appellee thereafter filed a Motion to Dismiss on Demurrer to Evidence dated October 25, 2012^[4] alleging that no evidence was submitted to prove that plaintiff-appellant was entitled to recovery of possession over the subject property. Plaintiff-appellant filed his Comment thereto stressing that he was able to prove prior possession of the property in question.^[5] In an Order dated May 22, 2013,^[6] the court *a quo* granted the Demurrer to Evidence, stating that plaintiff-appellant failed to present convincing evidence that he owned the subject property.

Plaintiff-appellant filed a Motion for Reconsideration^[7] of the above-cited Order to which defendant-appellee filed her Comment/Objection dated June 26, 2013.^[8] The court *a quo* denied the motion in its Order dated September 9, 2013.^[9]

Plaintiff-appellant's counsel then filed an Entry of Appearance with Notice of Appeal dated October 1, 2013.^[10] Thereafter, the court *a quo* noted the Entry of Appearance of plaintiff-appellant's new counsel and approved the Notice of Appeal in its Order dated October 2, 2013.^[11]

Hence, the present recourse by the plaintiff-appellant, raising the following assignment of errors:

ASSIGNMENT OF ERRORS

First Assigned Error

THE COURT A QUO COMMITTED GRAVE ERROR IN FINDING IN THE ORDER DATED 22 MAY 2013 THAT PLAINTIFF FAILED TO PRESENT CONVINCING EVIDENCE THAT THE SUBJECT PROPERTY IS WITHIN THE LOT OWNED BY THE PLAINTIFF.

Second Assignment of Error

THE COURT A QUO COMMITTED GRAVE ERROR IN CONCLUDING THAT THE PLAINTIFF FAILED TO PRESENT COMPETENT WITNESSES TO TESTIFY ON THE ISSUE OF THE BOUNDARY OF HIS PROPERTY SUCH AS A LICENSED OR GOVERNMENT SURVEYOR WHEN THE RECORD SHOWS THAT ENGR. NESTOR DELGADO OF THE DENR TESTIFIED AS PLAINTIFF'S WITNESS^[12]

We deny the appeal.

In dismissing plaintiff-appellant's Complaint through a Demurrer to Evidence, the court *a quo* ratiocinated that plaintiff-appellant failed to present convincing evidence that he is the owner of the subject property.^[13] According to the court *a quo*, there was no showing in the Tax Declaration No. 003-1574^[14] presented by plaintiff-appellant to prove his claim that the lot in question was part of his property. In addition, the sketch map^[15] issued by the Department of Environment and Natural Resources (DENR) from which plaintiff-appellant anchored his claim did not indicate that the subject property is within or part of the property covered by Tax Declaration No. 003-1574. It likewise did not give credence to plaintiff-appellant and his witness' allegations that the subject property used to be a private road before defendant-appellee fenced the same.^[16]

Plaintiff-appellant, however, contended that the pieces of evidence he submitted sufficiently supported a cause of action for recovery of possession. He pointed out that it is now the duty of the defendant-appellee to prove by preponderance of evidence that the four (4) meter pathway was included in the sale of her 979 square meter property.^[17]

After a thorough and judicious scrutiny of the parties' position, We sustain the court *a quo*'s findings.

Rule 33, Section 1 of the 1997 Rules of Civil Procedure provides:

Section 1. Demurrer to evidence. — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

In the case of *Erlinda B. Dandoy vs. Court of Appeals, et al.*,^[18] the High Court had the occasion to expound the concept of a demurrer to evidence and when the same should be granted, thus:

"xxx xxx Demurrer to evidence authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part as he would ordinarily have to do, if plaintiff's evidence shows that he is not entitled to the relief sought. Demurrer, therefore, is an aid or instrument for the expeditious termination of an action, similar to a motion to dismiss, which the court or tribunal may either grant or deny.

A demurrer to evidence may be issued when, upon the facts adduced and the applicable law, the plaintiff has shown no right to relief. Where the totality of plaintiff's evidence, together with such inferences and conclusions as may reasonably be drawn therefrom, does not warrant recovery against the defendant, a demurrer to evidence should be sustained. A demurrer to evidence is likewise sustainable when, admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make out one or more of the material elements of his case, or when there is no evidence to support an allegation necessary to his claim. It should be sustained where the plaintiff's evidence is *prima facie* insufficient for a recovery.
xxx xxx" [Emphasis and underscoring supplied]

From the above, it could be synthesized that the question to be resolved in a demurrer to evidence is whether the plaintiff, by his evidence in chief, was able to establish a *prima facie* case.^[19] A litigating party is said to have a *prima facie* case when the evidence in his favor is sufficiently strong for his opponent to be called on to answer it.^[20] In other words, the resolution of a demurrer to evidence hinges on the determination of whether the evidence of the plaintiff-appellant is sufficient enough so as to entitle him to the relief sought for.

Unfortunately for the plaintiff-appellant, We are in one with the court *a quo's* findings that he failed to present convincing evidence to support his allegations.