

CHERYL B. GONZALES, REPRESENTED BY HER LEGAL GUARDIAN GENARO GONZALES, PETITIONER, VS. FELIPE BIALA, BERING BIALA, ANALIZA GUBA AND ROSITA OCUMEN, RESPONDENTS.

Ponente: YBAÑEZ, J.

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YBAÑEZ, J.:

In this Petition for Review,[1] petitioner Cheryl Gonzales, through her legal guardian Genaro Gonzales, assails the Decision[2] dated 31 March 2011 rendered by Branch 42 of the Regional Trial Court in Dagupan City which reversed and set aside the Municipal Trial Court's decision[3] dated 18 December 2008, thereby dismissing her complaint for ejectment.

The Facts

The subject property in this case is a three hundred forty-square meter parcel of residential land situated in Salay, Mangaldan, Pangasinan.

Petitioner Cheryl claimed that she was the child of spouses Cornelio and Conchita Gonzales, who died on 19 May 2005 and 21 April 2007, respectively. During the lifetime of her parents, they lived in the subject property. However, when Conchita was confined in the hospital and Cheryl stayed temporarily with her paternal grandparents, respondents took possession of the subject property.[4] When her paternal aunt got married, Cheryl wanted to return to her house so she, represented by legal guardian Genaro Gonzales and counsel, formally demanded from the respondents to vacate the subject property[5] and surrender possession thereof to her which was left unheeded, prompting her to institute a Complaint for Ejectment[6] before the Municipal Trial Court (MTC) of Mangaldan, Pangasinan. The same was docketed as Civil Case No. 2501.

For their part, respondents countered that petitioner has no cause for filing the instant complaint because respondent Felipa Biala, not Cheryl, is the real owner of the subject property as she was the one who can rightfully succeed Conchita. Cheryl could not have inherited the same because she is not the biological offspring of Felipa's daughter, Conchita and her spouse because Conchita's uterus had been removed prior to Cheryl's birth. Respondent further pointed out that Cheryl's birth certificate was simulated and falsified to make it appear that she was a child of the late spouses Gonzales.[7]

The Ruling of the Municipal Trial Court (MTC)

Ruling in favor of the petitioner, the MTC, on 18 December 2008, ordered respondents to vacate the subject property and to pay the former the sum of Five Hundred Pesos (P500.00) as monthly rentals from the date of the filing of the complaint on 14 September 2007 until they vacate the subject property, attorney's fees and costs of suit. It found Cheryl to be the sole and compulsory heir of the late spouses as evidenced by the birth certificate she presented before the court. Moreover, respondents were not able to establish the contrary as they did not submit any convincing proof that Cheryl was indeed not an issue of the late spouses.[8]

The Ruling of the Regional Trial Court (RTC)

Aggrieved, respondents appealed and found solace with the Regional Trial Court (RTC) when it rendered a Decision[9] dismissing petitioner's complaint. The RTC ruled that Felipa Biala, as Conchita's mother, is the person who can rightfully succeed the latter since Cheryl, the alleged daughter, could not do so due to the physical impossibility on the part of Conchita who was operated to remove her uterus a year before Cheryl's birth. Being an heir, Felipa has the right to continue with her prior possession over the subject property.[10]

Undeterred by the said reversal, petitioner moved for the reconsideration[11] of the aforesaid decision which was, however, denied in the Resolution[12] issued on 02 June 2011.

Hence, petitioner filed the instant petition interposing the following errors,[13] to wit:

I.

THE APPELLATE COURT ERRED IN REVERSING AND SETTING ASIDE THE DECISION OF THE MUNICIPAL TRIAL COURT OF MANGALDAN, PANGASINAN;

II.

THE APPELLATE COURT ERRED IN FINDING THAT PETITIONER IS NOT A RIGHTFUL HEIR WITH THE RIGHT TO SUCCEED THE PROPERTY OF CONCHITA;

III.

THE APPELLATE COURT ERRED IN FINDING THAT FELIPA BIALA SUCCEEDS OVER THE PARCEL OF LAND UPON THE DEATH OF CONCHITA AND WITH A RIGHT TO CONTINUE WITH HER PRIOR POSSESSION; and

IV.

THE APPELLATE COURT ERRED IN RENDERING A DECISION BY WAY OF REVERSAL AND SETTING ASIDE WITHOUT RESOLUTION OF DISMISSAL OR NOT, AS THE CASE MAYBE.

The Issues

The issues presented for Our resolution are 1.) whether or not respondents may validly impugn Cheryl's filiation in this case for ejectment and 2.) whether or not respondents could be ejected from the subject property.

The Ruling of this Court

We find the petition bereft of any merit.

As to the first issue, petitioner, relying on Article 170-171 of the Family Code,[14] argued that respondents could

not, as a defense in the instant case, attack Cheryl's filiation because an independent action must be brought for the said purpose. Moreover, even if the respondents are considered as proper parties to impugn Cheryl's legitimacy, they still cannot properly do so because the one-year period to file an independent action already lapsed.

We disagree. Petitioner's reliance on the aforesaid articles is misplaced.

A careful reading of the above articles will show that the same do not contemplate a situation, like in the instant case, where a child is alleged not to be the child of nature or biological child of a certain couple. Rather, these articles govern a situation where a husband (or his heirs) denies as his own a child of his wife. Thus, under Article 166, it is the husband who can impugn the legitimacy of the said child by proving: (1) it was physically impossible for him to have sexual intercourse, with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child; (2) that for biological or other scientific reasons, the child could not have been his child; (3) that in case of children conceived by insemination, the written authorization or ratification by either parent was obtained through mistake, fraud, violence, intimidation or undue influence. Articles 170 and 171 reinforce this reading as they speak of the prescriptive period within which the husband or any of his heirs should file the action impugning the legitimacy of said child.[15] The ruling in *Ida Labagala vs. Nicolasa Santiago, et al.*,[16] is instructive of this point, viz:

“Article 263 of the New Civil Code (now Art. 170 of the Family Code) refers to an action to impugn the legitimacy of a child, to assert and prove that a person is not a man's child by his wife. However, the present case is not one impugning petitioner's legitimacy. Respondents are asserting not merely that petitioner is not a legitimate child of Jose, but that she is not a child of Jose at all. Moreover, the present action is one for recovery of title and possession, and thus outside the scope of Article 263 on prescriptive periods.

Petitioner's reliance on *Sayson* is likewise improper. The factual milieu present in *Sayson* does not obtain in the instant case. What was being challenged by petitioners in *Sayson* was (1) the validity of the adoption of Delia and Edmundo by the deceased Teodoro and Isabel Sayson, and (2) the legitimate status of Doribel Sayson. While asserting that Delia and Edmundo could not have been validly adopted since Doribel had already been born to the Sayson couple at the time, petitioners at the same time made the conflicting claim that Doribel was not the child of the couple. The Court ruled in that case that it was too late to question the decree of adoption that became final years before. Besides, such a challenge to the validity of the adoption cannot be made collaterally but in a direct proceeding.

In this case, respondents are not assailing petitioner's legitimate status but are, instead, asserting that she is not at all their brother's child.[17] xxx” (emphasis supplied)

Indubitably, we cannot fault the RTC if it did not consider petitioner's position and did not apply the said articles to the facts at bar since the respondents never posited that Cheryl is not the child of Cornelio with Conchita but rather, what they repeatedly evinced before the lower courts is the fact that Cheryl was not born to Cornelio and Conchita because of the latter's operation which removed her uterus.[18]

Regarding the second issue, petitioner claims that as the sole heir of the deceased spouses Gonzales, who owned the subject property during their lifetime, she is now entitled to the possession and ownership of the same. Thus, respondents should vacate the property.

We find such averment unavailing.

It is well settled that in ejectment suits, the only issue for resolution is the physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants. However, the issue of ownership may be provisionally ruled upon for the sole purpose of determining who is entitled to possession de facto.[19]

Where the parties to an ejectment case raise the issue of ownership, the courts may pass upon that issue to determine who between the parties has the better right to possess the property. However, where the issue of ownership is inseparably linked to that of possession, adjudication of the ownership issue is not final and binding, but only for the purpose of resolving the issue of possession. The adjudication of the issue of ownership is only provisional and not a bar to an action between the same parties involving title to the property.[20]

The statements in the complaint that respondents have been occupying the subject property by mere tolerance of the petitioner clearly make out a case for unlawful detainer. Unlawful detainer involves the person's withholding from another of the possession of the real property to which the latter is entitled, after the expiration or termination of the former's right to hold possession under the contract, either express or implied.[21]

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 petitioner, the acts of tolerance must be proved.[22]

In the instant case, petitioner failed to prove that respondents' possession of the subject property was by mere tolerance, except by merely alleging thereof. Other than her averment, she did not illustrate the circumstances nor present any supporting evidence on record showing how respondents' possession became unlawful, which is a requisite in an unlawful detainer case. Without showcasing petitioner's acts of tolerance, then her case for unlawful detainer naturally falls short. In *Ten Forty Realty Development Corporation vs. Cruz*,[23] the Supreme Court expressed its qualms over the averments of facts in the complaint which do not contain anything substantiating the claim that the plaintiff tolerated or permitted the occupation of the property by the defendant.

In light of the foregoing consideration, we are inclined to uphold the RTC decision. It should be emphasized that since this is an ejectment case, our ruling involves only the question of who is entitled to the physical possession of the premises, that is, to the possession de facto and not to the possession de jure. Key jurisdictional facts constitutive of the particular ejectment must be averred in the complaint and sufficiently proven,[24] which unfortunately were not abided with by the petitioner. However, the latter is not without resort as she can still file a proper action to ventilate and prove her alleged ownership.

WHEREFORE, premises considered, the instant petition is DENIED. The assailed Decision dated 31 March 2011 of the Regional Trial Court is AFFIRMED.

SO ORDERED.

Dimaampao, Chairperson, and Sadang, JJ., concur.

[1] Rollo, pp. 23-34

[2] Id., pp. 54-60

[3] Id., pp. 51-53

[4] Id., Position Paper, pp. 84-85

[5] Id., p. 48-50

[6] Id., pp. 42-45

[7] Id., Answer with Compulsory Counterclaim, pp. 81-82

[8] Id., pp. 51-53

[9] Supra on note 2

[10] Supra on note 2, pp. 59-60

[11] Rollo, pp. 61-63

[12] Id., p. 64

[13] Supra on note 1, p. 11

[14] Article 170. The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.

If the husband, or in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier.

Article 171. The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:

- (1) If the husband should die before the expiration of the period fixed for bringing the action;
- (2) If he should die after the filing of the complaint, without having desisted therefrom; or
- (3) If the child was born after the death of the husband.

[15] Teofista Babiera vs. Presentacion Catotal, G. R. No. 138493, June 15, 2000, 333 SCRA 487, 495

[16] G. R. No. 132305, December 4, 2001, 371 SCRA 360, 368

[17] Id.

[18] Rollo, p. 116

[19] Heirs of Rosendo Lasam, represented by Rogelio Lasam and Atty. Edward Llonillo vs. Vicenta Umengan, G. R. No. 168153, December 6, 2006, 510 SCRA 596.

[20] Ruben Corpuz, represented by Attorney-in-fact Wenifreda Agullana vs. Sps. Hilarion Agustin and Justa Agustin, G. R. No. 183822, January 18, 2012, 663 SCRA 350

[21] Id.

[22] Id.

[23] G. R. No. 151212, September 10, 2003

[24] Ruben Corpuz, represented by Attorney-in-fact Wenifreda Agullana vs. Sps. Hilarion Agustin and Justa Agustin, *supra* on note 20

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