

DOMINICO FOS AND DINO DIVA, PETITIONERS, VS. SPOUSES RODEL ROBERT AND CONSOLACION SERVAÑEZ, ESTRELLA F. DIVA, AND ERLINDA F. MARTINEZ, REPRESENTED BY CONSOLACION SERVAÑEZ AND / ...

Ponente: TOLENTINO, A.G., J.

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TOLENTINO, A.G., J.:

This petition for review filed pursuant to Rule 42 of the 1997 Rules of Civil Procedure, as amended, assails the decision^[1] dated January 21, 2013 of the Regional Trial Court of Odiongan, Romblon, Branch 82, which affirmed the earlier decision of the 5th Municipal Circuit Trial Court (MCTC) of Odiongan-Ferrol in Odiongan, Romblon granting the Forcible Entry and Damages suit filed by the respondents against the petitioners.

The subject of the controversy is a 2,606-square meter lot designated as Lot No. 2985-P of Cadastral 341-D Odiongan Cadastre, which is located in Brgy. Mayha, Odiongan, Romblon.

Based on the findings^[2] of the MCTC, the ownership of the subject property, which was covered by Tax Declaration No. 240 and declared for taxation purposes in favor of the Heirs of Rosario Fadrigore, could be traced from Pedro Fadrigore, the father of Rosario Fadrigore. Eventually, the said lot descended by inheritance to the children of Rosario Fadrigore; namely: Estrella Fadrigore Fontamillas-Diva, Erlinda Fadrigore Fontamillas-Martinez (both respondents in the instant case), and Eduardo Fadrigore Fontamillas, who on April 1, 2001 executed a Deed of Extra-Judicial Partition With Waiver of Rights and Deed of Absolute Sale over his share in favor of respondents spouses Rodel Robert Servañez and Consolacion Fainsan Servañez. The subject lot was thereafter subdivided into Lot No. 10479-A, which was assigned to the Spouses Servañez; Lot No. 10479-B and Lot No. 10479-C, which went to Estrella Fadrigore Fontamillas-Diva and Erlinda Fadrigore Fontamillas-Martinez, respectively.

Spouses Servañez then filed a free patent application over Lot No. 10479-A with the Department of Environment and Natural Resources (DENR). Petitioner Dominico Fos, on the other hand, filed his protest against the said application. In the DENR Order dated April 5, 2011, the application for free patent by Spouses Servañez was denied for the latter's failure to comply with the requirement of actual possession and cultivation, among others. Meanwhile, having found that petitioner Dominico Fos is the one actually occupying the said lot, having introduced minimal improvement thereon, the DENR was bent to give preferential right to the former over the said lot. Accordingly, Dominico Fos was directed, in the same order, to file the appropriate public land application for the said lot.^[3] Spouses Servañez filed a motion for reconsideration against the said order of the DENR, which is still awaiting resolution.

However, the fact that the respondents adduced in evidence tax declarations in the name of Pedro Fadrigore and the Heirs of Rosario Fadrigore, as well as realty tax payments made by Joy Martinez in the name of the Heirs of Rosario Fadrigore, augured well for them as the MCTC held that tax declarations or realty tax payments, although not conclusive evidence of ownership, nevertheless, they are considered good indicia of possession in the concept

of an owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. The respondents were also able to adduce documents showing that the lot previously declared in the name of Severo Fos and now, in the name of his son Mateo Fos, from whom petitioner Dominico Fos traced his title over the subject lot, pertains to Lot No. 2992, which is a totally different lot from the one in the case at bar. Against these pieces of evidence of the respondents, the petitioners showed none. Hence, the ruling in favor of the respondents by the MCTC:

"WHEREFORE, premises considered, the Court renders Judgment in favor of the plaintiff spouses Rodel Robert Servañez and Consolacion Fainsan Servañez, Estrella Fadrigore Fontamillas-Diva and Erlinda Fadrigore Fontamillas-Martinez and against the defendants Dominico Fos and Dino Diva, ordering the latter to:

- 1) Immediately vacate and surrender possession of Lot Nos. 10479-A, 10479-B and 10479-C to the plaintiffs;
- 2) Respect and not to disturb the possession of the plaintiffs of the said parcels of land;
- 3) Immediately remove or demolish any improvement introduced by them to the said lands, except trees, plants and any kind of vegetation which are hereby declared forfeited in favor of the plaintiffs, otherwise, the Court will have them removed or demolished at defendants' expense;
- 4) Pay plaintiffs, jointly and severally, the amount of Twenty Thousand Pesos (P20,000.00) by way of attorney's fees; and
- 5) Pay the costs of this suit.

The Preliminary Prohibitory and Mandatory Injunctions issued by the Court on May 31, 2011 are hereby made PERMANENT.

SO ORDERED."

Aggrieved, the petitioners appealed to the RTC, but to no avail. Just like the MCTC, the RTC relied heavily on the tax declarations and realty tax payments adduced in evidence by the respondents, which, it said, tend to show that they are the owners of the subject property and as such, have the exclusive right to exercise dominion and control over the same. On the basis of the said documents, the RTC was convinced that the respondents were able to substantially establish their occupancy and prior possession over the subject property before the intrusion of the defendants.

Hence, the instant petition for review whereby the petitioners assign the following errors for the consideration of this Court, to wit:

THE HONORABLE COURT GRAVELY ERRED IN ITS FINDING THAT THE RESPONDENTS-APPELLEES' (sic) WAS (sic) IN PRIOR PHYSICAL POSSESSION OF THE SUBJECT PROPERTY AND THEREFORE, HAS (sic) A BETTER RIGHT TO POSSESS THE SUBJECT PROPERTY AS AGAINST THE PETITIONERS-APPELLANTS;

THE HONORABLE COURT GRAVELY ERRED IN PRONOUNCING THAT THE RESPONDENTS-APPELLEES' (sic) ARE ENTITLED TO AN AWARD OF ATTORNEYS (sic) FEES.[4]

THE PETITION IS MERITORIOUS.

This Court is not convinced that the respondents were in prior possession of the property and that the petitioners deprived them of such possession by means of strategy or stealth as found by the lower courts.

In ejectment cases, possession means nothing more than actual physical possession, not legal possession in the sense contemplated in civil law. Prior physical possession is the primary consideration in a forcible entry case. A party who can prove prior possession can recover such possession even against the owner himself. Whatever may

be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him. The party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror.[5]

Both the RTC and MCTC ruled that because the respondents were able to show tax declaration and realty tax payments in the names of their alleged predecessors-in-interest, the evidence of prior physical possession is in their favor. This holding is misplaced. Indeed, a tax declaration or a real property tax payment may constitute proof of a claim of title over, but not necessarily of actual possession of, the property so declared or for which the realty tax was paid.[6] They are merely good indicia of possession in the concept of owner but not necessarily of the actual possession required in forcible entry cases.[7] Tax declarations and realty tax payments are more appropriately associated with "possession" flowing from ownership of the property, rather than to actual possession.[8] Possession in forcible entry suits refers only to possession de facto, or actual or material possession, and not possession flowing out of ownership; these are different legal concepts for which the law provides different remedies for recovery of possession.[9]

In the instant case, aside from the tax declaration and realty tax payments, which do not prove de facto possession as contemplated in forcible entry, the respondents, who were the plaintiffs in the case below, and upon whom the burden of proof lies, have shown no other evidence to prove their prior physical possession. It is a basic rule in civil cases, including an action for forcible entry, that the party having the burden of proof must establish his case by a preponderance of evidence, which simply means "evidence which is of greater weight, or more convincing than that which is offered in opposition to it." Hence, parties who have the burden of proof must produce such quantum of evidence, with plaintiffs having to rely on the strength of their own evidence, not on the weakness of the defendant's.[10]

The result of the ocular inspection made over Lot No. 10479-A, which is contained in the April 5, 2011 order of the DENR, is even quite telling. Based on the investigation report submitted on June 19, 2007 by the Hearing Officer of CENRO Odiongan, Romblon in the application for free patent filed by respondent spouses Servañez, it was pointed out that Lot No. 10479-A (which forms part of the subject Lot No. 2985-P) "is an open area with minimal improvements thereon", which improvement, upon subsequent validation, was found to have been introduced by petitioner Dominico Fos. Thus, one of the reasons why the application for free patent by respondent spouses Servañez was denied was due to their failure to prove actual possession and cultivation of the said lot, either by themselves or through their predecessors-in-interest. It was thus really unfortunate for the lower court to have completely disregarded the findings of the DENR. It is worth reiterating that in forcible entry, what is really essential is prior actual physical possession, which the respondents failed to establish.

It could then be argued that the investigation report pertained only to Lot No. 10479-A, and does not speak the truth about the entire portion of Lot No. 2985-P. But the fact that the respondents were not in prior actual physical possession of Lot No. 2985-P before the instant controversy commenced is bolstered by the testimonies of their own witnesses Willy Flores and Danilo Sumagingsing who stated in their joint affidavit[11] that the respondents, who were the known owners of the subject lot, even let other persons occupy the same from 2000-2003. After 2003, however, nothing was mentioned about the possession thereof by the respondents. This only goes to show that since 2003, the respondents have not exercised, let alone, took actual possession of the subject lot.

The finding of the MCTC that the lot claimed by the petitioners seems to be different from the subject lot is of no moment. It must be emphasized that in forcible entry, it does not even matter if the party's title to the property is questionable. Regardless of the actual condition of the title to the property the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror. Neither is the unlawful withholding of property allowed. Courts will always uphold respect for prior possession.[12]

WHEREFORE, premises considered, the present petition is GRANTED. The assailed decision dated January 21, 2013 of the court a quo is REVERSED and SET ASIDE. The forcible entry case with damages filed by the respondents against the petitioners with the 5th MCTC of Odiongan-Ferrol, Odiongan, Romblon is DISMISSED.

SO ORDERED.

Rosario and Barrios,[*] JJ., concur.

[*] Vice Justice Leoncia R. Dimagiba, per Office Order No. 199-14-ABR dated May 9, 2014.

[1] Rollo, pp. 206-213.

[2] Rollo, pp. 195-201.

[3] Rollo, pp. 119-122.

[4] Rollo, p. 33.

[5] Antazo vs. Doblada, G. R. No. 178908, February 4, 2010.

[6] Lee vs. dela Paz, G. R. No. 183606, October 27, 2009.

[7] Nenita Quality Foods Corporation vs. Galabo, G. R. No. 174191, January 30, 2013.

[8] Antazo vs. Doblada, supra.

[9] Nenita Quality Foods Corporation vs. Galabo, supra.

[10] Lee vs. dela Paz, supra.

[11] Rollo, 136-137.

[12] Villondo vs. Quijano, G. R. No. 173606, December 3, 2012.

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