

CARLOS SALIWAN AND IGMIDIO SALIWAN, PLAINTIFFS-APPELLEES, VS. ANTONIO AMORES (CALIWAN) AND FRANCISCA CALIWAN, DEFENDANTS-APPELLANTS.

G.R. No. L-26356. June 27, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

In this appeal on purely questions of law, the Court sustains the appeal and reverses the adverse decision of the Samar court of first instance ordering defendants-appellants to deliver possession of the lands in question to plaintiffs-appellees, notwithstanding its findings that "plaintiffs' possession is unlawful" and that defendants are the children of the acknowledged original owner of the lands, Monico Amores, whose rights and ownership were transmitted upon his death to defendants as his sole and rightful heirs.

The case originated as a forcible entry case filed on 10 April 1962 by plaintiffs, "in concept of owners," in the municipal court of Giporlos, Samar for the recovery of three parcels of agricultural land from defendants, who allegedly entered the same "by means of force, intimidation, strategy and stealth" and ejected the tenants and encargado therefrom in October, 1961 and for payment of "reasonable rental" of P150.00 per month.

At the trial in the municipal court, evidence in support of the parties' conflicting claims of ownership of the lands was received. Plaintiffs are the nephews of Monico Amores, acknowledged owner of the lands and claim to have taken possession thereof with Monico's other brothers and nephews after Monico's death in 1945 as Monico died allegedly "without issue." The municipal court's decision states that "(O)n the other hand, defendants by their evidence have shown that they are the only heirs of Monico Amores who married Valeriana Daep" and that in compliance with Monico's express instructions to the encargado, the latter delivered in 1960 possession of the lands to them upon their request.

Ruling, however, that "by preponderance of evidence, . . . prior physical possession of the 3 parcels of land . . . is heavily in favor of the plaintiffs," the municipal court rendered judgment on 31 October 1964 in favor of plaintiffs "condemning defendants to vacate and restore possession of the 3 parcels of land to plaintiffs" without damages or rentals for the use of the property.[1]

Defendants appealed in due course to the Samar court of first instance which conducted a pre-trial conference and trial de novo. The lower court's decision expressly recites that at the pre-trial the issues of defendants' filiation and ownership (as children of Monico and therefore his sole heirs) and of prior physical possession of the lands, were joined by the parties, as follows:

"In the pre-trial conference the parties agreed

"(1) to the identity of the three parcels described in the complaint;

"(2) that said parcels were originally owned by Monico Amores, and

"(3) that, according to the defendants, Antonio Amores and Francisca Caliwan are brother and sister, children of Monico Amores and Valeriana Daep; but the plaintiffs contend that Monico Amores had no issue and that his wife was Valentina Dogorio.

The primary issues therefore funnel down to the following questions: (1) whether or not the defendants are children of Monico Amores and (2) if they are, whether as such they have been in physical possession of the land in question prior to the month of October, 1961."^[2]

On the first issue of filiation of defendants-appellants, the lower court, after reciting the evidence, oral and documentary, determined that they were the children of Monico Amores born of his second marriage to Valeriana Daep and expressly found and so held "that the defendants' father was Monico Amores" and not of a certain Tomas Caliwan who was claimed to be their father.

On the second issue of prior possession of the lands, the lower court thus recited the evidence of the parties:

"According to the evidence for the plaintiffs, after the death of Monico, his brothers and sisters, named Crispulo, Manuela, Gregorio, Tornan, Emerrencia and Roman (the last is now in the United States) succeeded him in the ownership and possession of the lands. They designated Saturnino Llevado and Placido Cabling as tenants under the administration of Vicente Padul. They possessed the land from 1946 to 1961, when the defendants ousted them.

"These parcels were declared for taxation purposes in the name of Monico Amores under Tax Dec. 17568 corresponding to the property in Lologayan, Paya (Exh. B), Tax Dec. No. 389 in Bugho, Paya under the name of Monico Amores and Valentina Dogorio; and Tax Dec. No. 390, in Pili, Paya, under the names of Monico Amores and Valentina Dogorio. According to the two last tax declarations, which were issued after the death of Monico, the administrators of the property were respectively Gregorio Amores and Marcelo Llevado. The taxes were paid by Gregorio Amores (1945-47; 1949-1957; 1952-1953; 1955-1956; 1957-1961). Felix Dogorio (1948) and Elpidio Amores (1952-56; 1957). Gregorio Amores was a brother of Monico; Felix Dogorio was a nephew of Valentina Dogorio and Elpidio Amores was the son of Gregorio.

"According to the evidence for the defendants, even during the lifetime of Monico, he had tenants in his three parcels of land. Marcelo Llevado was his tenant in Pili and Bugho, and Placido Cabling, in Lologayan. They were designated tenants by Monico himself. Llevado testified that when Monico Amores left with his second wife to Tubabao, said tenants, who were residents of Paya, took care in the clearing and harvesting of the lands. After their death, Crispulo Amores, a brother of Monico with whom the children lived in Tubabao, received the shares of the land owner. This arrangement continued until the children had become of age when they took over the possession of the lands. That was in June, 1960."^[3]

The lower court, having found defendants-appellants to be Monico's children then concluded that "all the rights of Monico over the lands were transmitted to them upon his death" together with the right of possession, under Article 533 of the Civil Code. Without any finding that defendants, whom the lower court recognized as the lawful owners of the lands by succession from their father, had actually used force to secure physical possession of the lands from the encargado and although declaring that "plaintiffs' possession is unlawful," the lower court rendered judgment "declaring the plaintiffs entitled to the possession of the lands in question and ordering the defendants to vacate the same" for the avowed purpose of restoring the status quo, (but without any award, like the municipal court, for damages or rentals for the use of the property), as follows:

"x x x x x x x x

In view of the findings reached by the Court that the defendants Francisca Amores and Antonio Amores are the children of Monico Amores, it may be concluded that all the rights of Monico over the lands were transmitted to them upon his death. And with reference to possession, Article 533 of the Civil Code provides that

'The possession of hereditary property is deemed transmitted to the heir without interruption and from the moment of the death of the decedent in case the inheritance is accepted.'

When Monico died, Francisca who is the older of the defendants, was only six years old. Minors, however, may acquire possession of things. According to Article 335 of the same Code:

'Minors and incapacitated persons may acquire the possession of things; but they need the assistance of their legal representatives in order to exercise the rights from which the possession arise in their favor.'

No such legal representative was designated. Instead, the brothers and sisters of Monico took possession of the lands as shown by their payment of the land taxes and by their securing of a tax declaration with one of them named as administrator (Exhs. F, F-1 to F-10; F-11 to F-12; F-13 to F-16; F-17, F-18 to F-20) and divided the income among themselves.

"The plaintiffs' possession is unlawful but they cannot be turned out of possession by the defendants by taking the law into their own hands. The plaintiffs cannot be deprived of their possession by force. The defendants should have resorted to the remedy provided by law and sought the enforcement of their rights through the courts. (*Ligaya vs. Hon. Labrador*, G.R. No. 46262, Nov. 29, 1938).

"Under the circumstances, it becomes the duty of the Court to return the parties to their status quo until one of them brings a case for ownership (*Mediran contra Villanueva*, 37 Jun. Phil. 788)."[4]

If the case at bar were strictly a forcible entry case involving solely the issue of possession de facto as against possession de jure, the lower court's judgment could probably be sustained in line with the cases cited by the late Chief Justice Moran, holding that "(I)f plaintiff can prove a prior possession in himself, he may recover such possession even from the owner himself. Whatever may be the character of his prior possession, if he has in his favor priority of time, he has the security that entitles him to stay on the property until he is lawfully ejected by a person having a better right by either *accion publiciana* or *accion reivindicatoria*" since one cannot take justice unto his own hands and by force take his property from the person holding it.[5]

The lower court failed to appreciate however that even before the municipal court as well as before it, the issues joined by the parties were those of possession de jure and of lawful title and ownership of the lands in question.

Hence, both in the municipal and lower courts, plaintiffs presented evidence to support their claim that Monico Amores died without issue and that they with other brothers and nephews of Monico therefore "succeeded him in the ownership and possession of the lands" - in the words of the lower court's decision.[6] Defendants in turn presented documentary evidence including the register of marriages of Balangiga, recording the marriage of Monico Amores with "Val . . . 'aip" (*Valeriana Daip*) and the baptismal certificate of defendant Antonio Amores, recording his baptism on 2 March 1941 as the legitimate son of said couple (with plaintiffs presenting documentary counter-evidence) - on the basis of which the lower court found and held "that the defendants' father was Monico Amores."

In other words, the case below ceased to be a simple one of forcible entry but clearly and by common assent and understanding of the parties one for judicial determination of who, as between them, are entitled to the possession de jure and ownership of the lands. Hence, the primary issue joined between them as to the filiation of defendants - in the lower court's language: "whether or not the defendants are children of Monico Amores." [7] Plaintiffs disputed strongly such claim of defendants as to their filiation, since during Monico's lifetime they indisputably took charge of the lands on his behalf and apparently continued to do so after his death on the premise that they succeeded to the possession and ownership thereof as his collateral heirs — but that if he died with issue (i.e. the defendants) then, necessarily they would have to recognize that they were in law holding the lands on behalf of

defendants as Monico's children and concede their obligation to turn over the physical possession to them.

We then have at bar a case where in effect by the very issues joined by the parties and by the very nature of the proof presented by them, the question of physical possession could not properly be determined without settling that of lawful or de jure possession and of ownership — and hence the jurisdiction of the municipal court over the forcible entry case was lost and the action should have been dismissed. Similarly, the lower court had no jurisdiction over the case on appeal and could have dismissed the case as appealed from the municipal court.

But in line with Rule 40, Section 11,[8] since the parties not only did not object to, but in effect invoked, the original jurisdiction of the lower court and submitted as a primary issue the question of defendants' filiation and their evidence thereon, the lower court tried the case on the merits and rendered judgment accordingly, holding defendants to be the children of Monico and plaintiffs' prior possession of the lands (to whose ownership defendants succeeded in law as Monico's only children and forced heirs) as unlawful - since obviously plaintiffs' claim that they succeeded Monico in such ownership and possession of the lands as his collateral heirs lost all basis in the face of its findings that defendants were Monico's children and direct heirs.

Such judgment of the lower court in the exercise of its original jurisdiction is now the subject of this appeal by defendants on pure questions of law on the facts as determined by the lower court after due trial. Plaintiffs did not appeal from the judgment and are bound by such facts as found by the lower court as to defendants' filiation and plaintiffs' "unlawful possession."

On the facts as found and on the issues as raised and tried, there is no question that the complaint for forcible entry in the municipal court should have been ordered dismissed, since the question of ownership was so necessarily involved that it became impossible to decide the question of bare possession without first settling that of ownership and the municipal court thereby lost its jurisdiction over the case.[9] For if defendants proved to be the children of Monico, as eventually found by the lower court, then plaintiffs could not claim prior possession, since they claimed to step into Monico's shoes as possessors after his death, by alleged right of succession as his collateral relatives.

But defendants-appellants' submittal that the case at bar should be dismissed on the said ground of lack of appellate jurisdiction on the part of the lower court flowing from the municipal court's loss of jurisdiction would lead only to "needless delay and multiplicity of suits in the attainment of the same result"[10] and ignores, as above stated, that the case was tried and heard by the lower court in the exercise of its original jurisdiction by common assent of the parties by virtue of the issues raised by the parties and the proof presented by them thereon. In analogous cases, where the parties had commenced to present their evidence on the issue of title, the Court in setting aside an order of the court of first instance upholding the jurisdiction of the municipal court to try the case on the merits, ordered that the case be "ordered returned to the court of first instance . . . for that court to proceed with the trial in the exercise of its original jurisdiction."[11]

On the basis of the undisputed facts, wherein the lower court found that all the rights of Monico Amores over the lands were transmitted upon his death to defendants as his children and that plaintiffs' prior possession was unlawful, the lower court erred in declaring plaintiffs entitled to possession of the lands and in ordering defendants to vacate the same.

The issues of possession de jure and ownership were squarely submitted to the lower court. Having resolved then in favor of defendants and against plaintiffs, who did not appeal and who filed no brief to dispute in any manner such findings, the lower court manifestly erred in not dismissing the case instead of ordering defendants to vacate the lands "until one of (the parties) brings a case for ownership" as if the case before it were still a forcible entry case - when in fact it had found defendants to be the lawful owners by hereditary succession of the lands and

entitled to their de jure possession.

ACCORDINGLY, the judgment of the lower court is hereby reversed and set aside, and in lieu thereof, judgment is hereby rendered dismissing the complaint and declaring defendants-appellants as children of Monico Amores and owners of the lands in question by right of succession, duly entitled to the possession thereof. No costs.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Barredo, Makasiar, and Esguerra, JJ., concur.
Antonio, J., did not take part.

[1] Record, pp. 34-38.

[2] Record, pp. 39-40; italics supplied.

[3] Record, pp. 42-43.

[4] Record, pp. 43-44.

[5] 3 Moran's Comments on Rules of Court, 1970 Ed. p. 304, and cases cited.

[6] Record, p. 42.

[7] *Idem.*, p. 40.

[8] "SEC. 11. Lack of Jurisdiction. - A case tried by an inferior court without jurisdiction over the subject matter shall be dismissed on appeal by the Court of First Instance. But instead of dismissing the case, the Court of First Instance in the exercise of its original jurisdiction, may try the case on the merits if the parties therein file their pleadings and go to the trial without any objection to such jurisdiction." (Rule 40).

[9] Cf. 3 Moran's Comments, 1970 Ed. p. 309 and cases cited.

[10] *Galutera vs. Maersk Line*, 11 SCRA 251, 255 (1964).

[11] *Teodoro vs. Balatbat*, 94 Phil. 247, 250 (1954), italics supplied. See also *Castro vs. de los Reyes*, 109 Phil. 64 (1960).

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