

## EUGENIA VOLPE, PETITIONER, VS. JOHN PATRICK COUGHLAN, RESPONDENT.

Ponente: INTING, J.

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### INTING, J.:

This is a Petition for Review[1] with prayer for Temporary Restraining Order (TRO) and Preliminary Injunction filed under Rule 42 of the Rules of Court assailing the Decision[2] dated March 27, 2012 of the Regional Trial Court, Branch 31, Dapa, Surigao del Norte in Civil Case No. 226 for “Forcible Entry, Injunction with Prayer for TRO and Preliminary Mandatory Injunction” and the Order[3] dated April 24, 2012 denying petitioner's Motion for Reconsideration.

The facts of the case are as follows:

The property subject of this controversy is a parcel of land previously covered by Original Certificate of Title (OCT) No. 18865[4] in the name of Genalyn Ellarina (Genalyn) with an area of 1,054 square meters and located in Catangnan, General Luna, Siargao Island, Surigao del Norte. Genalyn Ellarina is the spouse of herein respondent, John Patrick Coughlan, an Australian citizen.

On August 23, 2007, Genalyn executed a Deed of Absolute Sale[5] over the subject lot in favor of petitioner Eugenia Volpe (Eugenia). She also sold a concrete two-storey residential house to Eugenia in a separate instrument[6]. At the time the transaction was made, Genalyn was in Australia. Moreover, the residential house had transient tenants with a contract of lease that would expire on January 2008. However, Genalyn and Eugenia agreed to respect the tenants' existing contract of lease.

In February 2008, when the tenants' contract of lease expired, Eugenia took possession of the house and started massive repair. Subsequently, on June 8, 2012, OCT No. 18865 was cancelled and Transfer Certificate of Title (TCT) No. 160-2012000129 was issued in Eugenia's name.

Meanwhile, on March 11, 2008, respondent John Patrick Coughlan (John Patrick), through his representative Atty. Del Carmen, filed a case for forcible entry and injunction against Eugenia. In his Complaint[7], John Patrick alleged that he is a lessee of the subject lot where he constructed a house which served as their family abode. He also accused Eugenia of illegal demolition and construction of the house.

Summons was served upon Eugenia at Catangnan, General Luna during the Holy Week. On March 26, 2008, Eugenia filed her Answer with Affirmative Defenses and Counterclaim[8] through registered postal service. In her Answer, Eugenia alleged that her entry and physical possession of the property is by virtue of the Deed of Absolute Sale. Thereafter, the parties filed their position papers.

On July 3, 2008, the Municipal Circuit Trial Court (MCTC) rendered a Decision[9] in favor of John Patrick. The MCTC disregarded the Answer filed by petitioner for having been filed beyond the ten (10) day reglementary period.

Eugenia appealed the Decision to the Regional Trial Court (RTC). The RTC issued its Decision[10] which lifted

and set aside the MCTC Decision and remanded the case to the court of origin for further proceedings. John Patrick moved for a reconsideration but the RTC denied it.

At the court of origin, petitioner filed a Motion for Voluntary Inhibition[11] of Judge Ignacio Macarine. The Motion was granted in an Order[12] dated October 28, 2009.

On September 13, 2010, the MCTC rendered a Decision[13] dismissing the Complaint, the dispositive portion of which provides:

WHEREFORE, in the lights of the foregoing the court finds for the defendants against the plaintiff:

- For the dismissal of the complaint in favor of the defendant for lack of cause of action.
- For the plaintiff to pay defendants Moral Damages of P40,000.00 and Exemplary Damages of P20,000.00.
- Payment of Attorneys Fees in the amount of P20,000.00.
- And payment of litigation expenses fixed by the Court to P20,000.00.

**SO ORDERED.**

Aggrieved, John Patrick appealed the Decision to the RTC. On March 27, 2012, the court a quo rendered a Decision against Eugenia. The fallo of the Decision reads:

WHEREFORE, in view of the foregoing, the Judgment of the 9[th]Municipal Trial Court, Tenth Judicial Region, General Luna-Pilar, Surigao del Norte dated September 13, 2010 is hereby REVERSED and SET ASIDE and a new one is entered as follows:

- The defendants-appellees are hereby ORDERED TO VACATE IMMEDIATELY from the subject property and TURN OVER POSSESSION thereof to the plaintiff-appellant; and
- TO PAY plaintiff-appellant a rental of P5,000.00 beginning April 2008 up to the present.

Upon the DECISION becoming final, let the records of this case be returned to the Court of origin for appropriate action.

**SO ORDERED.**

The court a quo ratiocinated:

As correctly pointed out by the plaintiff-appellant, the construction of a concrete residential house and its occupation by the plaintiff of the property as residence when he was in the Philippines is an allegation of prior possession. The house became the family abode and its constitution is not temporary or passing but of permanence. xxx

xxx

It is not required that plaintiff is in actual occupation of every inch of the property at all times. The property in litigation is the residence of the plaintiff. It is where he, his wife and children maintain their family abode. xxx

Hence, the instant petition.

Petitioner raises the following assignment of errors[14]:

I.

WHETHER THE COMPLAINT FOR FORCIBLE ENTRY MADE SPECIFIC ALLEGATION OF

PLAINTIFF PRIOR PHYSICAL POSSESSION OF THE PROPERTY.

II.

WHETHER RESPONDENT JOHN COUGHLAN WAS IN PRIOR PHYSICAL OF THE PROPERTY WHEN EUGENIA VOLPE TOOK ITS PHYSICAL POSSESSION.

III.

WHETHER RESPONDENT JOHN COUGHLAN WAS DISPOSSESSED OF THE PROPERTY BY ANY OF THE FOLLOWING MEANS; FORCE, INTIMIDATION, THREAT, STRATEGY OR STEALTH.

IV.

WHETHER THE COURT A QUO ERRED IN REVERSING THE DECISION OF THE LOWER COURT WHICH DISMISSED THE FORCIBLE ENTRY CASE.

On August 24, 2012, this Court issued a Resolution<sup>[15]</sup> denying petitioner's prayer for the issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction.

#### Our Ruling

Petitioner Eugenia contends that neither respondent John Patrick Coughlan nor his wife Genalyn was the actual prior physical possessor of the subject property; and that Genalyn and her children lived in Surigao City when she leased the subject property to an American couple who actually stayed and lived there. Eugenia also argues that her entry and possession of the subject property was very peaceful, open, public and orderly considering that the keys to the house were in fact voluntarily given by the lessees to her after the latter's contract of lease expired. Hence, she maintains that John Patrick has no cause of action to file a case for forcible entry.

We find the petition meritorious.

Ejectment cases - forcible entry and unlawful detainer - are summary proceedings designed to provide expeditious means to protect actual possession or the right to possession of the property involved.<sup>[16]</sup> “The only question that the courts resolve in ejectment proceedings is: who is entitled to the physical possession of the premises, that is, to the possession de facto and not to the possession de jure. It does not even matter if a party’s title to the property is questionable. For this reason, an ejectment case will not necessarily be decided in favor of one who has presented proof of ownership of the subject property.”<sup>[17]</sup> Where the issues of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property.<sup>[18]</sup> The adjudication is, however, merely provisional and would not bar or prejudice an action between the same parties involving title to the.<sup>[19]</sup>

In the case at bar, Eugenia anchors her claim on the disputed land on the Deed of Absolute Sale executed by respondent John Patrick's wife, Genalyn, in her favor. To note, Genalyn was the registered owner of the subject lot as evidenced by OCT No. 18865. As the registered and exclusive owner of the property, she had the absolute right to dispose of it. Consequently, by virtue of the Deed of Absolute Sale executed by Genalyn in favor of Eugenia it follows that Eugenia, as the vendee and now the registered owner of the subject property, has the right to possess the subject property.

On the other hand, John Patrick claims that he has a better right of possession to the subject property as he allegedly leased the property from his wife, and thereafter built their family home therein.

We do not agree.

First, other than John Patrick's self-serving allegation that he is a lessee to the subject lot, he failed to present a contract of lease to prove the allegation. Also, he failed to substantiate his claim that he has prior physical possession of the subject lot considering that aside from the absence of a contract of lease, he was in Australia at the time of the transaction of sale. In fact, Eugenia claims that at the time she bought the subject property, an American couple leased the subject property wherein the contract of lease would expire in February 2008. This fact was never rebutted by John Patrick. Furthermore, it is worthwhile to note that John Patrick, being an alien, is absolutely prohibited from acquiring private and public lands in the Philippines. As such, the subject property which was registered in his wife's name remains in her sole ownership.

Anent John Patrick's claim in his Complaint before the MCTC that Eugenia, with the use of threats, intimidation, stealth and strategy, entered illegally into the subject property, We do not agree.

It bears stressing that Eugenia entered the subject property as an owner by virtue of a valid Deed of Absolute Sale. Also, the fact that Eugenia was given the keys to the house and used them to enter the subject property militates against John Patrick's claim that Eugenia used force, intimidation, stealth or strategy to deprive him of the physical possession of the property. Finally, as the lawful owner of the subject property, Eugenia has the right to exclude any person from the enjoyment and disposal thereof.[20] Possession is an essential attribute of ownership.[21] Necessarily, whoever owns the property has the right to possess it.[22]

In forcible entry, the plaintiff must allege in the complaint, and prove, that he was in prior physical possession of the property in dispute until he was deprived thereof by the defendant by any of the means provided in Section 1, Rule 70 of the Rules either by force, intimidation, threat, strategy or stealth.[23] In the instant case, John Patrick failed to prove these requisites. Thus, this action for forcible entry must necessarily fail.

WHEREFORE, the petition is hereby GRANTED. The Decision dated March 27, 2012 of the Regional Trial Court, Branch 31, Dapa, Surigao del Norte in SCA No. 10-30 is REVERSED and SET ASIDE. The complaint against herein petitioner in Civil Case No. 226 is DISMISSED.

### **SO ORDERED.**

Camello, J. Ch., and Perez, JJ., concur.

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[1] Rollo, pp. 7-25

[2] Rollo, pp. 154-157

[3] Rollo, p. 163

[4] Rollo, p. 42-43

[5] Rollo, pp. 40-41

[6] Rollo, p. 48

[7] Rollo, pp. 26-29

[8] Rollo, pp. 33-37

[9] Rollo, pp. 81-83

[10] Rollo, pp. 109-114

[11] Rollo, 122-124

[12] Rollo, p. 125

[13] Rollo, pp. 134-137

[14] Memorandum, Rollo, p. 331

[15] Rollo, pp. 321-326

[16] Corpuz v. Agustin, G.R. No. 183822, January 18, 2012

[17] Supra

[18] Barrientos v. Rapol, G.R. no. 169594, July 20, 2011

[19] Supra

[20] Article 429 of the Civil Code provides: The owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonable to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.

[21] Gaiterio v. Almeria, G.R. No. 181812, June 8, 2011

[22] Supra

[23] Sarmienta v. Manalite Homeowners Association, Inc., G.R. No. 182953, October 11, 2010

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