

FIFTEENTH DIVISION

[CA-G.R. CV NO. 85425, August 14, 2006]

HEIRS OF PACIANO FERNANDEZ, NAMELY, REVELINA FERNANDEZ-PASTORES, TERESITA FERNANDEZ-APSAY, ANTONIO FERNANDEZ, REYNALDO FERNANDEZ, MOISES FERNANDEZ, LUZ FERNANDEZ-ALIMURONG, EMILY FERNANDEZ-EDNACOT AND PACIANO FERNANDEZ, JR., AS REPRESENTED BY THEIR ATTORNEYS-IN-FACT FELICISIMO ARANGORIN AND YOLANDA FERNANDEZ, PLAINTIFF-APPELLEES, VS. JOSE ARANGORIN, LUCILA APELO, ABRAHAM PARADEZA, VITALIANO CRISTOBAL, VILLAMOR ALVEZ, NORMA CRISTOBAL, DIVINA ONIA, DELFINA AMBUYOC, AND ALL PERSONS CLAIMING RIGHTS UNDER THEM, DEFENDANT-APPELLANTS.

D E C I S I O N

REYES, J.:

A case for "Recovery of Possession and Damages with Prayer for the Issuance of Writ of Preliminary Injunction and/or Temporary Restraining Order" was filed by the Heirs of the late Paciano Fernandez, namely, Revelina Fernandez-Pastores, Teresita Fernandez-Apsay, Luz Fernandez-Alimurong, Emily Fernandez-Ednacot and Antonio, Reynaldo, Moises and Paciano, Jr. all surnamed Fernandez represented by their attorneys-in-fact Felicisimo Arangorin and Yolanda Fernandez against Jose Arangorin, Lucila Apelo, Abraham Paradeza, Vitaliano Cristobal, Villamor Alvez, Norma Cristobal, Divina Onia, Delfina Ambuyoc and all the persons claiming rights under them before the Regional Trial Court of Iba, Zambales, Branch 70, docketed as Civil Case No. RTC 1916-I.

The pertinent facts of the case as culled from the records:

Plaintiff-appellees Revelina Fernandez-Pastores, Teresita Fernandez-Apsay, Luz Fernandez-Alimurong, Emily Fernandez-Ednacot and Antonio, Reynaldo, Moises and Paciano, Jr. all surnamed Fernandez are the children and the only surviving legal heirs of the late Paciano Fernandez who died intestate at Palauig, Zambales sometime in 1996.

During Paciano Hernandez' lifetime, he bought a parcel of land situated at Barrio Inayranan (now Brgy. Lipay) Municipality of Palauig, Province of Zambales with an area of 9,375 square meters, more or less from a certain Ricardo P. Asis (***Deed of Absolute Sale dated 21 July 1947, Exh. "K"/ "3", pp. 192 and 245, Original Record***). Paciano Fernandez and his caretaker Felicisimo Arangorin then physically occupied and took possession of the abovementioned property to the exclusion of all other persons. He religiously paid the real property taxes thereon, enclosed the same with fences and introduced improvements therein. The subject property was later on cadastrally surveyed in 1962 (***Exh. "P", Id. at p. 203***) in the name of

Paciano Fernandez as owner thereof without any adverse claim or protest being registered therein. After the cadastral survey, the land was later on identified as Lot No. 2618, Cad. 364-D with an area of 12,182 square meters. Paciano Fernandez was then issued the tax declarations (**Exhs. "M" – "M-3", Id. at pp. 194-197**) in his favor covering Lot 2618 and since then he had been religiously paying all the realty taxes due on the subject property. (**Exhs. "N"-"O-3", Id. at pp. 198-202**)

Sometime in April 1984, the defendant-appellants and/or their predecessors-in-interest began claiming ownership of the land and by means of force and intimidation, unlawfully entered the same by destroying its fences, occupying the western portion thereof and constructed thereat two (2) makeshifts or nipa huts thereby unlawfully divesting the plaintiff-appellees' predecessors-in-interest of the possession and ownership thereof. From the time the defendant-appellants unlawfully and illegally occupied the disputed property, they had continuously appropriated for their own benefit the fruits thereof consisting of bamboo trees and other nipa products and they also prevented the plaintiff-appellees' predecessor-in-interest from working on the other portions of the property, thereby depriving them of their right to use, enjoy and appropriate the fruits thereof as the lawful owners thereof. In view of the defendant-appellants and/or their predecessors-in-interests' unlawful intrusion and occupation of the property, Paciano Fernandez brought the matter before the Barangay of Lipay, Palauig, Zambales; however, there was no settlement arrived at. Hence, a Certification to File Action dated April 29, 1984 was issued. (**Exh. "Q", Id. at p. 204**).

In the same year (1984), Paciano Fernandez applied for a free patent titling of the subject property before the Bureau of Lands in order to protect his right as owner thereof in which the defendant-appellants and/or their predecessors-in-interest filed their protest. Likewise in 1986, Paciano Fernandez through his former counsel Atty. Jose T. Pacis filed an action for "Quieting of Title" against the defendant-appellants and/or their predecessors-in-interests before the Regional Trial Court of Iba, Zambales, Branch 71, docketed as Civil Case No. RTC-351-I; however, on motion of Atty. Pacis that there is a pending free patent case before the Bureau of Lands, the quieting of title case was dismissed without prejudice (**Order dated 30 July 1990, Id. at p. 61**).

Meanwhile, after conducting the hearings on the free patent application of Paciano Fernandez, the hearing officer of the Bureau of Lands, Mr. Teofilo Murcia, then issued a Recommendation dated 05 December 1985 (**Exhs. "S"-"S-4", Id. at pp. 206-210**), granting the application for free patent titling of Paciano Fernandez. Effectively, it disposed respondents' protest (herein defendant-appellants and/or their predecessors-in-interest), imputing that the latter did not submit any documentary evidence to prove their claim while Paciano Fernandez had able to prove by preponderance of evidence his ownership over the property sought to be titled. Surprisingly, however, the Regional Office of the Bureau of Lands of San Fernando, Pampanga issued an Order dated **11 June 1986 (Exh. "T"/"2", Id. at pp. 211 and 244)** contradictory to the aforementioned Recommendation of the hearing officer - Mr. Murcia and ordered the segregation of the subject land occupied by the defendant-appellants from the application of Paciano Fernandez. A Motion for Reconsideration/Reinvestigation thereto (**Exh. "U", Id. at p. 212**) was filed by Paciano Fernandez through his former counsel which motion was treated as an appeal by the Bureau of Lands which is still pending at present.

In 1996, Paciano Fernandez died (**Exh. "L", Id. at p. 193**) and was survived by his children, herein plaintiff-appellees. On 23 May 2002, the plaintiff-appellees as heirs of the late Paciano Fernandez filed the instant complaint and prayed for the recovery of moral damages in the sum of P100,000.00; actual damages in the amount of P300,000.00; reasonable amount of exemplary damages and P30,000.00 as acceptance fees and P1,000.00 per court appearance and as attorneys' fees. (**Id. at p. 5**)

On the other hand, the defendant-appellants and/or their predecessors-in-interest claimed *inter alia* 1) that *res judicata* had already set in by virtue of the Order of the Bureau of Lands ordering the segregation of the parcel of land from the claim of the late Paciano Fernandez, the plaintiff-appellees' predecessor-in-interest; 2) the Bureau of Lands acted through the Office of the President, has the sole authority to grant the titles through the free patent titles and such authority is conclusive to the courts; 3) that they are the respective owners of a portion of land which they now possess and occupy; 4) that their occupation and possession thereof had been for a long period of time without interruption and in the concept of owners and they had put up their respective houses and/or improvements thereon in good faith which has now an assessed value of P50,000.00; and 5) that the plaintiff-appellees' cause of action if any, had already prescribed and/or had already lapsed and they are guilty of estoppel and/or laches. (**Id. at pp. 56 to 57**)

According to the defendant-appellants, a case for quieting of title was filed by the plaintiff-appellees' predecessor-in-interest – the late Paciano Fernandez against the former's predecessors-in-interests - Patricio Cristobal, et. al., which was eventually dismissed in an Order dated 30 July 1990. (**Original Record, supra at p. 61**)

The area which the late Paciano Fernandez, (the plaintiff-appellees' predecessor-in-interest) claimed to have been bought from the original owner Ricardo de Asis does not cover or embrace the parcel of land which the defendant-appellants now occupy respectively as the same are outside the ownership of Ricardo de Asis pursuant to the Order dated 11 June 1986 (**Exh. "T", Id. at p. 211**) issued by the Director Lands; and that from the Deed of Sale allegedly executed by Ricardo de Asis on 21 July 1947 (**Exh. "K"/ "3", Id. at pp. 192 and 245**), it is crystal clear that what was sold to Paciano Fernandez is only a portion of the subject land containing an area of 9,375 square meters.

As counterclaim, the defendant-appellants prayed *inter alia* for the dismissal of the instant complaint and that they be awarded the sum of P30,000.00 as attorney's fees and P1,000.00 per court appearance; moral and exemplary damages in the sum of P100,000.00; and other incidental expenses as may be warranted under the circumstances.

Pre-trial and trial on the merits ensued. Thereafter, a Decision dated 21 March 2005 was rendered by the court **a quo**, the decretal text of which reads:

"WHEREFORE, judgment is hereby rendered:

1. Ordering the defendants and all persons claiming rights under them to vacate the disputed western portion of Lot No. 2618 of the Palauig Cadastre which they occupy and to surrender the actual possession thereof to the plaintiffs;

2. Ordering the defendants to pay attorney's fees to the plaintiffs in the amount of THIRTY THOUSAND PESOS (P30,000.00) and also the costs of this suit.

SO ORDERED". (*Id. at p. 337*)

From the aforementioned Decision, the defendant-appellants sought the reconsideration thereof and the same was denied for lack of merit. (*Order dated 10 May 2005, Id. at p. 346*)

Disgruntled, the defendant-appellants sought recourse before Us, raising the following assigned errors, to wit:

I.

"THAT THE LOWER COURT ERRED IN NOT DISMISSING THIS CASE OUTRIGHT CONSIDERING THAT AS ADMITTED BY THE PLAINTIFF-APPELLEES BY THEIR OWN EVIDENCE THERE IS STILL A MOTION FOR RECONSIDERATION AND REINVESTIGATION ON THE EARLIER ORDER OF THEN BUREAU OF LANDS FILED BY THE HEIRS OF PACIANO FERNANDEZ AND THEREFORE ADMINISTRATIVE REMEDY HAS NOT BEEN EXHAUSTED".

II.

"THAT THE HONORABLE COURT FAILED TO CONSIDER THAT THE PLAINTIFF-APPELLEES FAILED TO ESTABLISH A REAL CAUSE OF ACTION AGAINST THE DEFENDANT-APPELLANTS THE FACT THAT THE PLAINTIFF-APPELLEES FAILED TO CLEARLY IDENTIFY THE PORTION OF THE LAND AND THAT THEIR EVIDENCE CLEARLY APPEARS TO BE CONTRADICTORY INSOFAR AS THE IDENTITY OF THE PORTION OF THE LAND THAT THEY ARE CLAIMING".

III.

"THAT THE HONORABLE COURT ERRED IN APPLYING ARTICLES 1542 OF THE NEW CIVIL CODE AND THEREFORE ERRED IN HOLDING THAT THE DEFENDANT-APPELLANTS HAVE NO EVIDENCE OF OWNERSHIP AND POSSESSION". (*Rollo, pp. 24 to 25*)

The appeal is not meritorious.

While it appears that there is a pending motion for reconsideration and reinvestigation of the Order dated 11 June 1986 of the Bureau of Lands (*Original Records, pp. 211 and 244*); nonetheless, the same does not divest the court a quo of its authority and jurisdiction to hear and adjudicate the instant case.

Courts have jurisdiction over possessory actions involving public lands to determine the issue of physical possession in ejectment cases before inferior courts, as well as the better right of possession in accion publiciana cases before regional trial courts, both of which are basically possessory actions. This, because the actions for possession raised before the courts are proceedings **discrete** from the