

**IRENE CRUZ IBARRETA, NIEVES CRUZ MALLARI AND JOSE CRUZ,
PLAINTIFFS-APPELLANTS, VS. GERMAN MOJICA, NICOLAS
MORALES, ORLY CABE, VIOLY CABE, ROBERTO BONIFACIO,
AVELINO CALMA, REYNA...**

Ponente: BUESER, J.

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BUESER, J.:

This is an appeal from the Decision dated August 2, 2011 rendered by the Regional Trial Court, Branch 5, of Dinalupihan, Bataan, which dismissed the Complaint for Accion Publiciana in Civil Case No. DH-992-04.

The factual antecedents:

Irene Cruz Ibarreta, Nieves Cruz Mallari and Jose Cruz filed a Complaint which, in sum, states that they were true, lawful and prior possessors of a 2.5 hectares parcel of land covered by Original Certificate of Title No. 573 as well as the adjoining one (1) hectare parcel of land, both situated in Dinalupihan, Bataan; that sometime in 2001, defendants, through force, intimidation, threat, strategy and stealth invaded and occupied said parcels of land and thereafter built houses thereon; that they gathered fruits from the produce of the subject land; and that criminal charges were filed against the defendants for trespassing before the Municipal Circuit Trial Court, but was, however, dismissed on account of technicalities.[1]

Instead of filing an Answer, defendants filed a Motion to Dismiss on the ground that the pleading asserting the claim states no cause of action.[2] After exchanges of pleadings from both parties, the trial court resolved to deny the Motion for lack of merit.[3]

Defendants filed their Answer with Counterclaim (With Opposition to Issue Temporary Restraining Order and Preliminary Injunction) admitting paragraph 1 of the Complaint but denying the rest of the Complaint for lack of knowledge or information as to the averments made thereof and by way of Special and Affirmative Defenses, alleged that: Espino Pelayo, the father of defendant Bengbeng Pelayo is the registered owner of the subject land; since 1943, Espino Pelayo had his family continue to enjoy peaceful and exclusive possession of the subject landholding evidenced by certification and homestead patent application of Espino Pelayo with DENR and tax declarations under Pelayo's name and Bayan-bayanan was reserved as an aeta community by virtue of NIPAS Act; one day, a certain Eulalio Cruz arrived and, taking advantage of the unlettered aetas, managed to harass the surviving heirs of Espino Pelayo; due to harassment, some heirs have move and settled in other places except defendant Bebung Pelayo and other members of the tribe, who remained and continued to stay in the subject landholding.[4]

Pre-trial was, thereafter, conducted. However, for failure of the defendants named in the complaint to appear during the pre-trial conference despite notice, defendants were declared as in default.[5]

Inasmuch as defendant German Mojica was not declared in default, trial on the merits ensued as to him. Thus, plaintiffs commenced with the presentation of evidence.[6]

Plaintiff Irene Ibarreta testified that OCT No. 573 consisting of 2 ½ hectares of land is owned by her grandfather, Manuel dela Cruz but now, the owner of the same is her father, Eulalio dela Cruz, upon the death of his father they thus inherited the said property; her father, Eulalio Bansil Cruz is the son of Manuel dela Cruz; the other heirs of Manuel dela Cruz are Lamberto de Guzman, Dante Cruz and Eulalio dela Cruz, as represented by her; she and her co-heirs agreed to subdivide the property to have their own share but the same was not in writing; the other heirs were already occupying their share; they were in prior possession of the subject property evidenced by the Certification xxx proving ownership of the lot in question issued by the Punong Barangay of Bayan-bayanan and the Katunayan dated May 5, 2004 xxx proving possession of the property; when they were evicted from the land, they reported it to the authorities but defendants refused to vacate the premises; they filed criminal charges against the defendants but the same was dismissed; the surnames Cruz and dela Cruz are one and the same but she has no court order pertaining the same; while her surname is not dela Cruz, she can prove that she is a grandchild of Manuel dela Cruz evidenced by her birth certificate xxx; Manuel dela Cruz had four children, namely Eulalio Cruz, Eligio Cruz, Romana Cruz and Calixtra Cruz; and she is claiming right over the subject property by way of representation, her father being the father of Manuel dela Cruz, the registered owner of the property.[7]

Thereafter, plaintiffs rested its case.

On July 10, 2008, plaintiffs filed their formal offer of evidence, praying that the following be admitted: OCT No. 573 (Exh. “A”), Birth Certificate of Irene Ibarreta (Exh. “B”); Certification (Exh. “C”); and Katunayan (Exh. “D”).[8] Defendants opposed the admission of said exhibits on account that they were void, self-serving, immaterial, not properly identified and authenticated. Further, defendants claimed that more competent evidence were extant, which were in the possession of plaintiffs.[9]

Nonetheless, the trial court admitted all exhibits submitted by the plaintiffs. After several postponements, the trial court, upon motion of the plaintiffs, submitted the case for decision for failure of defendant German Mojica to attend the scheduled hearing despite notice.[10] Defendant moved for the reconsideration of said Order, but it was denied by the trial court.[11]

On August 2, 2011, the trial court held in favor of the defendants, the dispositive portion of its Decision[12] reads:

“WHEREFORE, premises considered, the instant Complaint is ordered dismissed for failure of the plaintiffs to prove by preponderance of evidence their claim against the defendants.

No pronouncement as to costs.

SO ORDERED.”[13]

On September 1, 2011, plaintiffs filed their motion for reconsideration of the above Decision.[14] The same was however denied by the trial court.[15]

Hence, this appeal.

Plaintiffs-appellants are raising a lone assigned error:

“THAT THE HONORABLE REGIONAL TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION, FAILED TO APPRECIATE THE DOCUMENTARY/TESTIMONIAL EVIDENCE OF THE PLAINTIFFS AND GRAVELY ERRED IN DISMISSING THE COMPLAINT FOR FAILURE OF THE PLAINTIFFS TO PROVE BY PREPONDERANCE OF EVIDENCE THEIR CLAIM AGAINST THE DEFENDANTS.”[16]

The resolution of the present controversy, thus, rests on whether appellants were able to prove by preponderance of evidence their complaint for accion publiciana against defendant-appellee.

At the outset, We are obliged herein to indulge in a discussion on accion publiciana and accion interdictal.

Accion Publiciana is recovery of the right to possess and is a plenary action in an ordinary civil proceeding in the Regional Trial Court.[17]

Accion Interdictal is the summary action for forcible entry and detainer which seeks the recovery of physical possession only and is brought within one (1) year in the justice of the peace court[18]

Forcible entry is distinct from accion publiciana. First, forcible entry should be filed within one year from the unlawful dispossession of the real property, while accion publiciana is filed a year after the unlawful dispossession of the real property. Second, forcible entry is concerned with the issue of the right to the physical possession of the real property; in accion publiciana, what is subject of litigation is the better right to possession over the real property. Third, an action for forcible entry is filed in the municipal trial court and is a summary action, while accion publiciana is a plenary action in the RTC.[19]

Inasmuch as the remedy taken by plaintiffs-appellants in this case is accion publiciana, the solemn duty of this Court is, thus, to determine who, between the parties herein, have proved, by preponderance of evidence, a better right to possession.

Appellants herein claim their right to possession of the subject properties, which have areas of about 1 hectare as well as 2.5 hectares, respectively, all located in Dinalupihan, Bataan, arises from the law on succession. They alleged that the lots in question are a portion of the lot with OCT No. 573, which is registered in the name of Heirs of Manuel Dela Cruz[20], represented by Eligio Dela Cruz. Irene C. Ibarreta claimed that she is the grand daughter of Manuel dela Cruz who have four children, namely: Eulalio, Eligio, Romana and Calixtra, all surnamed Cruz. She asserted that Eulalio Cruz, a son of Manuel, has six (6) children and she is one (1) of them. To substantiate her claim, she submitted to the trial court her birth certificate.[21] Later, the lot with OCT No. 573 was subdivided among the heirs. The subdivision did not underwent the formality of the law.[22]

Further, appellants claimed that she was in prior possession of the subject property.[23] To this effect, she presented a certification obtained from the Barangay Chairman of Bayan-Bayanan stating that they were the actual occupants of the subject property.[24] Another certification from the Barangay Chairman also confirmed that defendants-appellees did not own a property in Bayan-Bayanan, Dinalupihan, Bataan and the lot occupied by them belonged to the appellants.[25]

Moreover, appellant Ibarreta testified that, after appellants were forced out of the subject property, they reported the matter to the police authorities. Since appellees refused to vacate the premises they filed a criminal complaint against the latter.[26]

The foregoing evidence was not however rebutted by defendants. They did not present and/or submit to the court any iota of evidence refuting and/or contravening the plaintiffs-appellants' claim. As observed by the trial court, the trial court, upon motion of counsel for plaintiffs-appellants, submitted the case for decision for failure of defendant German Mojica to attend the scheduled hearing despite notice.[27]

It is thus clear that appellants have proved that they have a better right of possession over the subject property. They were able to establish that they were the heirs of Manuel dela Cruz, to whose name the property in question bore its name, and that their right of possession is derived from being heirs of Manuel Dela Cruz. They satisfactorily demonstrated that they were in prior possession of the property in question until defendant-appellee as well as his co-defendants gained entry into the subject property and occupied the same.

The rule, nonetheless, is clear: each party must prove his own affirmative allegation; one who asserts the

affirmative of the issue has the burden of presenting at the trial such amount of evidence required by law to obtain a favorable judgment, which in civil cases, is by preponderance of evidence.[28] Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other.[29] It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[30] In this case, appellants were able to duly prove by preponderance of evidence that they have a better right to possession over the disputed property.

WHEREFORE, in view of the foregoing, the Decision dated August 2, 2011 rendered by the trial court is hereby REVERSED and SET ASIDE. Accordingly, defendant-appellee German Mojica as well as his co-defendants mentioned in the Complaint are ordered to VACATE the premises of the subject property, REMOVE all improvements and structures they built and YIELD possession of the subject property to plaintiffs-appellants.

SO ORDERED.

De Guia-Salvador (Chairman) and Garcia, JJ., concur.

[1] Record, pp. 2-9; Id., pp. 273.

[2] Id., pp. 103-104; Id., p. 274.

[3] Id., p. 274.

[4] Id., pp. 126-130; Id., pp. 274-275.

[5] Id., p. 159; Id., p. 275.

[6] Record, p. 275.

[7] TSN, February 28, 2006, 1-9; TSN, August 8, 2006, pp. 1-10; TSN, November 7, 2006, pp. 1-17; and TSN, January 10, 2007, pp. 1-8; Record, 275.

[8] Record, pp. 209-210.

[9] Record, pp. 216-217; Id., p. 276.

[10] Id., p. 257; Id., p. 276.

[11] Id., pp. 269-270; Id., p. 276.

[12] Id., pp. 271-278.

[13] Id., p. 278.

[14] Id., pp. 280-281.

[15] Id., p. 293.

[16] Rollo, p. 19.

[17] Reyes v. Judge Sta. Maria, 180 Phil. 141, 145 (1979), citing Moran's Comments on the Rules of Court, 1970 Ed., p. 298.

[18] Reyes v. Judge Sta. Maria, supra.

[19] Jose v. Alfuerio, G.R. No. 169380, November 26, 2012: citing Regis, Jr. v. Court of Appeals, G.R. No.

153914, July 31, 2007, 528 SCRA 611, 620.

[20] Record, p. 212; TSN, February 26, 2006, p. 2-6.

[21] Record, p. 213; TSN, August 8, 2006, pp. 5-6.

[22] TSN, August 8, 2006, pp. 7-10.

[23] TSN, November 7, 2006.

[24] Record, p. 214; TSN, November 7, 2006, p. 4.

[25] Record, p. 215; TSN, November 7, 2006, p. 4-5.

[26] TSN, November 7, 2006, pp. 7-10.

[27] Rollo, p. 30.

[28] Ace Foods, Inc. v. Micro Pacific Technologies Co., Ltd., G.R. No. 200602, December 11, 2013: citing Tongson v. CA, G.R. No. 77104, November 6, 1992, 215 SCRA 426, 432-433.

[29] Siao Aba v. De Guzman, Jr., A.C. No. 7649, December 14, 2011: citing Habagat Grill v. DMC-Urban Property Developer, Inc., 494 Phil. 603, 613 (2005); Bank of the Philippine Islands v. Reyes, G.R. No. 157177, 11 February 2008, 544 SCRA 206, 216.

[30] Siao Aba v. De Guzman, Jr., supra: citing Republic v. Bautista, G.R. No. 169801, 11 September 2007, 532 SCRA 598, 612.

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