

## **NENITA DE GUZMAN FERGUSON, PETITIONER, VS. THE REGIONAL TRIAL COURT, MARIO BASA, FEDERICO BASA, SPOUSES WILFREDO BASA AND MARCELA BASA, RESPONDENTS.**

Ponente: LAMPAS PERALTA, J.

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### **LAMPAS PERALTA, J.:**

Assailed in this petition for review<sup>[1]</sup> filed under Rule 42, 1997 Rules of Civil Procedure is the Decision dated June 14, 2013<sup>[2]</sup> in Civil Case No. 04-M-2013 of Branch 84, Regional Trial Court (RTC), Malolos City, Bulacan affirming the Decision dated December 12, 2012<sup>[3]</sup> of the Municipal Trial Court (MTC) of San Rafael, Bulacan which dismissed petitioner's complaint<sup>[4]</sup> against private respondents for "Forcible Entry/Unlawful Detainer and Damages".

### **THE ANTECEDENTS**

The present case involves a two-meter right of way with an area of 57 square meters constituting a portion of Lot 374 with a total area of 1,272 square meters. The right of way traverses Lot 374-A with an area of 318 square meters located at 283 Pulo, San Rafael, Bulacan. Petitioner Nenita De Guzman Ferguson claims ownership of Lot 374-A. Allegedly, private respondents Mario Basa, Federico Basa, Wilfredo Basa and Marcela Basa were using said 57 square-meter portion to cross the street by "foot and/or vehicle", thus depriving petitioner of peaceful possession and ownership thereof.<sup>[5]</sup> On the other hand, private respondents claim that said portion was a registered right of way.<sup>[6]</sup>

Petitioner, Mauro De Guzman (petitioner's father) and Cherrylene Aquino (petitioner's niece) filed with the MTC a complaint<sup>[7]</sup> against private respondents for "Forcible Entry/Unlawful Detainer and Damages," alleging that (i) petitioner "possessed the disputed house & lot since 1890, tacking her predecessor's continued and uninterrupted possession into hers although her physical possession actually begins on November 25, 2007, the date she purchased said property;" (ii) petitioner simultaneously maintained her residence in the United States, while Cherrylene Aquino and her husband occupied the house on subject Lot 374-A during petitioner's absence; (iii) the disputed vacant property was once a balcony of a house built in 1890, and after the demolition of the balcony, private respondents started using the vacant space to cross the street by foot and/or vehicle; and, (iv) petitioner demanded that private respondents stop using the disputed vacant property, but private respondents did not heed said demand. Petitioner prayed that (i) she be declared as the rightful possessor of Lot 374-A; (ii) private respondents be ordered to surrender to petitioner the peaceful possession of Lot 374-A; and, (ii) private respondents be ordered to pay petitioner the sum of P30,000.00 representing actual damages and for continued use of the land.

Private respondents filed their answer<sup>[8]</sup> alleging, among others, that (i) the property claimed by petitioner was only a right of way of the property; (ii) private respondents did not receive any verbal or written demand from petitioner "to vacate" the property; (iii) private respondents suffered from the filing of the baseless complaint and must be awarded Php50,000.00 as moral damages and Php50,000.00 as exemplary damages.

The MTC issued an Order dated April 26, 2012,[9] dropping Mauro de Guzman and Cherrylene Aquino as plaintiffs considering that petitioner was the only real party-in-interest.

After the submission of the parties' documentary evidence,[10] the MTC rendered a Decision dated December 12, 2012[11] dismissing petitioner's complaint as follows:

WHEREFORE, for violation of the rule on non-joinder of cases on special civil actions and actions governed by the special rule, as well as for failure to state a cause of action for ejectment, the instant complaint is hereby DISMISSED with no pronouncements as to costs and recovery of counterclaim.

SO ORDERED.[12]

Petitioner filed her appeal before the RTC[13] which rendered a Decision dated June 14, 2013[14] affirming the MTC Decision dated December 12, 2012.[15] Petitioner filed a motion for reconsideration,[16] but the same was denied by the RTC in an Order dated December 12, 2013.[17]

Hence, petitioner filed the present petition which is premised on this sole assignment of error:

"The Honorable public respondent, with due respect and deference, committed a reversible error in the interpretation/application of the law in the instant case and in the appreciation of facts and evidence presented."[18]

### **THE ISSUE**

Whether the RTC erred in affirming the MTC's dismissal of petitioner's complaint for "Forcible Entry/Unlawful Detainer and Damages".

### **THE COURT'S RULING**

In dismissing petitioner's complaint for "Forcible Entry/Unlawful Detainer and Damages", the MTC and RTC were unanimous in finding that the complaint failed to state a cause of action for either unlawful detainer or forcible entry.[19]

Petitioner asseverates that all the elements of unlawful detainer and forcible entry were alleged in the complaint and established by the evidence. According to petitioner, she was actually deprived of her possession of the 57 square-meter vacant lot, as private respondents took advantage of her absence in the Philippines and exclusively used said vacant lot as passageway. Despite petitioner's demand for private respondents to stop using the property, private respondents "remained in possession and such possession deprived the petitioner of its intended use and enjoyment." [20]

The asseverations are unfounded.

As in any civil case, the burden of proof lies with the plaintiff who must establish her case by preponderance of evidence. For a forcible entry suit to prosper, the plaintiff must allege and prove: (i) prior physical possession of the property, and (ii) unlawful deprivation of it by the defendant through force, intimidation, strategy, threat or stealth.[21]

On the other hand, the elements of unlawful detainer are: (i) initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff; (ii) eventually, the possession became illegal upon the plaintiff's notice to the defendant of the termination of the latter's right of possession; (iii) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the latter's enjoyment; and, (iv) within one year from the making of the last demand on the defendant to vacate the property, the plaintiff instituted

the complaint for ejectment.[22]

Jurisprudence also teaches that the issue in ejectment cases is physical possession of the disputed property. In a case for unlawful detainer, it is the unlawful withholding of possession,[23] that is, the "withholding by a person from another for not more than one year, of the possession of a land or building to which the latter is entitled after the expiration or termination of the former's right to hold possession by virtue of a contract express or implied." [24] In forcible entry, the unlawful deprivation of the property by the defendant is through force, intimidation, strategy, threat or stealth.[25] Petitioner failed to prove any of these.

For clarity, pertinent portions of petitioner's complaint[26] for "Forcible Entry/Unlawful Detainer and Damages" read:

10. The original house when built in 1890 has a balcony on its side with a roof covering such balcony. Subsequently, when it was sold to a third person, such person demolished the balcony but left the original roof intact thereby leaving the space where the balcony once stood as vacant lot with the original roof still covering - now the disputed vacant lot.

11. After the demolition of the balcony, the defendants started using the disputed lot to cross the street by foot and/or vehicle. When Nenita purchased the property, she orally demanded the defendants to stop using the disputed lot. Mario who is a jeepney driver and who lives at the back of Nenita's house normally drives his jeepney to the disputed lot to cross the street. Aside from driving recklessly by driving too close to Nenita's house thereby exposing the latter's house from being sideswiped, every time Mario's jeepney passes by, it causes severe vibration, loud and obnoxious noise and spewing thick gas and fumes inside Nenita's house which is greatly hazardous to the residents' health and undoubtedly beyond someone's tolerance.

xxx xxx xxx

13. On May 16, 2011, Nenita hired a land surveyor to determine the exact boundaries of her lot, Lot 374-A. Frederico and Mario through their concerted effort of employing force, intimidation, and threat of death or grave bodily injury prohibited the surveyor to survey said land and to put markers on the ground. This is the third time the defendants resorted to such intimidating conduct to prevent the survey of the disputed lot with the ulterior motive of depriving Nenita of its ownership and possession. xxx

xxx xxx xxx

15. On December 14, 2011, Mario through force, intimidation and threat of grave bodily injury, excavated the foundation of Nenita's house through the use of a crowbar xxx resulting in substantial damage to Nenita's house. xxx

xxx xxx xxx

#### CAUSE OF ACTION

Plaintiffs hereby replead and incorporate by reference the foregoing allegations insofar as they may be material and further alleges that:

1. Nenita who continuously possesses the disputed land must be placed in its peaceful possession to the exclusion of all the defendants free from force, intimidation or imminent threats of death, grave bodily injury or destruction to property by stoning her house.

2. Damages in the amount of P10,000.00 were incurred as a result of unauthorized excavation of the house foundation and P20,000.00 for the continued use and occupation of the premises despite express prohibition.

#### PRAYER

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court that a judgment be

rendered in favor of the plaintiffs:

1. Declaring Nenita to be the rightful possessor of Lot 374-A and ordering defendants to surrender the peaceful possession thereof.
2. Ordering defendants to pay the plaintiffs the sum of P30,000.00 representing actual damages and for continued use of the land.
3. That due to continued acts of trespass and illegal interference with the possession of the herein disputed land coupled with continued harassment, intimidation and serious threat of death or grave bodily injury committed by the defendants against the persons and properties of the plaintiffs, the plaintiffs ask this Honorable Court to issue a writ of injunction upon default by the defendants or after full trial on the merits enjoining the defendants, their relatives, agents, representatives or anybody acting on their behalf from disturbing in any manner the peaceful possession and occupation of the land by the plaintiffs.
4. Ordering the defendants jointly and severally liable to pay the costs of this suit and other litigation expenses.

The allegations in the complaint that "Nenita who continuously possesses the disputed land must be placed in its peaceful possession," and that "the defendants started using the disputed lot to cross the street by foot and/or vehicle", only show that private respondents were not claiming possession but were only using the disputed 57 square-meter vacant lot as a passageway. To stress, as alleged in the complaint itself, petitioner "continuously possess the disputed land." Hence, the complaint failed to allege facts constitutive of forcible entry or unlawful detainer. Notably, even in the present petition, it was explicitly alleged that "petitioner is not only the current possessor--she is/was the sole possessor--and never lost such possession even for a brief period of time since 1890, when her ancestor's house was originally built therein." [27] Verily, petitioner's remedy, if any, should be an appropriate action other than ejectment, [28] as there are no persons to eject from the property.

Noteworthy is the following disquisition of the MTC in its Decision dated December 12, 2012, wherein the MTC pointed out that petitioner continued to remain in possession of the 57 square-meter vacant lot and had never been actually deprived of her right to occupy the same:

Prescinding from said rule, the instant complaint for forcible entry/unlawful detainer is procedurally disallowed. It finds justification on the well-established jurisprudence that a forcible action cannot be converted to a case of unlawful detainer because the latter requires that the possession must be legal at the start of the possession xxx.

For academic discussion, nonetheless, it was shown from the pleadings submitted by the plaintiffs that they never lost the use and occupancy of the premises in question. They continue to remain in possession of the disputed property, and they have never been actually deprived of their right to occupy and use the subject lot as their right of way. In fact, what the plaintiffs are asking is not restoration of their lost possession over the subject right of way but to exclude or prevent the defendant from using said right of way, as well as to restrain defendants from their unruly, lawless and menacing behavior like grave threats and intimidation, and unauthorized excavation of the subject property.

Again, to stress for emphasis, the main thing to be proven in forcible entry or unlawful detainer action is that plaintiff has been deprived of the actual occupancy and use of the subject property by the defendant and plaintiff is asking for the restoration of his actual possession and use thereof. As facts stand, defendants merely use the disputed vacant lot as access to cross the main road by foot and/or vehicle, but there is no evidence to show that they occupy the subject lot for their exclusive use and to the exclusion of the plaintiffs.

In fine, plaintiffs' cause of action to restrain defendants from using the disputed vacant lot as an access to cross the street and to restrain defendants from their unruly, lawless and menacing behavior, and unauthorized excavation of plaintiffs' property is not fit for ejectment action but for other judicial remedy such as injunction

suit which may be instituted as a principal action itself.[29]

Thus, the RTC cannot be faulted in affirming the findings and ruling of the MTC. As the RTC stressed in its Decision dated June 14, 2013[30]:

From the allegations in the complaint and the answer, there is no disputing that the contested lot is being utilized by the defendant as their passageway in going to the street and returning to the residence. Obviously therefore, the defendants are not in occupation or possession of the disputed lot since their use thereof as a road right of way is merely temporary, unless they could establish that the said right of way is validly registered and titled. Therefore, whether or not the contested lot is still exclusively owned by the plaintiffs or has been validly registered and titled as a road right of way for the use of the defendants may only be ascertained by way of another suit, perhaps for quieting of title or annulment or rescission and reconveyance, but definitely not through an action for ejectment.

Withal, the Court concurs with the Court a quo when it declared that the pleadings of the plaintiffs failed to show any cause for either unlawful detainer or forcible entry since they alleged to be in continuous possession and occupancy of the premises in question. Put differently, the Court a quo is correct when it opines that the plaintiffs continued to remain in possession of the disputed property as they have never been actually deprived of their right to occupy the subject lot, including its use as their right of way.

The Court likewise agrees that, while it may be true that plaintiff's possession of the contested lot is being disturbed by its use, as a passageway, by the defendants and/or by the latter's threats and intimidation, their (plaintiffs') remedy is not an ejectment suit but, perhaps, any of the foregoing action or even a petition for injunction to enjoin or prevent such use of the disputed lot. Besides, there is nothing to prevent the plaintiffs from blocking and stopping the use of the contested lot as a passageway if the claim of right of way of the defendants has no leg to stand on.[31]

In sum, the Court finds no compelling reason to deviate from the unanimous findings and ruling of the lower courts. Squarely applicable is the general rule that factual findings of the trial court are accorded great weight and respect, if not finality by the Court, except when (i) the trial court's inference from its factual findings is manifestly mistaken, absurd, or impossible; (ii) there is grave abuse of discretion in the appreciation of facts; (iii) there is misapprehension of facts; and, (iv) the factual findings are premised on the absence of evidence, or are contradicted by the evidence on record.[32] None of the exceptions obtains in the present case.

WHEREFORE, the petition is dismissed for lack of merit and the Decision dated June 14, 2013 of the Regional Trial Court is affirmed.

**SO ORDERED.**

Acosta, and Garcia-Fernandez, JJ., concur.

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[1] pp. 7-20, Rollo

[2] pp. 47-50, *ibid.*

[3] pp. 37-43, *ibid.*

[4] pp. 22-29, *ibid.*

[5] pp. 7-8, 22, 24-25 & 38-39, *ibid.*

[6] pp. 24-25, *ibid.*

- [7] pp. 22-29, *ibid.*
- [8] pp. 31-36, *ibid.*
- [9] pp. 45-46, *ibid.*
- [10] p. 40, *ibid.*
- [11] pp. 37-43, *ibid.*
- [12] p. 43, *ibid.*
- [13] p. 60, *ibid.*
- [14] pp. 47-50, *ibid.*
- [15] p. 50, *ibid.*
- [16] p. 10, *ibid.*
- [17] *ibid.*
- [18] p. 10, *ibid.*
- [19] pp. 43 & 49, *ibid.*
- [20] pp. 12-18, *ibid.*
- [21] *Nenita Quality Foods Corporation vs. Galabo*, 689 SCRA 569 [2013]
- [22] *Republic of the Philippines vs. Sunvar Realty Development Corporation*, 674 SCRA 320 [2012]
- [23] *Ross Rica Sales Center, Inc. vs. Ong*, 467 SCRA 35 [2005]
- [24] *Medina, Sr. vs. Court of Appeals*, 181 SCRA 837 [1990]
- [25] *Nenita Quality Foods Corporation vs. Galabo*, 689 SCRA 569 [2013]
- [26] pp. 24-29, Rollo
- [27] p. 18, Rollo
- [28] *Pagadora vs. Ilao*, 662 SCRA 15 [2011]
- [29] pp. 42-43, Rollo
- [30] pp. 47-50, *ibid.*
- [31] pp. 48-49, Rollo
- [32] *Borromeo vs. Descallar*, 580 SCRA 175 [2009]; See also *Spouses Bolaños vs. Zuñiga, et al.*, 635 SCRA 264, [2010]

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