

CA-G.R. SP. NO. 72003 OLSIM LAGMAN, JOSEPHINE LAGMAN, BUYAN LAGMAN AND LOCAN LAGMAN, PETITIONERS, VS. APOSTOLIC VICARIATE OF BAGUIO-BENGUET, REPRESENTED BY REV. FR. ANDRES COSAL...

Ponente: BARRIOS, J.

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BARRIOS, J.:

The respondent Apostolic Vicariate of Baguio-Benguet (hereafter Apostolic Vicariate) sued the petitioners Olsim, Josephine, Buyan and Locan, all surnamed Lagman (or the Lagmans) for Ejectment before the Municipal Trial Court of Atok-Tublay (or MTC).

The judgment was adverse to the Lagmans who appealed to the Regional Trial Court of La Trinidad, Benguet (or RTC). The RTC affirmed the ruling, hence this appellate recourse. In its complaint, the Apostolic Vicariate alleged that it is the owner of that 1,035 square meters lot in Acop, Tublay, Benguet covered by Transfer Certificate of Title T-904. The Apostolic Vicariate was formerly known as the Catholic Vicar Apostolic of the Mountain Province when it acquired this from the Heirs of Danal on August 24, 1953. A chapel was initially constructed thereon, but this was demolished when the Tublay Catholic Mission church was constructed.

The Lagmans own the lot adjacent to this. In February 2001 they caused the construction of a building on their lot and undertook the needed leveling and excavation. The Lagmans however through stealth, strategy and machination encroached on a portion of the lot of the Apostolic Vicariate. Demands to stop the construction were made, but these were futile. Hence the filing with the MTC of this ejectment suit with prayer for the issuance of preliminary injunction and restraining order.

In their traverse, the Lagmans asseverated that Josephine Lagman owns the lot adjacent to the lot of the Apostolic Vicariate. They have put up a construction on this lot but deny that they overreached and encroached on the lot of the Apostolic Vicariate as their construction was undertaken well within Josephine's lot. They opposed the application for preliminary injunction and prayed for the dismissal of the complaint for lack of cause of action.

On April 10, 2002 the MTC rendered its Decision decreeing that:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff, ordering the defendants to remove the overhang of their building that encroaches on the property of the plaintiff.

Costs against the defendants.

SO ORDERED. (p. 214, record)

This was affirmed by the RTC in the assailed Decision dated May 30, 2002.

Hence this petition for review with the Lagmans assigning as the errors committed by the RTC the following:

- THAT THE HONORABLE REGIONAL TRIAL COURT GRAVELY ABUSED ITS DISCRETION WHEN IT FAILED TO APPRECIATE THAT THIS IS A CASE FOR FORCIBLE ENTRY;

- THAT THE HONORABLE REGIONAL TRIAL COURT GRAVELY ABUSED ITS DISCRETION WHEN IT IMPLIEDLY HELD THAT PETITIONERS ALREADY ADMITTED RESPONDENTS PRIOR PHYSICAL POSSESSION AND SUBSEQUENT DEPRIVATION OF THE SUBJECT LOT;
- THAT THE HONORABLE REGIONAL TRIAL COURT GRAVELY ABUSED ITS DISCRETION WHEN IT UPHELD THE RESPONDENTS RIGHT FOR EJECTMENT/FORCIBLE ENTRY BASED SOLELY ON THE ALLEGED OWNERSHIP/TITLE OF RESPONDENT. (p. 11, rollo)

The petition lacks merit.

Contrary to what the Lagmans want to portray, the prior physical possession was sufficiently alleged in the complaint. It was averred that the Apostolic Vicariate is owner of the property which it acquired in 1953 and on which it had constructed a chapel which was in use until demolished when a new church was constructed. The Lagmans then by force, strategy and stealth encroached on the premises and commenced the construction of a structure thereon and despite demands they continued with the encroachment. It clearly alleged the owner's prior physical possession and its having been unlawfully turned out therefrom.

There is forcible entry or desahucio when one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy or stealth. We have previously held that the foundation of possessory action is really the forcible exclusion of the original possessor by a person who has entered without right. The words "by force, intimidation, threat, strategy or stealth" include every situation or condition under which one person can wrongly enter upon a real property and exclude another, who has had prior possession therefrom (Bañes vs. Lutheran Church in the Philippines, G. R. No. 142308, November 15, 2005).

The Apostolic Vicariate satisfactorily established by proofs its allegations of prior possession and the encroachment on the subject property by the Lagmans. Possession can be acquired by juridical acts. For one to be considered in possession, one need not have actual or physical occupation of every square inch of the property at all times (Habagat Grill vs. DMC-Urban Property Developer, Inc., G. R. No. 155110, March 31, 2005). In this case, prior possession of the lot was sufficiently shown by the fact that the questioned portion of the lot was subject to the will of the Apostolic Vicariate from 1953 until February 2001 when the Lagmans encroached thereon. The encroachment was proven by the relocation survey conducted, and no evidence was offered to rebut this. Such make for a strong case of forcible entry. No reversible error can thus be attributed to the RTC in affirming the MTC's Decision and dismissing the Lagmans' appeal.

WHEREFORE, the petition is DENIED DUE COURSE and accordingly DISMISSED.

SO ORDERED.

Guariña III and Romilla-Lontok, JJ., concur.

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