

**BALBINA PAG-ONG, VERONICA DIDAL, ELEONOR JAMILE, AND
VIRNIE P. RAFALLO, PETITIONERS, VS. BRENDA REYES TURNER, AS
REPRESENTED BY ROSALINDA R. TIU, RESPONDENT,**

Ponente: INTING, J.

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INTING, J.:

Before Us is a Petition for Review under Rule 42 of the 1997 Rules of Civil Procedure assailing that the Decision[2] of the Regional Trial Court of Butuan City, Branch 3, rendered in Civil Case No. 5890, which is a Complaint for Unlawful Detainer.

The facts[3] of the case are as follows:

The crux of the controversy involves a parcel of land, consisting of one thousand two hundred thirteen (1,213) square meters, situated in Butuan City, covered by Transfer Certificate of Title No. RT-47567 and particularly described as follows:

"A parcel of land, Lot 365-A, Psd-13-006489 being a portion of Lot 365, Swo-8674, situated in the Barrio of Poblacion, City of Butuan, Province of Agusan del Norte, Island of Mindanao. Bounded on the
W., along line 1-2 by lot 563, Swo-8674;
N., along line 2-3 by lot 412, Swo-8674;
E., along line 3-4 by R. Calo Street;
S., along line 4-1 by lot 365-B, Psd-13-006489;

Beginning at the point marked "1" on the plan being N., 16 deg. 16'W., 642.27 meter from BLLM No. 1, Butuan Cad.

1-2 N., 4 deg. 23'E., 26.30 m.
2-3 N., 89 deg. 46'E., 41.06 m.
3-4 S., 4 deg. 27'E., 29.96 m.
4-1 N., 85 deg. 37'W., 45.54 m.

Beginning, containing an area of ONE THOUSAND TWO HUNDERED THIRTEEN (1,213) Sq. Meters. All points referred to are indicated on the plan marked on the ground as follows; Points all corners by PS cyl. conc. mons. 15 x 40 cm. Bearings true. Date of Original Survey Feb. 15, 1909 and that of the Subdivision Survey dated July 8, 2000 executed by Geodetic Engineer Roger B. Pepaña and approved on Aug. 24, 2000." [4]

Sometime in 1974, Luz Reyes Alejandria (predecessor-in-interest of respondent Brenda Reyes Turner) filed an application for Land Registration before the Regional Trial Court of Agusan del Norte and Butuan City, Branch 5 (RTC-5), over a parcel of land identified as Lot 365, as shown on Plan No. 8674, L.R.C., with an area of three thousand six hundred thirty nine (3,639) square meters. The application was granted by the RTC-5 on March 17, 2000. The pertinent portion of which reads:

"After the Court has studied thoroughly the evidence for the applicant, and the evidence of the oppositors the

Court is convinced that the applicant has proven her case that she is in actual physical possession of the properly described in Paragraph 1 of her application. That her possession and occupation of the said property was continuous and uninterrupted for a period from 1920, up to the present, tacking the possession of her late father Francisco Reyes and her possession and occupation.

She has proven her case by preponderance of evidence and the Court is convinced that the application for Land Registration of the applicant has to be given due course and approved.

WHEREFORE, premises considered the Court hereby renders judgment in favor of the applicant Luz Reyes Alejandria, and the parcel of land subject of the said application, as shown in paragraph 1 of the Application, should be ordered registered in her name."[5]

Consequently, Original Certificate of Title No. RO-312 was issued in her name on June 20, 2006, with the following memorandum of encumbrances:

"This is to certify that this Certificate of Title has on July 5, 2000 at 4:00 p.m. been judicially reconstituted by virtue of Decision dated March 17, 2000 of the Regional Trial Court of Agusan del Norte and Butuan City, 10[th] Judicial Region, Branch 5, Butuan City, in favor of Luz Reyes Alejandria, applicant, LRC Case No. 205 (Lot 365 SWO-8674 Butuan City and entered under Entry No. 688 of the Records of Reconstitution of Lot 365, Certificate of Title under the provisions of Republic Act No. 26.

The source (sic) of reconstitution are as follows:

- Copy of Decision
- Copy of Approved Subdivision Plan
- Technical Descriptions

Butuan City, July 5, 2000 at 4:00 p.m."[6]

Thereafter, respondent inherited a portion of the aforementioned land from her aunt, Luz Reyes Alejandria. On June 20, 2006, TCT No. RT-47567 (the subject property) was issued in her name. The subject property was declared for tax purposes under Declaration of Real Property No. 96GR-01-005-0744-R.

On August 26, 2008, respondent filed a complaint for unlawful detainer against petitioners. Respondent alleges, among other things, that over a number of years, some families have lived in her subject property, including the petitioners. Due to humanitarian consideration, she allowed them to occupy the subject property free from any payment of rentals, provided that they voluntarily vacate the subject property once she decides to use it.[7]

Sometime thereafter, when she informed the petitioners of her intention to use the area, the latter offered resistance. While all the others voluntarily vacated, petitioners maliciously refused to leave and turn over the area to respondent.[8]

According to respondent, petitioners remained adamant despite the previous undertaking they made during the barangay conciliation proceedings last April 5, 2006, wherein they promised to vacate the subject property without any assistance from the respondent. Prior to this, petitioner Balbina P. Pag-ong also executed the following undertaking dated December 19, 1997 and witnessed by Barangay Captain Florencio Canete and Kagawad Fernando Macuno:

"x x x

- That I have agreed that if the heirs will make use of the property of Francisco Reyes, they have the right to use and we will give way without any obligation for them to pay us.

- That I have agreed to vacate the place and demolish all structure without any financial obligation whatsoever by the time they will use the said property. x x x" [9]

Despite the notice to vacate sent by respondent to petitioners, the latter refused to vacate the subject property. Thus, respondent was constrained to file the case against petitioners

For their part, the petitioners aver in their answer that they and their predecessors-in-interest have been in possession of the subject property since the 1960's, even before the date of its registration. They claim that they were the first ones to occupy the property and even inquired with the city government with regard to the status of the land, and were informed that it was still part of the public domain. They emphasize that their stay in the subject property was never under the permission of anyone. Petitioner Balbina Pag-ong admits that she signed the aforementioned undertaking. However, she reasons out that she only did so in order to put an end to the pestering of respondent's sister, Rosalinda Tiu, who constantly harassed her and her husband by periodically calling them for confrontation at the office of the Punong Barangay of Brgy. San Ignacio, Butuan City.

On March 2, 2009, the Municipal Trial Court in Cities (MTCC) of Butuan City, Branch 2, rendered its Decision. The dispositive portion of which reads:

"WHEREFORE, IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of the plaintiff, Brenda P. Reyes-Turner, represented by Rosalinda R. Tiu, and against the defendants, Balbina Pagong, Veronica Didal, Eleonor Jamile, and Aurero Rafallo, and ordering said defendants to immediately vacate the lot in question.

Further the said defendants are also ordered to pay said plaintiff of the following:

- The amount of P20,000.00 as attorney's fees;
- The amount of P5,000.00 as litigation expenses; and
- The amount of P7,350.00 as cost of suit." [10]

Undeterred, the petitioners elevated the case before the Regional Trial Court (RTC) of Butuan City, Branch 3. In its decision dated January 5, 2010, the RTC affirmed the ruling of the MTCC and found that petitioners were guilty of unlawful detainer and ordered their ejectment from the subject property. However, the RTC removed the award of attorney's fees, litigation expenses, and cost of suit for failure of the MTC to explicitly state in the body of the decision, and not just in the dispositive portion, the legal reason for the award of attorney's fees.

Thus, this Petition for Review with the following assignment of errors:

I

The trial court committed reversible error when it ruled to the effect that the MTCC's failure to consider the position paper submitted by petitioners is of no moment as the petitioners were amply given their day in court when they were given the opportunity to submit their answer and participate in the preliminary conference;

II

The trial court committed reversible error when it ruled that respondent was able to show that her tolerance existed at the time when petitioners started to occupy her property until the time when she demanded for them to vacate the same. Hence, the MTC acquired jurisdiction over the case for ejectment;

III

The trial court committed reversible error when it ruled that petitioners' entitlement to possession of the subject property is inferior to that of the respondent's by reason of her certificate of title over the said property; and

IV

The trial court committed reversible error when it did not dismiss the case for lack of jurisdiction of the MTCC over the ejectment case.[11]

Our Ruling

The petition is bereft of merit.

Anent the first issue, the Supreme Court, in *Teraña v. de Sagun* has ruled that the failure of one party to submit his position paper, in a case governed by the Rules of Summary Procedure, does not bar the lower court from rendering a judgment on the complaint. Thus:

"The strict adherence to the reglementary period prescribed by the RSP is due to the essence and purpose of these rules. The law looks with compassion upon a party who has been illegally dispossessed of his property. Due to the urgency presented by this situation, the RSP provides for an expeditious and inexpensive means of reinstating the rightful possessor to the enjoyment of the subject property. This fulfills the need to resolve the ejectment case quickly. Thus, we cannot reward the petitioner's late filing of her position paper and the affidavits of her witnesses by admitting them now.

The failure of one party to submit his position paper does not bar at all the MTC from issuing a judgment on the ejectment complaint. Section 10 of the RSP states:

Section 10. Rendition of judgment. — Within thirty (30) days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same, the court shall render judgment. [Underscoring supplied.]

However, should the court find it necessary to clarify certain material facts, it may, during the said period, issue an order specifying the matters to be clarified, and require the parties to submit affidavits or other evidence on the said matters within ten (10) days from receipt of said order. Judgment shall be rendered within fifteen (15) days after the receipt of the last affidavit or the expiration of the period for filing the same.

The court shall not resort to the foregoing procedure just to gain time for the rendition of the judgment.

Thus, the situation obtaining in the present case has been duly provided for by the Rules; it was correct to render a judgment, as the MTC did, after one party failed to file their position paper and supporting affidavits.

That a position paper is not indispensable to the court's authority to render judgment is further evident from what the RSP provides regarding a preliminary conference: 'on the basis of the pleadings and the stipulations and admissions made by the parties, judgment may be rendered without the need for further proceedings, in which event the judgment shall be rendered within 30 days from the issuance of the order.' Thus, the proceedings may stop at that point, without need for the submission of position papers. In such a case, what would be extant in the record and the bases for the judgment would be the complaint, answer, and the record of the preliminary conference." [12]

Hence, based on the aforementioned law and jurisprudence, the MTC did not commit any error when it no longer considered the position paper of the petitioners when it rendered its judgment.

With regard to the remaining issues, We shall discuss them jointly as they are interrelated.

We reiterate the findings of the RTC-5 that the possession of respondent over the subject property dates back from his predecessors-in-interest. This possession began as early as the 1920's with his late grandfather Francisco Reyes and then to his aunt Luz Reyes Alejandria. The RTC-5 recognized their actual, open and continuous possession of the subject property and thus, awarded the OCT to respondent's aunt, Luz.

The Supreme Court has held in a plethora of cases that the title holder has a better right to possess a disputed property as against one who has no title thereto. Hence, in *Co. v. Militar*, the Supreme Court held, to wit:

"We have, time and again, held that the only issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants. Moreover, an ejectment suit is summary in nature and is not susceptible to circumvention by the simple expedient of asserting ownership over the property.

In forcible entry and unlawful detainer cases, even if the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the lower courts and the Court of Appeals, nonetheless, have the undoubted competence to provisionally resolve the issue of ownership for the sole purpose of determining the issue of possession.

Such decision, however, does not bind the title or affect the ownership of the land nor is conclusive of the facts therein found in a case between the same parties upon a different cause of action involving possession.

In the instant case, the evidence showed that as between the parties, it is the petitioner who has a Torrens Title to the property. Respondents merely showed their unregistered deeds of sale in support of their claims. The Metropolitan Trial Court correctly relied on the transfer certificate of title in the name of petitioner.

In *Tenio-Obsequio v. Court of Appeals*, it was held that the Torrens System was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized.

It is settled that a Torrens Certificate of title is indefeasible and binding upon the whole world unless and until it has been nullified by a court of competent jurisdiction. Under existing statutory and decisional law, the power to pass upon the validity of such certificate of title at the first instance properly belongs to the Regional Trial Courts in a direct proceeding for cancellation of title.

As the registered owner, petitioner had a right to the possession of the property, which is one of the attributes of his ownership. Respondents' argument that petitioner is not an innocent purchaser for value and was guilty of bad faith in having the subject land registered in his name is a collateral attack on the title of petitioner, which is not allowed. A certificate of title cannot be subject to a collateral attack and can be altered, modified or cancelled only in a direct proceeding in accordance with law."^[13]

Although admittedly this rule is not absolute and admits of exceptions, We see no reason to reverse the Decision of the court a quo. The petitioners failed to present evidence of prior physical possession. They allege that their prior physical possession began as early as the 1960's. These are bare allegations which cannot hold up in court. It must be borne in mind that the predecessor-in-interest of respondent had been in possession of the subject property as early as the 1920's.

Moreover, We find that the petitioners' contention of lack of jurisdiction of the court a quo is misplaced.

There are three kinds of actions for the recovery of possession of real property:

- Accion interdictal, or an ejectment proceeding which may be either that for forcible entry (detentacion) or unlawful detainer (desahucio), which is a summary action for recovery of physical possession where the dispossession has not lasted for more than one year, and should be brought in the proper inferior court;
- Accion publiciana or the plenary action for the recovery of the real right of possession, which should be brought in the proper Regional Trial Court when the dispossession has lasted for more than one year; and
- Accion reivindicatoria or accion de reivindicacion, which is an action for the recovery of ownership which must be brought in the proper Regional Trial Court.^[14]

Unlawful detainer is a summary action for the recovery of possession of real property. This action may be filed by a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession by virtue of any contract, express or implied. In unlawful detainer, the possession of the defendant was originally legal, as his possession was permitted by the plaintiff on account of an express or implied contract between them.[15]

Contrary to the contention of the petitioners, the allegations of the complaint clearly show that it falls under accion interdictal (unlawful detainer) and not accion publiciana.

An action for unlawful detainer based on a complainant's mere tolerance has been recognized by the Supreme Court when there is a formal demand made by the complainant. Verily, in the case of *Malabanan v. Cabuyao*, the Supreme Court held, thus:

"Going over the allegations in the complaint, it is clear that respondent's action for unlawful detainer is based on petitioner's possession by mere tolerance. From the time the title to the property was transferred in the name of respondent, petitioner's possession was converted into one by mere tolerance of the owner. The forbearance ceased when respondent made a demand on petitioner to vacate the lot. Thenceforth, petitioner's occupancy had become unlawful.

A person who occupies the land of another with the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against him."[16]

In the case at bar, respondent, through her counsel, also sent a formal demand/notice to vacate dated February 6, 2008 to the petitioners. However, such notice fell on deaf ears.

The issue of 'tolerance' asseverated by the respondent is proven by the fact that the petitioners made an undertaking during the barangay conciliation dated December 19, 1997 and April 5, 2006, that they will voluntarily vacate from the subject property without the assistance of respondent. The undertaking also impliedly recognized the rights of respondent over the subject property as heir of the late Francisco Reyes. Petitioner Balbina P. Pag-ong executed the following undertaking dated December 19, 1997, which was witnessed by Barangay Captain Florencio Canete and Kagawad Fernando Macuno:

"x x x

- That I have agreed that if the heirs will make use of the property of Francisco Reyes, they have the right to use and we will give way without any obligation for them to pay us.

- That I have agreed to vacate the place and demolish all structure without any financial obligation whatsoever by the time they will use the said property. x x x"[17]

They cannot now feign ignorance with this binding undertaking which they freely and willfully signed. In the first place, if they did not want to be bound by it, they should not have signed the same.

Verily, We find no reason to reverse the ruling of the court a quo.

WHEREFORE, the petition is DENIED. The Decision of the Regional Trial Court of Butuan City, Branch 3, rendered in Civil Case No. 5890 is AFFIRMED.

SO ORDERED.

[*]Borja, (Acting Chairperson), and Perez, JJ., concur.

[*] Designated Member vice J. Camello, per Raffle dated June 18, 2014

[1] Pursuant to the Order dated 30 August 2012, ordering Virnie P. Rafallo, as designated legal representative of deceased petitioner Aurelio Rafallo, to be substituted for and in his behalf.

[2] Penned by Francisco F. Maclang; Rollo, pp. 31-38.

[3] As culled from the records.

[4] Rollo, p. 57.

[5] Supra, p. 119.

[6] Supra, p. 32.

[7] Rollo, p. 50.

[8] Supra, p. 51.

[9] Supra, p. 59.

[10] Supra, pp. 148-150.

[11] Supra, pp. 13, 15.

[12] G.R. No. 152131; April 29, 2009.

[13] G.R. No. 149912; January 19, 2004.

[14] Encarnacion v. Amigo; G.R. No. 169793; September 15, 2006.

[15] Jose v. Alfuerio; G.R. No. 169380; November 16, 2012.

[16] G.R. No. 163495; May 8, 2009.

[17] See footnote 8.

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