

ARNOLD N. ALEJANDRO, PLAINTIFF-APPELLANT, VS. SPOUSES FELIX OLIVARES AND BUENAFE OLIVARES, DEFENDANTS-APPELLEES.

Ponente: PERALTA, JR., E. B., J.

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PERALTA, JR., E. B., J.:

At loggerheads with the Regional Trial Court's dispositions[1] which summarily dismissed plaintiff-appellant's suit for Recovery of Possession for perceived forum-shopping, the appeal[2] before Us later materialized.

In his Complaint[3] lodged in 2008 for restitution of the subject realty at Mangaldan, Pangasinan against Spouses Olivares, the plaintiff capitalized on his exclusive ownership over a commercial lot which he allegedly acquired by a deed of donation from his parents.[4] It dawned upon the plaintiff to secure possession from Spouses Olivares who occupied the realty by his sheer tolerance and the cause of action had to be initiated by reason of the occupants' resistance to the formal demand to relinquish possession.

For their part, the defendants asserted ownership per a Contract to Sell from the plaintiff's parents and the exculpation underscored the nexus between the plaintiff's father and co-defendant Buenafe Olivares as siblings.[5] Premised on the alleged covenant, their installment payments[6] culminated to full payment for the property in 2005 to drive home the idea of want of cause of action. In the midst of the pre-trial conference, the parties conceded these matters:

- The identity of the lot in question.
- The parcel of land in question is covered by Tax Declaration No. 00734127 with a qualification that it was obtained after the sale of the land by the plaintiff's parents.
- The land subject of this case was originally owned by plaintiff's parents.
- An ejectment case was filed by plaintiff against the defendants before the MTC Mangaldan but it was dismissed.
- It was subsequently appealed to RTC, Branch 44 but the decision of the MTC was affirmed.[7]

Fact-discovery commenced via partial direct-examination of the plaintiff's witness.[8] After the case was referred for mediation, which proceeding did not elicit any settlement, the subject Decision later materialized.

Hence, an appeal was interposed by the plaintiff-appellant to assail the Decision of the Court below, anchored on the following submissions:[9]

I.
WHETHER THERE IS A VIOLATION BY APPELLANT OF THE RULE ON FORUM-SHOPPING.

II.
WHETHER THERE IS A CONTRACT OF SALE OR AN ORAL LEASE AGREEMENT BETWEEN THE APPELLANT AND APPELLEES FOR OVER A YEAR THAT A FAITHFUL OBSERVANCE OF THE STATUTE OF FRAUDS NECESSITATES ITS APPLICATION AGAINST THE APPELLEE.

III.

WHETHER APPELLEES, ARE IN ESTOPPEL, AS LESSEES CANNOT DENY APPELLANTS POSSESSION AND, THEREFORE, CANNOT DENY APPELLANT'S OWNERSHIP.

IV.

WHETHER APPELLANT WAS DENIED DUE PROCESS OF LAW, HENCE, DEPRIVED OF HIS PROPERTY.

V.

WHETHER APPELLANT HAS A VALID CAUSE OF ACTION, HENCE, WITH A MERITORIOUS CASE AGAINST THE APPELLEES AND ALL PERSONS CLAIMING RIGHTS UNDER THEM WHICH DEMAND FOR THEIR EJECTMENT.

Plainly put, was it proper for the Court below to summarily dismiss the case for recovery of possession with prejudice for alleged breach of the rule on forum shopping in view of an ejectment case[10] previously decided on the merits before the Municipal Trial Court of Mangaldan, Pangasinan and affirmed in toto by the appellate court as stipulated by the parties?

To determine whether forum shopping exists, *Goodland Co. Inc. vs. Asia United Bank, et al.*[11] elucidates:

There is forum shopping when the following elements are present: “(a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration; said requisites [are] also constitutive of the requisites for *auter action pendant* or *lis pendens*.”[12] The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment, through means other than by appeal or certiorari.[13] (Emphasis Supplied)

Far from what was articulated by the magistrate below, there was no forum shopping to speak of. Verily, Section 18, Rule 70 of the 1997 Rules of Civil Procedure acknowledged the dichotomy of an action for *desahucio* and a suit involving title or ownership:

“...Such judgment shall not bar an action between the same parties respecting title to the land or building.”

Certainly, the mere filing of several cases based on the same incident does not necessarily constitute forum shopping. The test is whether the several actions filed involved the same transactions and the same essential facts and circumstances. The actions must also raise identical causes of action, subject matter, and issues.[14]

Indeed, the final judgment in the ejectment case[15] will not amount to *res judicata* in an action to recover possession for want of identity of cause of action between the two remedial measures as clarified in *Melchor Custodio vs. Rosendo F. Corrado*: [16]

Indeed, an ejectment case such as Civil Case No. 116, involves a different cause of action from an *accion publiciana* or *accion reivindicatoria*, such as Civil Case No. 120, and the judgment of the former shall not bar the filing of another case for recovery of possession as an element of ownership. A judgment in a forcible entry or detainer case disposes of no other issue than possession and establishes only who has the right of possession, but by no means constitutes a bar to an action for determination of who has the right or title of ownership.[17] Incidentally, we agree with the findings of the RTC that Civil Case No. 120 is not an *accion publiciana* but more of an *accion reivindicatoria* as shown by the respondent's allegation in the complaint that he is the registered owner of the subject lot and that the petitioner had constructed a bungalow thereon and had been continuously occupying the same since then.

The distinction between a summary action of ejectment and a plenary action for recovery of possession and/or ownership of the land is well-settled in our jurisprudence. What really distinguishes an action for unlawful detainer from a possessory action (accion publiciana) and from a reivindicatory action (accion reivindicatoria) is that the first is limited to the question of possession de facto. An unlawful detainer suit (accion interdical) together with forcible entry are the two forms of an ejectment suit that may be filed to recover possession of real property. Aside from the summary action of ejectment, accion publiciana or the plenary action to recover the right of possession and accion reivindicatoria or the action to recover ownership which includes recovery of possession, make up the three kinds of actions to judicially recover possession.[18]

Further, it bears stressing that the issue on the applicability of res judicata to the circumstance obtaining in this case is far from novel and not without precedence. In *Vda. de Villanueva v. Court of Appeals*, [19] we held that a judgment in a case for forcible entry which involved only the issue of physical possession (possession de facto) and not ownership will not bar an action between the same parties respecting title or ownership, such as an accion reivindicatoria or a suit to recover possession of a parcel of land as an element of ownership, because there is no identity of causes of action between the two. (Emphasis Supplied)

Necessarily, to abate any attempt to place the cart ahead of the horse, so to speak, We will thus forego any premature discourse on other incremental, nay, factual aspects of the appeal as advocated by the plaintiff-appellant which can unfold during resumption of trial before the court of origin.

WHEREFORE, premises considered, the APPEAL is hereby GRANTED only insofar as REVERSAL of the Decision dated April 8, 2010 and the trial court is directed to proceed with the hearing for the parties' evidence.

SO ORDERED.

Reyes, Jr., J. C., Chairperson, and Acosta, F. P., JJ., concur.

[*] Per Office Order No. 15-15-ABR dated January 20, 2015, effective February 2, 2015.

[1] Decision dated April 8, 2010, May 23, 2011, Record, pp. 110-116, 132.

[2] Notice of Appeal dated June 2, 2011, Record, page 133.

[3] Complaint dated June 26, 2008, Record, pp. 2-9.

[4] Exhibit "D", Record, pp. 8-9.

[5] Answer with Compulsory Counterclaim dated December 02, 2008, Record, pp. 29-32.

[6] Exhibits "2" and series, Record, pp. 34-45.

[7] See Pre-trial Order dated July 10, 2009, Record, pp. 84-85.

[8] See TSN dated August 10, 2009.

[9] Brief for Plaintiff-Appellant dated April 26, 2012, Rollo, page 36.

[10] See Exhibits "3" and "4", Record, pp. 100-109.

[11] *Goodland Co. Inc. vs. Asia United Bank, et al.*, G.R. No. 195546, March 14, 2012 and *Goodland Co. Inc. vs. Asia United Bank, et al.*, G.R. NO. 195561, March 14, 2012.

[12] *Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank*, G.R. No. 154187, April 14, 2004, 427 SCRA 585, 590, citing *Saura v. Saura, Jr.*, 372 Phil. 337, 349 (1999) as cited in the cases of *Goodland*

Co. Inc. vs. Asia United Bank, et al., G.R. No. 195546, March 14, 2012 and Goodland Co. Inc. vs. Asia United Bank, et al., G.R. NO. 195561, March 14, 2012.

[13] Melo v. Court of Appeals, G.R. No. 123686, November 16, 1999, 318 SCRA 94, 100; Ligon v. Court of Appeals, G.R. No. 127683, August 7, 1998, 294 SCRA 73, 88, citing Washington Distillers, Inc. v. Court of Appeals, G.R. No. 118151, August 22, 1996, 260 SCRA 821, 835 as cited in the case of Goodland Co. Inc. vs. Asia United Bank, et al., G.R. No. 195546, March 14, 2012 and Goodland Co. Inc. vs. Asia United Bank, et al., G.R. NO. 195561, March 14, 2012.

[14] 1 Herrera, Remedial Law, 2007 edition, pp. 726-727, citing Int'l. Container Terminal Services v. CA, G.R. No. 116910, October 18, 1995, 249 SCRA 389, and other cases.

[15] See Exhibits “3” and “4”, Record, pp. 100-109.

[16] Melchor Custodio vs. Rosendo F. Corrado, G.R. No. 146082, July 30, 2004.

[17] Bautista v. Fernandez, G.R. No. L-24062, 30 April 1971, 148 Phil. 567, 578 as cited in the case of Melchor Custodio vs. Rosendo F. Corrado, G.R. No. 146082, July 30, 2004.

[18] A. Francisco Realty and Development Corp. v. CA, G.R. No. 125055, 30 October 1998, 358 Phil. 833, 841-842 as cited in the case of Melchor Custodio vs. Rosendo F. Corrado, G.R. No. 146082, July 30, 2004.

[19] Vda. de Villanueva v. Court of Appeals, G.R. No. 117971, 1 February 2001, 351 SCRA 12, 19 as cited in the case of Melchor Custodio vs. Rosendo F. Corrado, G.R. No. 146082, July 30, 2004.

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