

**PEDRO CAPACIO AND FLORENTINA UNABIA CAPACIO,
PLAINTIFFS-APPELLANTS, VS. DR. JOSE RIVERA,
DEFENDANT-APPELLEE.**

G.R. No. L-28942. July 31, 1970

Ponente: FERNANDO, J.

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FERNANDO, J.:

A feature which, to say the least, is rather unusual, distinguishes this litigation from other forcible entry suits. Both the City Court of Cagayan de Oro as well as the Court of First Instance of Misamis Oriental were as one in dismissing a complaint for forcible entry precisely because, on plaintiffs' own pleadings, it would appear that the lot, the possession of which was allegedly entered into by force by defendant, is different from that made the basis of the complaint. This appeal, then, from the order of dismissal of the Court of First Instance of Misamis Oriental, must fail.

The complaint for forcible entry was filed by plaintiffs Pedro Capacio and Florentina U. Capacio, spouses, against defendant Jose Rivera in the City Court of Cagayan de Oro on February 20, 1967. After alleging the ownership and possession of a certain parcel of residential land located in such city, it set forth that on August 15, 1966, defendant, with the help of hired men, unlawfully entered a portion thereof, an illegal possession which had continued notwithstanding the demands made by plaintiffs for him to vacate the same.[1] The answer was duly filed on March 6, 1967 by defendant denying the truth of the allegation and setting forth as one of the affirmative defenses that the land in question was owned and occupied by him in the concept of owner, publicly, openly, continuously and adversely as far back as 1938.

Then came, on April 17, 1967, the order of dismissal by the City Court of Cagayan de Oro, the relevant portion of which was quoted in the brief for plaintiffs-appellants. Thus: "From the evidence adduced by defendant during the trial of the latter's affirmative defenses, it has been found that defendant's land is known as Lot No. 4349, covered by Transfer Certificate of Title No. 3111 of the Cagayan de Oro Cadastre, whereas that of the plaintiffs is a portion of Lot No. 4359 of the Cagayan de Oro Cadastre as evidenced by the Deed of Absolute Sale executed by Placido Bagting in favor of plaintiffs, dated September 6, 1941, marked as Annex 'B' to plaintiffs' complaint. It is therefore glaring that plaintiffs' land is different from that of the defendant (p. 48, record on appeal)."[2] An order of dismissal was thus entered.

What transpired next was set forth in the aforesaid brief as follows: "On April 25, 1967 plaintiffs thru their Counsel moved for reconsideration of the order of dismissal on April 27, 1967 and prayed to the Honorable City Court to conduct an ocular inspection of subject land to view its identity and the damages caused by defendant on improvements of plaintiffs, but the City Court summarily denied said motion on May 10, 1967 without hearing. Whereupon, plaintiffs appealed to the Court of First Instance of Misamis Oriental."[3] There was a pre-trial before the Court of First Instance of Misamis Oriental, after which the order of dismissal, now on appeal, was issued on September 21, 1967. It was therein stated: "This case is before this Court for preliminary hearing on the

allegations of the complaint and in the answer wherein both parties claim ownership of the land in question. Plaintiffs claim having bought the land from a certain person, whereas defendant likewise claims having acquired ownership of this parcel of land from a person whose ownership was evidenced by a Torrens title, so that the defendant is now the owner under a certificate of title in his name. From the allegations of the complaint and the answer, there seems to be a difference between the parcel that the plaintiffs are claiming and that claimed by defendant Dr. Jose Rivera. This difference was, noted by the City Judge who, after conducting a preliminary hearing of the case, dismissed it on the ground that the land claimed by plaintiffs is different from that claimed by defendant."^[4]

The Court then ordered the dismissal of the case. It is from such order, as mentioned earlier, that an appeal on a question of law was elevated to us. On the above facts, again as made clear at the outset, plaintiffs-appellants cannot possibly hope to succeed.

They would rely, in this appeal, on the applicable Rules of Court provision. It reads thus: "A perfected appeal shall operate to vacate the judgment of the justice of the peace or the municipal court, and the action when duly docketed in the Court of First Instance shall stand for trial de novo upon its merits in accordance with the regular procedure in that court, as though the same had never been tried before and had been originally there commenced. If the appeal is withdrawn, or dismissed for failure to prosecute, the judgment shall be deemed revived and shall forthwith be remanded to the justice of the peace or the municipal court for execution."^[5] Their insistence is that a trial de novo implies that what was done in the City Court could not be taken into account by the Court of First Instance which is required to hear the case anew. As noted in their brief: "The lower court, in dismissing the instant case on appeal, mainly relied on the oral remarks of counsel for both parties. It has not conducted a hearing either on the main issues of the case or on the affirmative defenses alleged by defendant-appellee. It must be noted that defendant-appellee has raised questions of facts in his affirmative defenses and which questions of facts, particularly the identity of the land in dispute, were properly ventilated in the City Court where it originated. By virtue of the appeal to the Court of First Instance, the latter Court should have conducted a hearing, either on the main issues of the case or of the affirmative defenses pleaded by defendant-appellee in order that it could arrive at a fair and just appraisal of the facts wherein it could anchor its findings and conclusions. To this end, the trial Court failed, but had rather disposed of the instant case summarily, thereby skipping a thorough and judicious appraisal of the issues involved. It merely affirmed the findings of facts of the City Court with respect to the identity of the land in dispute."^[6]

The contention of plaintiffs-appellants is not sufficiently persuasive. Such an approach could not be devoid of merit if there were no basis for the finding that the lot alleged by plaintiffs-appellants to have been entered into forcibly by defendant is different from that occupied by him. The very Annex B attached to their complaint, whose existence cannot be ignored by any one reading it, speaks of Lot No. 4359 as distinguished from defendant's land known as Lot No. 4349. Moreover, it is inaccurate to assert that the lower court Judge relied merely on what was done by the City Court. He did hear the parties on pre-trial. It would thus be undeniable that even prior to such a stage in the proceeding, that fatal discrepancy could be duly taken note of by the lower court and would call for the dismissal of the case. It cannot be said then that the conclusion arrived at by the lower court is bereft of support in law, the very pleadings of plaintiffs-appellants demonstrating the inherent weakness of their suit. Hence, the order of dismissal, which we must uphold.

WHEREFORE, the order of dismissal of the lower court of September 21, 1967 is affirmed. With costs against plaintiffs-appellants.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Teehankee, Barredo, and Villamor, JJ., concur.

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- [1] Complaint, Record on Appeal, pp. 1-7.
- [2] Statement of Facts, Brief for Plaintiffs-Appellants, p. 3.
- [3] Ibid.
- [4] Ibid, p. 4.
- [5] 2 Moran, Comments on the Rules of Court, 342 (1963).
- [6] Arguments, Brief for Plaintiffs-Appellants, pp. 7-8.

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