Supreme Court E-Library

FIRST DIVISION

[G.R. No. 250159; April 26, 2021]

SUSANA BARCELO, CATHERINE B. FLORES, CLARIZA B. BIATO, CHESCA B. MACAPAGAL, CARLO BARCELO and CAMILLE BARCELO, represented by their Attorney-in-Fact SUSANA BARCELO, *Petitioners*, *v.* **DOMINADOR RIPARIP, ROMEO RIPARIP, ROMEO RIPARIP, JR., and DANILO TAMALLANA,** *Respondents*.

D E C I S I O N

CARANDANG, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated February 28, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 152477, which dismissed petitioners' complaint for ejectment, and the Resolution[3] dated October 18, 2019, which denied petitioners' motion for reconsideration.

Facts of the Case

Adolfo Barcelo (Adolfo), the husband of petitioner Susan Barcelo and the father of the other petitioners, was the registered owner of a parcel of land covered by *Katibayan ng Orihinal na Titulo Blg. P-1805*[4] located at Barangay Conversion, Pantabangan, Nueva Ecija with an area of 36,435 square meters.[5] Adolfo's

---

[1] *Rollo*, pp. 13-27.

[2] Penned by Associate Justice Rodil V. Zalameda (now a Member of this Court), with the concurrence of Associate Justices Fernanda Lampas Peralta and Henri Jean Paul B. Inting (now a Member of this Court); id. at 36-44.

[3] Id. at 46-47.

[4] Id. at 63-64.

[5] Id.

Supreme Court E-Library

family had been in possession of the subject property by tilling and cultivating the land, planting vegetables and mango trees. Upon Adolfo's death on October 5, 2004, petitioners succeeded to the property. Sometime in 2006, petitioners discovered that respondent Dominador Riparip (Dominador) clandestinely encroached one hectare, more or less, of the subject property. Petitioners asked him to vacate the same, but to no avail. Dominador even constructed a nipa house and fenced the perimeter of the encroached area. Thus, petitioners filed a complaint before the Barangay Agrarian Reform Committee (BARC) against Dominador. No settlement was reached because Dominador insisted that the encroached portion was given to him by Adolfo but the latter did not present any document. Due to financial constraints, petitioners did not immediately file an action in court and allowed Dominador to remain in possession of said portion, even against their will.[6]

Sometime in June 2013, petitioners learned that Dominador, Romeo Riparip, Romeo Riparip Jr., and Daniel Tamallana (collectively, respondents), through strategy and stealth, occupied the remaining area of the subject property. Petitioners' demands fell on deaf ears. Respondents even threatened to hurt petitioners. Petitioners then brought the matter to the barangay but mediation failed;[7] thus, petitioners filed the instant complaint[8] against respondents before the Municipal Trial Court (MTC), Pantabangan, Nueva Ecija.

In their Answer with Special and Affirmative Defense and Motion to Dismiss,[9] respondents countered that their grandfather, Marcelino Riparip, was originally in possession of the subject property and who tilled and cultivated the same in 1980. Upon the death of Marcelino in 2000, respondents continued the possession and cultivation of the subject property by planting mango trees. Respondents claimed that the subject property was formerly a

---

[6] Id. at 37-38.

[7] Id. at 59-60.

[8] Id. at 58-62.

[9] Id. at 79-84.

public land. Adolfo and his wife was able to obtain a certificate of title by forging some documents, as well as misrepresenting that they are in possession of the property in their application for Free Patent from the Department of Environment and Natural Resources (DENR). They argued that since petitioners' title was fraudulently obtained, it is null and void; hence, they have no right to eject respondents from the subject property. Further, respondents sought the dismissal of the complaint arguing that petitioners' cause of action had prescribed since more than one year had lapsed from the time demand to vacate was made in 2006.[10]

By way of Reply, petitioners explained that their demand letter to vacate was given to respondents on August 8, 2013 while their complaint for ejectment was filed on February 28, 2014. Hence, their cause of action has not prescribed.[11]

Ruling of the Municipal Trial Court

On April 27, 2015, the MTC issued a Resolution[12] denying respondents' motion to dismiss for lack of merit.[13]

After submission of the parties' position papers,[14] the MTC issued a Decision[15] dated August 19, 2015, granting petitioners' complaint, the dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering defendants – DOMINADOR RIPARIP, ROMEO RIPARIP, JR., and DANILO TAMILLANO, and all other person claiming rights under them to:

1. Vacate the subject landholding and surrender possession thereof to the plaintiffs; and

---

[10] Id.

[11] CA *rollo*, p. 62.

[12] Penned by Presiding Judge Michael Benedick V. Aleta; *rollo*, pp. 95-97.

[13] Id. at 97.

[14] Id. at 98-102, 109-113.

[15] Id. at 114-122.

Supreme Court E-Library

2. Pay the costs of suit.

SO ORDERED.[16] (Emphasis in the original)

The MTC held that as between petitioners' Torrens title (*Katibayan ng Orihinal ng Titulo* P-1805) and the claim of respondents that they were in actual possession and occupation of the subject property since 1980 as evidenced by a Certification from the BARC Chairman, the Torren's title must prevail. Petitioners' title over the property is evidence of their ownership thereof. The MTC stated that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. Moreover, the MTC ruled that the validity of petitioners' certificate of title cannot be attacked by respondents in this case for ejectment but should be in a direct proceeding filed for that purpose.[17]

Respondents filed an appeal to the Regional Trial Court (RTC), San Jose City, Branch 39.[18]

Ruling of the Regional Trial Court

In its Decision[19] dated January 3, 2017, the RTC affirmed the MTC Decision. While the MTC held that the case filed by petitioners was one of unlawful detainer, the RTC ruled that the case was a forcible entry case. Petitioners were able to prove that they were in prior physical possession of the property and they were deprived possession thereof by stealth. Also, the RTC stated that the action was filed within one year from the time they learned of their deprivation of physical possession of the subject property. The RTC declared that the subject property is not a public land, it being titled in the name of Adolfo Barcelo and Susana Villaflor. The RTC held that the issue in this case pertains only to mere possession; the issue that petitioners' title was acquired through

---

[16] Id. at 121.

[17] Id. at 119-121.

[18] Id. at 140.

[19] Penned by Presiding Judge Cynthia Martinez Florendo; id. at 140-146.

Supreme Court E-Library

fraud and falsification is an attack on the title which is not a defense.[20]

Respondents moved for reconsideration[21] but it was denied in the Resolution[22] dated August 2, 2017.

A Petition for Review[23] under Rule 42 was filed by respondents before the CA.

Ruling of the Court of Appeals

In its Decision[24] dated February 20, 2019, the CA annulled and set aside the RTC Decision and dismissed the complaint for ejectment filed by petitioners. The decretal portion of the Decision states:

> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Decision dated 03 January 2017 and Resolution dated 02 August 2017, both issued by the Regional Trial Court, Branch 39, San Jose City, are **ANNULLED AND SET ASIDE**.
>
> The Complaint for Ejectment filed by respondents before the Municipal Trial Court of Pantabangan, Nueva Ecija is hereby **DISMISSED**.
>
> **SO ORDERED**.[25] (Emphasis in the original)

The CA held that both the MTC and the RTC ruled that this is an unlawful detainer case based on petitioners' tolerance of respondents' possession of the subject property. However, from the facts and evidence on hand, both the MTC and the RTC lost sight of the fact that petitioners themselves admitted in their pleadings that respondents' entry into the subject property was effected clandestinely or stealthily. Accordingly, respondents' entry should be categorized as possession by stealth, which gives rise to an action for forcible entry not unlawful detainer. Since

---

[20] Id. at 143-146.

[21] Id. at 147-150.

[22] Id. at 152.

[23] Id. at 153-159.

[24] Supra note 2.

[25] *Rollo*, p. 43.

Supreme Court E-Library

respondents' possession was illegal at the inception, there can be no possession by tolerance. Hence, petitioners' complaint must necessarily be dismissed. Tolerance or permission must have been present at the beginning of possession; if the possession was unlawful from the start, an action for unlawful detainer would not be the proper remedy and should be dismissed.[26]

Petitioners moved for reconsideration but the same was denied in the Resolution[27] dated October 18, 2019.

Hence, this Petition for Review on *Certiorari* filed by petitioners raising a lone issue for resolution:

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN ANNULLING THE DECISION OF THE REGIONAL TRIAL COURT OF SAN JOSE CITY, BRANCH 39 ON THE GROUND THAT PETITIONERS' COMPLAINT FOR UNLAWFUL DETAINER WAS BASED SOLELY ON THEIR BARE ALLEGATION OF TOLERANCE DESPITE THE FACT THAT THE SAID ISSUE WAS NOT RAISED BY THE RESPONDENTS IN THEIR PETITION FOR REVIEW.[28]

Petitioners' Arguments

Petitioners argue that in their petition for review before the CA, respondents did not even put in issue the propriety of the action brought against them by petitioner. Respondents raised in said petition that the subject property is part of the public land granted to them by the DENR as qualified grantees being in actual and physical possession and occupation thereof. According to petitioners, the RTC had already determined, upon its re-evaluation of the records and evidence, that the complaint is one for forcible entry. Petitioners assert that their Torrens title should prevail. Respondents' claim is in the nature of a collateral attack on their certificate of title which is not allowed.[29]

---

[26] Id. at 40-43.

[27] Supra note 3.

[28] *Rollo*, p. 22.

[29] Id. at 23-27.

Supreme Court E-Library

Respondents' Comment

Respondents aver that although the issue as to the cause of action of petitioners was not raised by respondents, the CA or any court for that matter cannot just turn a blind eye to resolve the failure of petitioners to file the proper case which is forcible entry, and not unlawful detainer. They contend that petitioners admit in their complaint and all subsequent pleadings they filed that respondents' entry to the subject property was effected clandestinely or stealthily which give rise to an action for forcible entry.[30]

Issue

The issue is simple: whether petitioners' complaint for ejectment was properly dismissed by the CA.

Ruling of the Court

The petition is meritorious.

As a general rule, the Court is not a trier of facts and does not normally embark in the evaluation of evidence.[31] This rule, however, allows exceptions, such as instances when the findings of fact of the trial court are conflicting or contradictory with those of the CA,[32] as in this case.

The MTC and the RTC granted petitioners' complaint for ejectment and ordered respondents to vacate and surrender the premises. The CA, on the other hand, dismissed the complaint. The CA ruled that the complaint filed was an unlawful detainer case as found both by the MTC and the RTC. However, since respondents' possession was illegal from the start, an action for unlawful detainer would not be the proper remedy and should be dismissed.

What determines the nature of the action, as well as which court has jurisdiction over the case, are the allegations in the complaint. In ejectment cases, the complaint should embody such statement

---

[30] Id. at 213-215.

[31] *Sps. Fahrenbach v. Pangilinan*, 815 Phil. 696, 705 (2017).

[32] Id.

Supreme Court E-Library

of facts as to bring the party clearly within the class of cases for which Section 1 of Rule 70 provides a summary remedy, and must show enough on its face to give the court jurisdiction without resort to parol evidence. Such remedy is either forcible entry or unlawful detainer. In forcible entry, the plaintiff is deprived of physical possession of his land or building by means of force, intimidation, threat, strategy or stealth. In illegal detainer, the defendant unlawfully withholds possession after the expiration or termination of his right thereto under any contract, express or implied.[33]

Pertinent portion of petitioners' complaint reads:

6. Prior to the death of Adolfo G. Barcelo, the plaintiffs and Adolfo G. Barcelo are in possession of the subject property. Adolfo G. Barcelo, during his lifetime, was the one tilling and cultivating the subject property by planting vegetables. Adolfo G. Barcelo together with his son Carlo Barcelo even planted mango trees in the subject property;

7. After the death of Adolfo G. Barcelo, the plaintiffs are still in possession of the subject property because they continued to cultivate the land left by Adolfo G. Barcelo. Sometime on *(sic)* 2006, the plaintiffs were shocked because Defendant Dominador Riparip clandestinely encroached a portion of more or less 1 hectare of the subject property. The plaintiffs asked him to vacate the subject property but to no avail. Worst, Defendant Dominador Riparip even constructed a fence over the 1 hectare land and inside it, he constructed his own nipa hut. Plaintiffs filed a complaint in the Office of the BARC in Conversion Pantabangan, Nueva Ecija, but no settlement was reached because Defendant Dominador insisted that the property he is occupying was given to him by Adolfo G. Barcelo but no document was shown to him to prove such transfer. He refused to surrender possession of the subject property and even challenged Plaintiff Susana Barcelo to bring out the sketch plan of the subject property. Because of financial setback, the plaintiffs did not immediately file an action in court until they could earn enough money to secure a sketch plan of the property and other documents to prove their right of possession over the property and finally to file the case in court. This is the reason why the plaintiffs, even against their will, tolerated the defendant Dominador Riparip to occupy the area of more

---

[33] *Zacarias v. Anacay*, 744 Phil. 201, 207-208 (2014).

or less 1 hectare until they could earn enough money to file the case in court and gather all the evidence needed;

8. The plaintiffs are still cultivating the area of the property not occupied by Defendant Dominador Riparip until the month of June 2013 when Defendant Dominador Riparip together with Romeo Riparip, Romeo Riparip Jr., and Daniel Tamallana, and one Benjamin Ancheta, by stealth and strategy, occupied the remaining area of the property to the effect that they occupied the entire property of the plaintiffs without permission from the latter to their great damage and prejudiced (sic). The defendants even threatened the plaintiffs that something will happen to them if they insist to enter the subject property. As such, the plaintiffs filed a complaint in the barangay but mediation failed because the defendants are claiming that the late husband of Plaintiff Susana Barcelo gave the subject property to the defendants. x x x.[34]

The CA erred in stating that the complaint filed was an unlawful detainer case. While the MTC held that the action filed was an unlawful detainer, the RTC Decision was clear when it ruled and corrected that the complaint was a forcible entry case, *viz.*:

With such allegations supported by Judicial Affidavits and Demand Letter, plaintiffs-appellees [petitioners] made out a case of forcible entry which was filed within the [one-year] period as required by the rules.

Accordingly, except for the findings by the court a quo that the action filed was one of unlawful detainer instead of forcible entry, this Court found the decision to be in accordance with law and existing jurisprudence.[35]

From the allegations in the complaint as above-quoted, the action filed by petitioners was a forcible entry case. It should be observed that the complaint was merely titled as "Ejectment."[36] While there may be allegations that petitioners tolerated respondents' possession after the latter clandestinely occupied more than a hectare of the subject property, what is controlling is the fact that respondents' entry into the subject property was illegal from the very beginning.

---

[34] *Rollo*, pp. 59-60.

[35] Id. at 145.

[36] Id. at 58.

Supreme Court E-Library

The facts established that the first illegal entry happened sometime in 2006 when petitioners discovered that respondent Dominador clandestinely encroached one hectare, more or less, of the subject property; constructed a nipa house; and fenced the perimeter of the encroached area. Petitioners asked him to vacate the same but respondent Dominador insisted that the encroached portion was given to him by Adolfo. Petitioners filed a complaint before the BARC but no settlement was reached. Due to financial constraints, petitioners did not immediately file an action in court and tolerated respondent Dominador to remain in possession of said portion, even against their will.

While petitioners tolerated the possession of respondent Dominador since the latter's illegal entry in 2006, it cannot be converted into an unlawful detainer case. It is the nature of defendant's entry into the land which determines the cause of action, whether it is forcible entry or unlawful detainer.[37] If the entry is illegal, then the action which may be filed against the intruder is forcible entry,[38] as in this case. In an unlawful detainer case, the possession was initially lawful but later became unlawful when the possessor by tolerance refuses to comply with the owner's demand to vacate.[39] The acts of tolerance must have been present right from the start of the possession which is later sought to be recovered.[40] In this case, respondents' entry was illegal from the very beginning.

The second illegal entry happened sometime in June 2013 when petitioners discovered that respondents, through strategy and stealth, occupied the remaining area of the subject property. Respondents refused to vacate despite demands. Petitioners

---

[37] *Sps. Fahrenbach v. Pangilinan*, supra note 32 at 211, citing *Spouses Valdez, Jr. v. Court of Appeals*, 523 Phil. 39, 48 (2006).

[38] Id.

[39] *Philippine Long Distance Telephone Company v. Citi Appliance M.C. Corporation*, G.R. No. 214546, October 9, 2019.

[40] *Sps. Fahrenbach v. Pangilinan*, supra note 32 at 210, citing *Spouses Valdez, Jr. v. Court of Appeals*, 523 Phil. 39, 47 (2006), citing *Sarona v. Villegas*, 131 Phil. 365, 373 (1968).

Supreme Court E-Library

made a written demand to vacate dated August 5, 2013 which was received by respondents on August 8, 2013.[41] They filed the complaint on February 28, 2014.

In a forcible entry case, the one-year prescriptive period is generally reckoned from the date of actual entry on the land.[42] However, if forcible entry is done through stealth, the period is counted from the time the plaintiff discovered the entry.[43] In marked contrast, the one-year period in unlawful detainer is counted from the date of the last demand to vacate.[44]

Guided by the foregoing, petitioners' action against respondents' entry through stealth over the one-hectare area in 2006 cannot be by way of summary action for ejectment. The one-year period for filing a forcible entry case from the date of discovery of entry prescribed in 2007. Hence, with respect to this one-hectare portion, they should have filed an *accion publiciana* or recovery of possession.

As to the illegal entry of the remaining area of the subject property, the forcible entry case was filed well within the one-year prescriptive period. The stealth was discovered in June 2013 and petitioners filed the complaint in February 2014.

However, considering that the property subject matter of this case pertain to only one parcel of land covered by one certificate of title *(Original na Titulo Blg. P1805)* and the intruders are the same, the Court gives due course to the filing of the instant forcible entry case for the whole area of the subject property. The filing of a case of *accion publiciana* for the one-hectare and another forcible entry case for the remaining area would be splitting the cause of action aiming for the same result and inconsistent with the summary nature of ejectment proceedings meant "to provide an expeditious means of protecting actual possession or right of

---

[41] *Rollo*, pp. 74-76.

[42] RULES OF COURT, Rule 70, Section 1.

[43] *Sps. Fahrenbach v. Pangilinan*, supra note 32.

[44] Id.

Supreme Court E-Library

possession of property."[45] Rather than file separate cases anchored on the same arguments and pieces of evidence, it would be more in keeping with the summary nature of ejectment which is "to provide for a speedy settlement and action to recover possession, and quell social disturbances"[46] if the Court treats the entire case as one for forcible entry and proceed to resolve the same.

For a forcible entry suit to prosper, the plaintiffs must allege and prove: (a) that they have prior physical possession of the property; (b) that they were deprived of possession either by force, intimidation, threat, strategy or stealth; and (c) that the action was filed within one year from the time the owners or legal possessors learned of their deprivation of the physical possession of the property.[47]

Petitioners have proved that respondents' entry into the subject property was through strategy and stealth. It was established that petitioners were in prior physical possession of the subject property, the primary consideration in a forcible entry case. In the Judicial Affidavit[48] of petitioner Susana Villaflor Barcelo, she stated that when her husband, Adolfo, was still alive, respondents were prohibited by Adolfo to enter into the subject property. Respondents were stopped then. However, upon the death of Adolfo on October 5, 2004, respondent Dominador took courage again to enter the subject property on July 25, 2006 and occupied one hectare thereof. On the same day, petitioner Susan immediately complained before the BARC Chairman but respondent Dominador ignored her demands declaring that her documents are fake. The foregoing shows that petitioners had been in prior physical possession of the subject property. Respondents did not refute these allegations.[49]

---

[45] Id., citing *Go, Jr. v. Court of Appeals*, 415 Phil. 172, 183-184 (2001).

[46] Id.

[47] *Mangaser v. Ugay*, 749 Phil. 372, 381 (2014).

[48] *Rollo*, pp. 103-108.

[49] Id. at 105-106.

Supreme Court E-Library

The subject property was registered in the name of petitioners' predecessor, Adolfo G. Barcelo, having been issued *Katibayan ng Orihinal na Titulo Blg.* P-1805, and declared the same for taxation purposes. Petitioners had been tilling and cultivating the same by planting vegetables and mango trees. When petitioners discovered the stealthy intrusion of respondents over the subject property, they immediately filed a complaint with the *barangay* and subsequently filed a complaint for ejectment before the MTC.

The issuance of a certificate of title in favor of petitioners' predecessor, pursuant to a free patent application, evidences ownership and from it, a right to the possession of the property follows. Well-entrenched is the rule that a person who has a Torrens titles over the property is entitled to the possession thereof.[50]

The issue as to the validity of petitioners' title is a collateral attack on the title and is not allowed in this forcible entry case. As it has been often said, a certificate of title cannot be subject to a collateral attack and cannot be altered, modified, or cancelled except only in a direct proceeding in accordance with law.[51]

WHEREFORE, premises considered, the instant petition is **GRANTED**. The Decision dated February 28, 2019 and the Resolution dated October 18, 2019 of the Court of Appeals in CA-G.R. SP No. 152477 are **SET ASIDE**. The Decision dated January 3, 2017 issued by the Regional Trial Court of San Jose City, Branch 39 in Civil Case No. 2015-558-P is **REINSTATED**.

SO ORDERED.

Gesmundo, C.J. (Chairperson), Caguioa, Lazaro-Javier,[*] and *Gaerlan, JJ.*, concur.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.

Department of Agrarian Reform Bureau of Agrarian Legal Assistance for respondents.

---

[50] *Sps. Fahrenbach v. Pangilinan*, supra note 32 at 385.

[51] *Sps. Santiago v. Northbay Knitting, Inc.*, 820 Phil. 157, 166 (2017).

[*] Designated as Additional Member per Raffle dated February 17, 2020.