

## TWELFTH DIVISION

**[ CA-G.R. CV NO. 81216, August 31, 2006 ]**

**MARIA L. PARAS, PLAINTIFF-APPELLEE, VS. ANGELINA VDA. DE LINGAT, DEFENDANT-APPELLANT.**

### DECISION

**SABIO, JR., J.:**

Brought to this Court for review through this appeal under Rule 41 of the 1997 Rules of Civil Procedure is the Decision,<sup>[1]</sup> dated October 24, 2003, in Civil Case No. 12324 of the Regional Trial Court of San Fernando City, the dispositive portion of which reads as follows:

"WHEREFORE, finding prepondering weight to support and sustain plaintiff's complaint, judgment is hereby rendered in favor of plaintiff and against defendant, as follows:

- 1) Ordering defendant to deliver to plaintiff Transfer Certificate of Title No. 364106-R;
- 2) Ordering defendant to execute an updated deed of sale in favor of the plaintiff, and pay thereafter the corresponding capital gains tax and other lawful taxes and fees required of an owner prior to the registration of sale and transfer of ownership thereof to plaintiff as buyer;
- 3) Ordering defendant to pay plaintiff the amount of Php50,000.00 as and for attorney's fees;
- 4) Ordering defendant to pay plaintiff Php25,000.00 as and for litigation expenses; and
- 5) Ordering defendant to pay the costs of suit.

For utter lack of merit, defendant's counterclaims are hereby dismissed, without prejudice to instituting an action to recover possession of the excess lot (accion publiciana) against Rizal Paras.

SO ORDERED."

The records disclose the following antecedent facts, which are pertinent in the present appeal, to wit:

*The disputed facts:*

Appellant alleges that the late Pedro Lingat was formerly the owner of two parcels of

land located at Telabastagan, San Fernando, Pampanga covered and described under Transfer Certificate of Title Nos. 173267-R and 173268-R, both of the Registry of Deeds of Pampanga.

Upon the death of Pedro Lingat on October 31, 1987, the aforementioned properties were consolidated and subdivided in accordance with the project partition of the inheritance and to terminate the intestate proceedings.

As a result of the consolidation and subdivision of the said properties, a portion of eight hundred thirty square meters (830 *sq. m.*) was allotted to, herein, appellant and was issued in her name Transfer Certificate of Title (TCT) No. 364106-R of the Register of Deeds of Pampanga.

In the year 2001, or fourteen years after the death of Pedro Lingat, appellant was asked by the appellee to deliver the certificate of title to the latter. Appellant, however, does not recall having signed a Deed of Absolute Sale in favor of the appellee. She submits, however, that assuming there was a sale, appellee dealt directly with her husband. She, likewise, alleges that she did not find any records of the sale when she went over her husband's records.

Upon the other hand, appellee asseverates that she purchased from the appellant and the latter's late husband an undivided portion of agricultural lot for residential purposes with an area of eight hundred thirty (830) square meters, as evidenced by the Deed of Sale of Undivided Portion of a Parcel of Land.<sup>[2]</sup>

According to the appellee, due to her persistent demands, the purchased lot was segregated in the name of the appellant under TCT No. 364106-R of the Register of Deeds of Pampanga. Without any lawful or valid reason, however, appellant kept the title. She sent a demand letter to the appellant to deliver the title to her, but the same fell on deaf ears. Thereafter, she referred the matter to the barangay for conciliation, but proved futile.

*The undisputed facts:*

On August 22, 2001, appellee filed a Complaint for Specific Performance with Damages<sup>[3]</sup> against appellant before the Regional Trial Court (RTC) of San Fernando, Pampanga. It was docketed as Civil Case No. 12324.

On October 22, 2001, appellant filed her Answer with Counterclaim<sup>[4]</sup> to the complaint.

After the issues had been joined, the case was set for pre-trial there being no settlement reached between the parties. On the basis of the testimonial and documentary evidence presented by the appellant and the appellee, the court *a quo* rendered its judgment in favor of the appellee as stated at the outset. Unfazed, the appellant filed her Notice of Appeal<sup>[5]</sup> on November 11, 2003.

Appellant now comes to this court, through this appeal, with the following submissions, to wit: (1) the lower court erred in denying defendant's motion for an ocular inspection; (2) the lower court erred when it denied the admission of Exhibits "2" and "3" for being immaterial and irrelevant (3) the award of attorney's fees and

litigation expenses are excessive.<sup>[6]</sup>

In her first assigned error, appellant submits that appellee claims to have bought from the late Pedro Lingat a portion of the latter's property. According to her, appellee is occupying an area of 1,040 square meters. Assuming, as proffered by her, that appellee, did, in fact, bought the property with an area of 830 square meters only, it appears that there is an excess area of 210 square meters. She alleges that the determination of the issue as to whether appellee occupies an excess area is so material since in her permissive counterclaim, she claims for reasonable rent for the unlawful use and occupation of the said area.

For starters, we deem it proper to discuss the propriety of an ocular inspection during trial. Ocular inspection, as a general principle, should be granted only where it is reasonably certain that it will be of substantial aid to the court in reaching a correct verdict, and the court may refuse to make the inspection where it is already familiar with the premises involved, or where photographs, diagrams, or maps in evidence adequately present the situation, or where changes have taken place since the time to which the action relates, or where it is not shown that the conditions are the same.<sup>[7]</sup> At any rate, whether such an ocular inspection should have been made or not, rested upon the discretion of the court *a quo*.<sup>[8]</sup> There are, to be sure, exceptions to this general rule but none of them obtains in this case.

There is no showing that the lower court erred in denying the motion. The trial court correctly refused to make the inspection in view of the fact that the testimonial and documentary evidence adequately established both the appellee's and appellant's respective allegations. However, even if the ocular inspection were granted by the court *a quo*, such grant would not alter, much less obliterate, her obligation to transfer the title of the portion of land covered by the sale in appellee's favor. We will save the discussion concerning this matter when we resolve the next issue.

In her second assigned error, appellant posits that the lower court erred in denying the admission of Exhibits "2" and "3" because the said documents tend to prove her claim that appellee is occupying an area more than the latter allegedly bought from her late husband. Thus, as claimed, the documents are relevant as they relate directly to the fact in issue.

Appellant's argument fails to persuade us.

Due process of law is not denied by the exclusion of irrelevant, immaterial, or incompetent evidence, or testimony of an incompetent witness. It is not error to refuse evidence, which although admissible for certain purposes, is not admissible for the purpose, which counsel states as the ground for offering it.<sup>[9]</sup>

In the case at bench, Exhibits "2" and "3", which tend to prove that appellee is encroaching upon the property of Angela Lingat, appellant's daughter, are irrelevant and immaterial, in as much as, the issue before the court *a quo* is whether appellant caused the segregation of the appellee's property from the undivided land owned by the late Pedro Lingat and caused the corresponding TCT to be issued in appellee's name, the same having been agreed upon during the execution of the deed of sale. Therefore, the documents, as the lower court had correctly ruled, are immaterial and irrelevant to the issue before it.