

EIGHTEENTH (18th) DIVISION ROCKY HILLS VILLAGE ASSOCIATION, INC., PETITIONER, VS. SPOUSES RODOLFO CUENCO AND CRISTETA CUENCO, RESPONDENTS.

Ponente: DIY, J.

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DIY, J.:

Before Us is a Petition for Review[1] under Rule 42 of the 1997 Rules of Civil Procedure. The instant case stemmed from a complaint[2] for ejectment, filed by herein petitioner Rocky Hills Village Association, Inc. (hereafter referred to as “Rocky Hills”) against respondent spouses Rodolfo Cuenco and Cristeta Cuenco (hereafter referred to as “Sps. Cuenco”) with the Municipal Trial Court of Cebu City (“MTC”, for brevity), specifically Branch 6 thereof.

The Facts of the Case

The subject of this controversy refers to two parcels of land namely: (1) Lot No. 6157-C-3-P covered by Transfer Certificate of Title (TCT) No. 164914;[3] and (2) Lot No. 6157-C-3-Q covered by TCT No. 164915.[4] Both landholdings are located in Tisa, Labangon, Cebu City and are hereafter collectively referred to as the subject landholdings.

Rocky Hills is the registered owner of a parcel of land designated as Lot No. 6157-C-3, consisting of 5,668 square meters, located in Tisa, Labangon, Cebu City and covered by TCT No. 113152.[5] The property was subdivided into smaller lots for which individual titles were issued, two of which are the subject landholdings.

Sometime in October of 2006, the Sps. Cuenco allegedly entered and took possession of the subject landholdings. Rocky Hills, through its President, Medardo Pedrano, demanded that the Sps. Cuenco vacate the premises. On November 21, 2006, Rocky Hills made a formal written demand,[6] which was ignored by the Sps. Cuenco.

On December 21, 2006, Rocky Hills filed with the MTC a complaint dated December 18, 2006 against the Sps. Cuenco, praying for their ejectment from the subject landholdings.

In their answer,[7] the Sps. Cuenco claimed ownership over the subject landholdings. They alleged that they bought the same from the Sps. Manuel and Josefina Galanto (hereafter referred to as “Sps. Galanto”) on October 25, 1991, who in turn, bought the property from Sps. Arsenio and Mercedes Madarang (hereafter referred to as “Sps. Madarang”) on November 10, 1989. The portions sold, which at that time still formed part of TCT 113152, were later purchased by the Panagtambayayong Foundation, Inc. After the property was developed into a subdivision, it was turned over to Rocky Hills. All the issued lot titles were registered in the name of Rocky Hills, including the subject landholdings.

After their purchase of the subject lots from the Sps. Galanto, the Sps. Cuenco allowed the Sps. Galanto to continue occupying the subject landholdings on the condition that the latter shall voluntarily vacate the premises by the end of the year, per the Memorandum of Agreement they executed in June of 1995. By reason of the Sps. Galanto’s non-compliance with the terms and conditions of the agreement, the Sps. Cuenco filed Civil Case No.

R-4978 for ejectment. On April 6, 2006, a Decision was rendered therein ordering the Sps. Galanto to turn over the possession of the contested lots to the Sps. Cuenco. Since October 20, 2006, the Sps. Cuenco have been in physical possession of the subject landholdings. The Sps. Cuenco demanded from Rocky Hills the surrender of the titles covering the subject landholdings to them, but Rocky Hills refused to heed their demand.

On November 8, 2007, the Sps. Cuenco, this time, filed before Branch 10, Regional Trial Court (RTC) of Cebu City a separate complaint[8] for quieting of title, reconveyance and damages with prayer for the issuance of a temporary restraining order/preliminary injunction, against Rocky Hills, Panagtambayayong Foundation, Inc., and Medardo Pedrano (Civil Case No. CEB-33841).

The Ruling of the MTC

On July 4, 2008, the MTC rendered its decision[9] in this controversy under review (the complaint for ejectment), the dispositive portion of which provides:

WHEREFORE, from all the foregoing, judgment is hereby rendered DISMISSING the case against the defendants for insufficient cause of actions [sic] and directing plaintiff to pay defendants the amount of P20,000.00 as Attorney's fees and P10,000.00 litigation expenses.

SO ORDERED.

As reason for such ruling, the MTC found that the complaint of Rocky Hills recites a case of forcible entry and not unlawful detainer. Being a case of forcible entry, the fact of prior physical possession disturbed through stealth which was unlawful from the beginning must be alleged in the complaint. According to the MTC, Rocky Hills failed to state or allege the fact of its prior physical possession of the subject landholdings. Such defect is fatal to the claim of Rocky Hills. The MTC added that if Rocky Hills is indeed the owner of the subject landholdings and that it was unlawfully deprived of the real right of possession or ownership thereof, it should present its claim before the Regional Trial Court in an accion publiciana or an accion reivindicatoria and not before the MTC in a summary proceeding.

As explained by the MTC, even if one is the owner of the property, the possession thereof cannot be wrested from another who had been in physical or material possession of the same by lawful means. This case likewise cannot be considered an unlawful detainer suit because the Sps. Cuenco neither unlawfully withheld possession of the subject landholdings nor are they lessees or occupants of the premises by tolerance. The Sps. Cuenco firmly contended that they are the lawful owners of the subject landholdings, being in actual physical possession thereof and having secured favorable judgment in the ejectment case filed before Branch 8, MTCC, Cebu City (Civil Case No. R-4978).

On December 12, 2008, Rocky Hills filed its Notice of Appeal of the July 4, 2008 Decision rendered by the MTC. Rocky Hills assigned to the lower court the following errors:

1.)

It had failed to appreciate the fact that therein plaintiff is the registered owner of the lot in issue under the Torrens System and only wanted to exercise the attributes of ownership.

2.)

It made an oversight in dismissing the case on the ground that the same is forcible entry and not unlawful detainer when the complaint never specifically mentioned unlawful detainer as the ground for ejectment. And as could be clearly gleaned in the body of the complaint, the ground for ejectment is entry due to stealth.

3.)

It erred in ordering the plaintiff to pay attorney's fees and litigation expenses to the defendants when the instant case was filed in utmost good faith.

The Ruling of the RTC, Branch 7

On October 22, 2009, the RTC, Branch 7 rendered its decision[10] in this controversy under appeal, the dispositive portion of which provides:

Hence, the Court sets aside the judgment in the Decision dated July 4, 2008, issued by the lower court in Civil Case No. R-52307 and in its place directs plaintiff-appellant Rocky Hills Village Association, Inc.:

1. To deliver the titles TCT No. 164914 & TCT No. 164915, free from all liens and encumbrances, to defendants-appellees Sps. Rudolfo and Cristeta Cuenco, who are the owners of Lot No. 6157-C-3-P & Lot No. 6157-C-3-Q;
2. To pay attorney's fees in the amount of P20,000.00;
3. To pay litigation expenses in the amount of P10,000.00; and
4. To pay the costs.

SO ORDERED.

As reason for such ruling, the RTC stated that the action is neither one of forcible entry nor unlawful detainer but essentially involves ownership over the subject landholdings, which must be resolved in an accion reivindicatoria.

As explained by the RTC, what determines the cause of action in forcible entry and unlawful detainer is the nature of the defendant's entry into the land. In this case, the Sps. Cuenco's entry was under colorable title and not by force, intimidation, threat, strategy, or stealth, as alleged by Rocky Hills.

Rocky Hills claims ownership over the subject landholdings, as evidenced by Torren's titles issued in its name. The Sps. Cuenco, on the other hand, also profess ownership over the same by virtue of a Deed of Absolute Sale in their favor, among others. According to the RTC, from these two directly opposing positions, a legitimate issue of ownership emerges. Thus, the RTC concluded that Rocky Hills should have brought a suit for ownership or accion reivindicatoria before the RTC.

The RTC treated the appeal as an accion reivindicatoria, invoking the 2nd paragraph of Section 8, Rule 40 of the 1997 Rules of Civil Procedure, which states that, "if the case was tried on the merits by the lower court without jurisdiction over the subject matter, the RTC on appeal shall not dismiss the case if it has original jurisdiction thereof, but shall decide the case in accordance with the preceding section, without prejudice to the admission of amended pleadings and additional evidence in the interest of justice."

As found by the RTC, before Lot 6157-C-3 was subdivided, Rocky Hills bought the property from the Sps. Madarang on May 4, 1990. Rocky Hills registered the property and a new title, TCT No. T-1-113152, cancelling TCT No. 48702, was issued in its name. The records also show that on November 10, 1989, the Sps. Madarang had sold portions of Lot No. 6157-C-3 to the Sps. Galanto. The sale of such portions by the Sps. Madarang to the Sps. Galanto was known to Rocky Hills, which recognized the Sps. Galanto as owners and bona fide members of the association. The Deed of Sale executed by the Sps. Madarang in favor of the Sps. Galanto was not registered. On October 25, 1991, the Sps. Galanto sold the subject landholdings to the Sps. Cuenco who, in the meantime, allowed the Sps. Galanto to continue occupying the premises. It was only in October of 2006, when the Sps. Cuenco started residing on the subject landholdings, that Rocky Hills began asserting its claim of ownership over

said portions.

The RTC ruled that this case involves a double sale. The conflict falls under and can be resolved under Article 1544 of the Civil Code which sets the rules on double sale: “[i]f the same thing should have been sold to different vendees, the ownership shall transfer to the person who may have first taken possession thereof in good faith, if it should be movable property. Should it be immovable property, the ownership shall belong to the person acquiring it, who in good faith first recorded it in the Registry of Property. Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.”

The RTC found Rocky Hills as the second vendee, which registered the sale in its favor, whereas the Sps. Galanto, the first buyers did not. But mere registration is not enough. Good faith must concur with the registration. Knowledge gained by Rocky Hills regarding the first sale in favor of the Sps. Galanto defeats its rights even if it was first to register the second sale, since such knowledge taints its prior registration with bad faith.

The RTC added that when Rocky Hills registered the later sale in its favor, it was already aware of the prior sale in favor of the Sps. Galanto, as shown in the Joint Affidavit of the then President and Vice-President of the association and the Minutes of the Meeting of the Board of Directors of which Medardo Pedrano, the current president of the association, was the secretary. The RTC lastly stated that there is no doubt that Rocky Hills’ presumed good faith has been sufficiently overcome and its bad faith amply established.

On November 12, 2009, Rocky Hills filed a Motion for Reconsideration[11] of the October 22, 2009 Decision of the RTC.

On February 22, 2010, the RTC issued an Order[12] denying Rocky Hills’ Motion for Reconsideration.

The instant Petition for Review

On March 25, 2010, Rocky Hills filed the instant Petition for Review under Rule 42 of the 1997 Rules of Civil Procedure. In said petition, as well as in its Memorandum[13] filed on March 16, 2012, Rocky Hills assigned the following errors:

1.)

The RTC, Branch 7 erred in ruling upon the issue of ownership over the subject landholdings when jurisdiction over the same is lodged before the RTC, Branch 10 (Civil Case No. CEB-33841), a co-equal court.

2.)

The RTC committed oversight when it held that the proper action that should have been filed by Rocky Hills is an accion reivindicatoria and not ejectment.

3.)

The RTC erred in declaring the Sps. Cuenco as the owners of the subject landholdings when it is clear that they only stepped into the shoes of their predecessors-in-interest (Sps. Galanto) who failed to register the alleged sale.

4.) The RTC erred in granting attorney’s fees and litigation expenses in favor of the Sps. Cuenco when the complaint is filed in good faith and only for the purpose of exercising the rights of ownership.

On the other hand, the Sps. Cuenco, in their Comment[14] on the Petition for Review, contend that all the issues

sought for review have already been threshed out and clearly explained in the Decision dated October 22, 2009 of the RTC, Branch 7 that decided Rocky Hills' appeal of the lower court's decision dismissing the latter's complaint for ejectment.

On September 30, 2010, RTC, Branch 10 (Civil Case No. CEB-33841) issued an Order^[15] stating that the respective counsel for each party agreed to suspend the hearings and to await the resolution of this instant petition for review.

The Ruling of the Court

The petition is partially impressed with merit.

It is settled that in actions for forcible entry, two allegations are mandatory for the municipal court to acquire jurisdiction. First, the plaintiff must allege his prior physical possession of the property. Second, he must also allege that he was deprived of his possession by any of the means provided for in Section 1, Rule 70 of the 1997 Rules of Civil Procedure, namely, force, intimidation, threats, strategy, and stealth.^[16]

Based on the complaint filed by Rocky Hills, it only managed to allege: (1) that it is the registered owner the subject landholdings; (2) that the Sps. Cuenco, sometime in October 2006, clandestinely took possession of the subject landholdings without the knowledge and consent of Rocky Hills; and (3) that the Sps. Cuenco refused to vacate the premises despite repeated demands.

It must be noted that the bare allegation in the complaint (as in this case) that plaintiff was "deprived" of the possession of the land in dispute has been held to be insufficient.^[17] Pursuant to the foregoing, the lower court clearly did not have jurisdiction over the ejectment case.

However, even in the absence of jurisdiction, the records reveal that the lower court tried the case on the merits.^[18]

As such, the requisites for the application of the 2nd paragraph of Section 8, Rule 40 of the 1997 Rules of Civil Procedure were existent in this case.

Section 8, Rule 40 of the 1997 Rules of Civil Procedure provides:

SECTION 8. Appeal from orders dismissing case without trial; lack of jurisdiction. — If an appeal is taken from an order of the lower court dismissing the case without a trial on the merits, the Regional Trial Court may affirm or reverse it, as the case may be. In case of affirmance and the ground of dismissal is lack of jurisdiction over the subject matter, the Regional Trial Court, if it has jurisdiction thereover, shall try the case on the merits as if the case was originally filed with it. In case of reversal, the case shall be remanded for further proceedings.

If the case was tried on the merits by the lower court without jurisdiction over the subject matter, the Regional Trial Court on appeal shall not dismiss the case if it has original jurisdiction thereof, but shall decide the case in accordance with the preceding section, without prejudice to the admission of amended pleadings and additional evidence in the interest of justice.

In the ejectment case, the lower court tried the case on the merits although without jurisdiction over the subject matter. As such, the RTC, Branch 7 correctly applied the 2nd paragraph of Section 8, Rule 40 of the 1997 Rules of Civil Procedure by treating the appeal as an accion reivindicatoria originally filed before it.

One of the allegations raised by Rocky Hills was that the RTC, Branch 7 violated the rules on appreciation of evidence since the documents submitted by the Sps. Cuenco were neither identified by their witnesses, nor had been marked and identified in protracted trial. This question has already been resolved by the Supreme Court.

According to the latter, if the case is tried on the merits by the Municipal Court without jurisdiction over the subject matter, the RTC on appeal may no longer dismiss the case if it has original jurisdiction thereof. Moreover, the RTC shall no longer try the case on the merits, but shall decide the case on the basis of the evidence presented in the lower court, without prejudice to the admission of the amended pleadings and additional evidence in the interest of justice.[19]

As such, it was not error on the part of the RTC, Branch 7 to consider, in resolving the issue of ownership, the evidence on record elevated to it from the MTC, which employed the rules on summary procedure.

However, noteworthy is the fact that the Sps. Cuenco had initiated a separate civil action for quieting of title, reconveyance, and damages as early as November 8, 2007 before RTC, Branch 10 (Civil Case No. CEB-33841). On the other hand, the appeal filed before RTC, Branch 7 was made only on December 12, 2008. As such, RTC, Branch 10 is the court which first acquired jurisdiction over the subject matter of determination of ownership over the subject landholdings. It is said that when several courts have concurrent jurisdiction, the first court which acquires jurisdiction retains it to the exclusion of the others.[20] Pursuant to this principle, the RTC, Branch 7's Decision awarding ownership in favor of the Sps. Cuenco must necessarily be rendered ineffectual. All questions relating to ownership over the subject landholdings should be left to the wisdom of the court that first acquired jurisdiction thereon.

Anent the issue of the propriety of the award of attorney's fees and litigation expenses, this Court finds no reversible error as to the award of the same.

Article 2208 of the Civil Code states the policy that should guide the courts when awarding attorney's fees to a litigant. As a general rule, the parties may stipulate the recovery of attorney's fees. In the absence of such stipulation, this article restrictively enumerates the instances when these fees may be recovered, to wit:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

It is settled that the award of attorney's fees is the exception rather than the general rule; counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208 of the Civil Code. As such, it is necessary for the court to make findings of fact and law that would bring the case within the ambit of these enumerated instances to justify the grant of such award, and in all cases it must be reasonable.[21]

Attorney's fees are allowed in the discretion of the court after considering several factors which are discernible from the facts brought out during the trial. In the instant ejectment case, the Sps. Cuenco were compelled to litigate and incur expenses in order to protect their interest.[22] It was found that Rocky Hills was in bad faith when it proceeded with the registration of the second sale of the subject landholdings in its favor even if it was already aware of the existence of the first sale in favor of the Sps. Galanto. From these facts obtaining in the instant case, We rule that the award of attorney's fees and litigation expenses is reasonable and hence warranted.

WHEREFORE, premises considered, the Decision rendered by Branch 7, RTC, Cebu City on October 22, 2009, and its Order dated February 22, 2010, are hereby SET ASIDE and a new Order is issued in its stead DISMISSING the complaint for ejectment filed by Rocky Hills Village Association, Inc. and DIRECTING said association to pay Spouses Rodolfo Cuenco and Cristeta Cuenco the amount of P20,000.00 as and by way of attorney's fees and P10,000.00 for litigation expenses.

SO ORDERED.

Maxino, and Diy, JJ., concur.

[1] Rollo, pp. 6-72.

[2] Ibid., pp. 106-109.

[3] Rollo, p. 36.

[4] Ibid., p. 37.

[5] Ibid., p. 38.

[6] Ibid., p. 41.

[7] Ibid., pp. 43-46.

[8] Rollo, pp. 47-56.

[9] Ibid., pp. 30-32.

[10] Rollo, pp. 25-29.

[11] Rollo, pp. 63-71.

[12] Ibid., p. 24.

[13] Ibid., pp. 96-105.

[14] Rollo, pp. 92-93.

[15] Ibid., p. 94.

[16] Estel vs. Diego, Sr., G.R. No. 174082, January 16, 2012.

[17] Gumiran, et al. vs. Gumiran, G.R. No. L-6364, January 11, 1912 as cited in the case of Saclolo vs. IAC., G.R. No. 73380, March 21, 1988.

[18] As stated in the citation of facts of the October 22, 2009 Decision of the RTC, Branch 7, detailing the numerous documentary evidence evaluated by the lower court in resolving the complaint for ejectment.

[19] Encarnacion vs. Amigo, G.R., No. 169793, September 15, 2006.

[20] Neñaria, et al. vs. Veluz, G.R. No. L-4683, May 29, 1952.

[21] Philippine National Construction Corporation vs. APAC Marketing Corporation. G.R. No. 190957, June 5, 2013.

[22] Philippine Rabbit Bus Lines, Inc. vs. Esguerra., G.R. No. L-31420 October 23, 1982.

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