

**BERNARDO FRANCIA, ARNOLD FRANCIA & HIS SPOUSE,
PETITIONERS, VS. FELICIANO O. FRANCIA, JOINED BY HIS SPOUSE,
BEATRIZ NAPALIT FRANCIA, RESPONDENTS.**

Ponente: CAMELLO, J.

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CAMELLO, J.:

This Petition for Review[1] assails the Decision dated 31 January 2011[2] rendered by Branch 14 of the Regional Trial Court of Davao City[3] in Civil Case No. 33,571-10.

The present appeal stemmed from a Complaint for Unlawful Detainer filed before Branch 5 of the Municipal Trial Court in Cities, Davao City (MTCC), by Feliciano O. Francia (Feliciano) and his spouse, Beatriz Napalit Francia (Beatriz) against Bernardo Francia (Bernardo), Arnold Francia (Arnold) and his spouse.

The facts as aptly synthesized by the MTCC:

“The verified complaint alleged that the plaintiff Feliciano O. Francia is formerly a member of the defunct Philippine Constabulary since 1967 until he was assigned with the 431st PC Company in 1972 at the Davao METRODISCOM, Davao City. That during such assignment, he was awarded the rights to occupy and possess a small portion of land within the PC Reservation wherein the above-said military establishment was situated over an area containing only about twelve (12) square meters. That the plaintiff occupied and constructed a residential house made of light materials on the subject property which was assessed by the City Assessor’s Office of Davao City (Annex “A”) and under Tax Declaration Numbers B-1-6876 (Annex “C”) and B-1-17218 (Annex “D”). That while the plaintiff was in possession of the said property, Severiana Oracion and Bernardo Antolin and the defendants lived therein upon the permission of the plaintiff. That when the plaintiffs acquired a residential house at N.H.A., Kadayawan Homes, Bangkal, Davao City, defendant Bernardo Francia secured permission from the plaintiff to occupy the property wherein the parties entered into a written agreement dated March 12, 2001. That in April 2009, plaintiffs asked the defendants to return and peacefully turn over the subject property in their favor but the latter refused claiming ownership over the same. That despite sincere efforts exerted by the plaintiff to vacate the premises, the defendants refused and ignored the demands of the plaintiff. That the plaintiff was constrained to engage the services of a counsel in the amount of Thirty Thousand Pesos (P30,000.00) and incurred litigation expenses in the amount of Ten Thousand Pesos (P10,000.00).

On January 27, 2010, the defendants filed their Answer by denying the material allegations of the Complaint and averred that defendant Bernardo Francia is the recognized house owner and occupant by the Active and Retired AFP Landless Association, Inc. That the improvements made on the house built on the subject property was through the initiative and own money of the defendants. That as counter-claim, defendants alleged that by reason of the baseless institution of the case by the plaintiff, they were constrained to engage the services of a counsel in the amount of Thirty Thousand Pesos (P30,000.00) as Attorney’s Fees and that they are entitled to the award of moral and exemplary damages for the annoyance caused by the malicious imputations made by the plaintiffs against them.

On February 22, 2010, the parties were directed to proceed to the Philippine Mediation Center (PMC) but the

case was referred back to Court for failure to settle their dispute.”[4]

On 02 August 2010, Presiding Judge Daydews D. Villamor of the MTCC rendered a Decision,[5] awarding possession of the subject property in favor of Feliciano. In doing so, Presiding Judge Daydews D. Villamor made this ratiocination:

The Court carefully examined the record of the case and finds judgment in favor of the plaintiffs.

An unlawful detainer action is the act of unlawfully withholding the possession of the land or building against or from a landlord, vendor or vendee or other person after the expiration or termination of the detainer’s right to hold possession by virtue of a contract express or implied. (*Pharma Industries, Inc. v. Pajarillaga*, L-53788, October 17[,] 1980)

Time and again, settled is the rule that in unlawful detainer or ejectment case the only issue is physical or material possession of the property involved, independent of any claim of ownership that may be set forth by any of the party litigants. Anyone of them who can prove prior possession de facto may recover such possession even from the owner himself. (*Luis Ceremonia Substituted by Quirino Ceremonia, et. al. vs. the Hon. Court of Appeals and Maximo Celesta as substituted by Asuncion Celesta*, G.R. No. 103453, Sept. 21, 1999).

In the present case, the evidence on record supports the claim of the plaintiff that he was in prior possession of the subject property before the defendants. The Declaration of Real Property – City (Tax Declaration No. B-1-687) dated May 27, 1981 issued in the name of Plaintiff Feliciano O. Francia established his prior lawful possession and occupation of the property in dispute. That while he was in lawful possession thereof, he allowed the defendants to stay in his premises out of good will but the latter refused to vacate the same despite receipt of the demand.

Defendants’ commitment to vacate the property whenever the owner Feliciano Francia needs to use the same is evidenced by an Acknowledgment executed by the plaintiff and defendants before Barangay Captain Paz Oracion and Kagawad Magdalena Bargamento (Annex “E” to Complaint). This further proves the ownership and lawful possession of plaintiff over the property.

As the owner thereof, the plaintiff has in its favor the “right to use” which necessarily entitles him to possession of the property because the owner has the right to enjoy his property without other limitations other than those established by law. He has also the right to action against the holder and possessor of the thing in order to recover it. (Article 428, Civil Code)

The defendants, whose occupation is merely by tolerance or permission of plaintiff, are necessarily bound by an implied promise that they will vacate upon demand, failing which a summary action for ejectment is the proper remedy against them. (*Vda. De Cachuela vs. Francisco*, 98 SCRA 172)

There is no legal obstacle for the owner to allow defaulting tenants to remain on the rented property one month, one year, several years or even decades. That consent no matter how long it may last makes lawful tenant’s possession. Only when that consent is withdrawn and the owner demands to leave the property is the owner’s right of possession asserted and the tenant’s refusal or failure to move out makes their possession unlawful because it is violative of the owner’s preferential right of possession. (*Canaynay vs. Sarmiento* 79 Phil. 36; *Robies vs. San Jose* 52 O.G. 6193)

WHEREFORE, above premises considered, judgment is hereby rendered in favor of the plaintiff Feliciano O. Francia against the defendants Bernardo Francia, Arnold Francia and Spouse, their heirs, assigns and those acting for and in their behalves to vacate the subject property located at #712 Rizal Extension, Davao City.

Further, the defendants are ordered to pay the plaintiff the following:

- the amount of P5,000.00 as reasonable monthly rentals from April 2009 and every month thereafter until such time that the subject property is restored to the possession of the plaintiff;

- the amount of P15,000.00 as Attorney's Fees;

- The cost of suit.

SO ORDERED.”[6]

Petitioners appealed the MTCC Decision before the court a quo.

On 31 January 2011, the latter court rendered a Decision[7] affirming in toto the 02 August 2010 Decision of the MTCC, to wit:

“WHEREFORE, finding no cogent reason to disturb the decision herein appealed from, the same is hereby AFFIRMED IN TOTO.

The instant appeal is DISMISSED with cost against the appellants.

SO ORDERED.”[8]

Undaunted, petitioners filed the instant petition, raising this issue:

Whether or not the Regional Trial Court Branch 14 was correct when it affirmed the decision of the Municipal Trial Court in Cities Branch 5.[9]

Initially, Bernardo was named as co-petitioner in this case.[10] However, after failing to comply with the directives in Resolution dated May 15, 2012,[11] the petition, with respect to Bernardo, was dismissed,[12] and the dismissal has become final.[13]

The issue is who between the parties has the better possessory right.

Petitioners insist that the court a quo erred in affirming the MTCC Decision despite the lack of evidence to substantiate its ruling. They pointed out that the court a quo gave evidentiary weight to a document submitted by respondents which was a mere photocopy. They also claim that the court a quo erroneously applied the principle of *pari delicto* in the instant case. They assert that this principle is not applicable to the instant case because respondents have the burden of proving their claim.

On the other hand, respondent Feliciano maintains that he is the owner of the subject property who has the right of possession over it. This fact is acknowledged by Bernardo as evidenced by a document dated 12 March 2001.[14] The document also contains a stipulation that “anytime the owner Retired P/INSP Feliciano Francia will use the area, the person occupying will anytime, vacate the place.” This stipulation indicates that petitioners’ stay in the property was merely tolerated by respondent Feliciano.

We rule for the respondent.

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession by the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess.[15]

A requisite for a valid cause of action in an unlawful detainer case is that possession must be originally lawful,

and such possession must have turned unlawful only upon the expiration of the right to possess. It must be shown that the possession was initially lawful; hence, the basis of such lawful possession must be established. If, as in this case, the claim is that such possession is by mere tolerance of the plaintiff, the acts of tolerance must be proved.[16]

As shown by the respective decisions of the lower courts, both the MTCC and the court a quo found that respondents clearly established the element of tolerance.[17] Both courts gave more probative weight to the documentary evidence submitted by respondents, including a document which both parties executed on 12 March 2001. The document shows that Bernardo acknowledged the ownership of Feliciano over the property he is occupying, and promised that he will vacate the premises upon the demand of Feliciano. That document contains an admission by a party of a relevant fact. Such admission has not been contradicted; it is evidence against Bernardo.[18]

As an owner, Feliciano has a right of possession over his property. The right of the owner to the possession of a property is an essential attribute of ownership.[19] While Feliciano permitted the petitioners to stay in the premises, his consent may be withdrawn at any time and he may demand from petitioners to vacate the premises. Petitioners must then accede to Feliciano's demand.

Regarding the applicability of the principle of in pari delicto, We find it immaterial to the main issue of possession, which we have already determined in favor of respondents.

In fine, the court a quo did not err in affirming the MTCC Decision which evicted petitioners from the subject property.

For this reason, the petition is DENIED. The lower court's decision is AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Inting and Perez, JJ., concur.

[1] The Rules of Court, Rule 42; Rollo, pp. 4-15.

[2] Rollo, pp. 17-19.

[3] Hon. George E. Omelio, presiding judge.

[4] MTCC Decision dated 02 August 2010; Rollo, pp. 20-21.

[5] Rollo, pp. 20-22.

[6] Rollo, p. 22.

[7] Id. at 17-19.

[8] Supra, note 2 at 19.

[9] Rollo, p. 6.

[10] Rollo, p. 4.

[11] Rollo, p. 38.

[12] Resolution dated August 30, 2012, rollo, pp. 50-55.

[13] Entry of Judgment, rollo, p. 57.

[14] Rollo, p. 45.

[15] Delos Reyes v. Odone, et al., G.R. No. 178096, March 23, 2011.

[16] Carbonilla v. Abiera, G.R. No. 177637, 26 July 2010, 625 SCRA 461, cited in Corpuz v. Agustin, G.R. No. 183822, January 18, 2012.

[17] Rollo, p. 18; p. 21.

[18] Rules of Court, Rule 130, Section 26.

[19] Madriaga, Jr. v. China Bank Corp., G.R. No. 192377, July 25, 2012.

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