

SIXTH DIVISION

[CA-G.R. CV NO. 96451, November 13, 2014]

**EDGAR S. LUBRIN, PLAINTIFF-APPELLEE, VS. SPOUSES ARIEL
AND IMELDA DIMAANO, DEFENDANTS-APPELLANTS.**

DECISION

TIJAM, J.:

Before Us on appeal is the Order^[1] dated May 28, 2010, issued by the Regional Trial Court [RTC] of San Fernando City, La Union, Branch 66, which granted the Demurrer to Evidence, thereby dismissing Civil Case No. 6926, for Recovery of Possession of Real Property and Damages, filed by the plaintiff-appellee, Edgar S. Lubrin [Appellee] against the defendants-appellants, spouses Ariel and Imelda Dimaano [Appellants]. The dispositive portion of the assailed Order reads:

"WHEREFORE, premises considered, the "Demurrer to Evidence" filed by defendants is hereby GRANTED and the instant case is hereby DISMISSED. Costs to the parties.

SO ORDERED."^[2]

The antecedent facts are as follows:

On August 13, 2004, an Amended Complaint^[3] for Recovery of Possession of Real Property and Damages was filed by the appellee, through his attorney-in-fact, Danilo S. Gacayan [Gacayan] against the appellants, before the RTC, San Fernando City, La Union, Branch 66.

Appellee alleged that he is the owner and possessor of Lot No. 20691 and Lot No. 20690,^[4] both under Cad 539-D, San Fernando Cadastre, situated at Lubrin Heights, Barangay I, San Fernando City, La Union, with an assessed value of P19,620.00 and P157,400.00, respectively, more particularly described as follows:

LOT 20690, CAD 539-D, San Fernando Cadastre

A parcel of residential land, Lot 20690, Cad. 539-D, San Fernando Cadastre, with an area of 388 sq.m.; Bounded on the North by Lot 20691; on the East by Barangay Road; on the South by Lot Nos. 20689 and 98; and on the West by alley, Lot Nos. 9235 and 53 covered by Tax Declaration No. 93-001-040, Property Identification No. 008-01-001-01-003 with an assessed value of P157,400.00". A machine copy of the said Tax Declaration is herewith attached and marked as ANNEX "B".

LOT 20691, CAD 539-D, San Fernando Cadastre

"A parcel of residential land, Lot 20691, Cad 539-D, San Fernando Cadastre, with an area of 195 sq.m.; Bounded on the North by Barangay Pagdaraoan Boundary; on the East by Road; on the South by Lot No. 20690, Road; and on the west by Lot No. 53, Barangay Pagdaraoan Boundary." Covered by Tax Declaration No. 02-001-64085 and Property Identification No. 008-01-001-02-049 and Approved Survey Plan AP-01-006558 and approved on August 15, 2003, copies hereto attached as ANNEXES "C" and "D", respectively."

Appellee also alleged that, in May 2002, he and the appellants established the boundaries of their respective properties and fenced them. In November 2002, while he was abroad, appellants had their property surveyed by Engr. Juanita Laddaran [*Engr. Laddaran*], without prior approval of the DENR-Land Management Bureau, Regional Office I, San Fernando City, La Union. Appellants executed an Affidavit of Correction based on the sketch plan resulting from the survey and then fenced a portion of appellee's properties.

On January 31, 2004, appellee arrived in the Philippines. He learned about the encroachment by the appellants on his lots so he referred the matter to the *lupon tagapayamapa*. They never settled amicably in the lupon, hence, a certification to file action in court was issued. Appellee demanded the appellants to remove the fence on the portion of the lots belonging to him, but the demand was unheeded.

Appellee caused the verification survey of his lots by Engr. Teresita C. Binongcal [*Engr. Binongcal*] which showed an encroachment of an area of 205 sq.m. on Lot No. 20690 and 57 sq.m. on Lot No. 20691. He claimed that appellants acted with fraud and evident bad faith when they fenced a portion of his lots and applied for a correction to their tax declaration without informing him, when he and appellants previously both aided each other to fence their respective properties.

Appellee prayed that judgment be rendered 1) declaring him as lawful possessor/owner of the subject properties; 2) declaring appellants' acts of occupying a portion of his properties, constructing a fence and introducing other improvements therein, as illegal; 3) ordering appellants to vacate the premises and remove the fence and improvements therein; and, 4) ordering appellants to pay monthly rentals for the use of his lots from November 2002 until complete possession thereof is restored to him. Appellee also prayed for payment of air fare, accommodation and loss of earning capacity while he was in the Philippines for a period of 2 months; moral and exemplary damages; attorney's fees, and appearance fee; litigation expenses as may be proven and costs. He likewise prayed for other reliefs just and equitable under the premises.

In their Answer^[5] to the complaint, appellants denied that they and appellee mutually helped or aided each other in fencing their respective lots. Appellants admitted that Engr. Laddaran surveyed their property and they executed an Affidavit of Correction as a result of the survey. They claimed that they fenced in good faith the area that is rightfully and legally within the metes and bounds of their property, hence, the fence was not illegally constructed. Appellants prayed for the dismissal of

the complaint for lack of cause of action and for payment of litigation expenses, attorney's fees, appearance fee, as well as costs of the suit, and such other reliefs just and equitable under the premises.

On October 4, 2004, the RTC issued an Order stating that upon agreement of the parties, a committee led by an Engineer from the Regional Office of the DENR shall survey the properties subject of the litigation.^[6]

On January 14, 2005, Engr. Wilfredo T. Tabion [*Engr. Tabion*] issued a Verification Survey Report^[7] on Lot Nos. 20690 and 20691, Cadastre 539-D, San Fernando Cadastre after the verification survey conducted in the presence of the parties and their surveyors. The verification survey report states:

"xxx. We run a traverse station over the subject lots and took side shots of the monuments appeared on the ground as reference in the computation of common points. Based on the data gathered, we adopted corner 2 of Lot 25475, Cad-539-D as common point and corner 10 of Lot 53, corners 2, 3, 4, 5 of Lot 20691 and corners 1, 2, 6, 7 of Lot 20690 were used for checking of the positions of the monuments.

Based on the computation, the area encroached by Dimaano over the lot of Lubrin was 66 Sq. meters while the area encroached by Lubrin over the lot of Dimaano was 26 Sq. meters. This computation was based on the actual boundary from the fences constructed by Dimaano and Lubrin. Please see attached sketch plan for ready reference.

From these findings, it appears that encroachment really exists from the actual boundaries of the lots subject of the controversy." [Emphasis supplied].

Subsequently, the parties agreed to a resurvey of the area bought by the appellants in an auction sale; and for the removal of the fence at the expense of the appellee, and if it is shown that the area actually belongs to the appellants, then it will be returned at the expense of the appellee.^[8]

On October 11, 2005, Engr. Tabion submitted before the RTC a Verification Survey Report^[9] over Lot No. 75, Cad. 539, San Fernando Cadastre, the property bought by the appellants in an auction sale. Based on the attached Survey Plan, the area occupied by the appellants where their house was built is 124 sq.m. designated as Lot 75-B, Lot 75-A is an Existing Road consisting of 73 sq.m. and Lot 75-C was occupied by Arnel Melicano with an area of 272 sq.m.

On October 8, 2007, during the chamber conference, the parties agreed to abide by the legal effects of the Verification Survey Report dated January 14, 2005. Appellants have renounced the 66 sq.m. which they encroached and restored the same into the ownership of the appellee. On the other hand, appellee has yet to comply with the survey report and has expressed to waive and renounce his right and interest over the encroached area of 26 square meters in favor of the appellants as shown in the verification survey report. With respect to the verification survey

report dated October 10, 2005, the RTC directed the issuance of a subpoena to Engr. Tabion to explain the technical meaning of his survey report to assist the court in assessing the alleged encroachment by the appellants.^[10]

When Engr. Tabion can no longer be summoned to testify on his report, the parties agreed to a new verification survey to be conducted by Engr. Joel Eden or Engr. Martin Lim of DENR, Regional Office I, San Fernando City, La Union.^[11] Since appellee opposed the commission of Engr. Lim, the case was set for Judicial Dispute Resolution (JDR) where conferences were held, but the same failed.^[12]

After the pre-trial was terminated,^[13] trial thus ensued.

Appellee's evidence consists of his own testimony and that of Edgar Gacayan, Zenaida Avila, Ursula Lopez and Engr. Teresita Binongcal.

Appellee testified that his lots located at Lubrin Heights, Brgy. 1, San Fernando City, La Union were fraudulently surveyed and fenced by the appellants. He identified Lot No. 20691 which was declared in his name^[14] and with an approved survey plan^[15]; and Lot No. 20690 which was previously owned by his grandfather, Andres Lubrin,^[16] both covered by Cad. 539-D, San Fernando Cadastre.^[17] Appellee declared that in 1984, he acquired Lot No. 20691 through donation from his brother, Hector Lubrin. He stated that he is a forced heir of Lot No. 20690 which was administered by his father, Federico Lubrin [*Federico*] and he took administration thereof when the latter died. He declared that he planted trees on these parcels of land^[18] adjoining the lot of the appellants, which lot the latter purchased from Magdalena Murla, who bought the same from spouses David and Ofelia Malaga.^[19]

Appellee further testified that in 2002, he and the appellants agreed to and fenced their respective lots.^[20] After he left for Australia, he learned from Gacayan that appellants had their property surveyed without notice, executed an Affidavit of Correction^[21] and relocated their fence extending to his lots.^[22] He called up appellant Imelda Dimaano about the encroachment but the latter retorted that the fence can be removed through a court order.^[23] He came home and sought conciliation before the lupon tagapamayapa but to no avail. Through counsel, he demanded from the appellants to remove the fence and vacate the encroached area but they did not heed. Appellee also declared that he commissioned Engr. Binongcal to conduct a verification survey of his properties and the survey showed that appellants encroached an area of 158 sq.m. on Lot No. 20690 and 57 sq.m. on Lot No. 20691.^[24]

The second witness, Edgar Gacayan testified that 3 surveys were made on the disputed property, the first was in August 2003 by Engr. Felino Perez, in his presence and the appellants. The second survey was made in 2004 by Engr. Tabion involving Lot Nos. 20690, 20691, 75-A and 75-B and witnessed by Engr. Laddaran and Engr. Binongcal. The third survey was also made by Engr. Tabion on Lot Nos. 75-A and 75-B.^[25] Gacayan declared that Lot No. 20691, owned by appellee consists of 168 sq.m. as appearing in the approved survey plan.^[26] He stated that under the survey plan of Engr. Tabion over Lot Nos. 20690 and 20691, the one colored in orange with an area of 66 sq.m. is the only property that is being encroached by the property of

the appellants.^[27] Gacayan further declared that the appellants purchased the adjoining lot from Magdalena Murla, which lot was previously mortgaged by appellee's father, Federico with La Union Development Bank. Said lot was later foreclosed by said bank. The land was bought from the bank by David Malaga, who sold the same to Murla.^[28]

The third witness, Zenaida Avila [*Avila*], cousin of the appellee, testified that the subject lots were previously owned by Andres. Federico inherited the lots from Andres and gave to his sons, Hector and the appellee. She further stated that she is a neighbor of the appellants who bought Lot No. 75 from Magdalena Murla, adjacent to the appellee's lots and separated by a road-right-of-way which has been established for a long time.^[29]

The fourth witness, Ursula Lopez [*Lopez*], declared that the Lubrin family is her friend since childhood. She stated that her family owns a property at the lower part of the Lubrin Heights while the appellee and the appellants own parcels of land at the upper part of the Lubrin Heights. The Lubrins and the Dimaanos own adjacent lots separated by a road which has been established for a long time.^[30]

Engr. Binongcal testified that sometime in March 2004, she surveyed Lot Nos. 20691 and 20690, in relation to Lot No. 75. After the verification survey, she prepared a survey plan outlining the fence and concrete monuments on the ground. The sketch plan showed the boundaries of Lot No. 75, a portion of which was sold to the appellants and on which their house was built, the road-right-of-way, the adjacent lots of the appellee, and the existing barbwire fence. She pointed out that the road separates the realties of the appellee and the appellants.^[31]

Engr. Binongcal further testified that Engr. Tabion of the DENR made a survey on Lot Nos. 20691 and 20690 in November 2004 in the presence of the parties and their respective surveyors. Engr. Tabion's survey report showed that appellants encroached an area of 66 sq.m. on appellee's lot, while appellee encroached an area of 26 sq.m. on appellants' lot. Engr. Binongcal presented the approved cadastral map of the area, identifying Lot Nos. 20690 and 20691 of the appellee, Lot No. 75 in the name of the La Union Development Bank, and the existing road between the lots of the parties. The map is based on the technical descriptions issued by the Land Management Service of the DENR.^[32]

After the appellee rested his case, appellants filed a Motion with Leave of Court to File Demurrer to Evidence^[33] and a Demurrer to Evidence^[34] on the ground of insufficiency of evidence to justify appellee's right to relief.

Appellants argued that appellee failed to prove that he acquired Lot No. 20690 by way of succession from his grandfather, Andres. They contended that the tax declaration covering Lot No. 20690 is not in the name of the appellee because it is without any declared owner and there was no proof that he indeed paid the realty taxes over the said lot. They claimed that planting some trees and plants by the appellee over the said lot is insufficient proof of possession. Appellants averred that under the verification survey report of Engr. Tabion, appellee encroached 26 sq.m. of Lot No. 20690, which is owned by them, but he refused to renounce the same in their favor. They insisted that the private survey conducted by Engr. Binongcal