

HEIRS OF ANASTACIO FAUNILLAN, PETITIONERS, VS. HON. CHRISTINE MUGA-ABAD, PRESIDING JUDGE, MCTC, MOALBOAL, CEBU, HON. LEOPOLDO T. CAÑETE, PRESIDING JUDGE RTC, BR.60, BARILI, CEBU...

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

Before Us is this Petition for Review[1] under Rule 42 of the 1997 Rules of Civil Procedure, which seeks to assail: 1) the May 11, 2009 Decision[2] of the 12[th] Municipal Circuit Trial Court (MCTC) of Moalboal, Cebu, 2) the January 7, 2010 Decision[3] of the Regional Trial Court (RTC) Branch 60 of Barili, Cebu, and 3) its March 19, 2010 Order[4] in Civil Case No. CEB-BAR-595 for Ejectment With Damages.

The Petition prays that We set aside the assailed Decisions and Order, and in their stead, render a new one, as follows:

- a. Ordering the respondents to vacate the subject premises and or to surrender peaceful possession thereof to the petitioners;
- b. Ordering the respondents to remove their house and/ or any improvement which they might have constructed on the subject premises;
- c. Ordering the respondents to restore the stone embankment; and finally,
- d. Ordering the respondents to pay the petitioners the amount of P300,000.00 as moral damages; P50,000 as actual damages and P1,000 per month from June 15, 1994 up to the actual restoration of petitioners' possession of the subject premises, as reasonable rentals thereof.

THE ANTECEDENTS

On May 25, 1995, petitioners Heirs of Anastacio Faunillan, Heirs of Sotero Faunillan and Heirs of Felician F. Bontigao, filed a Complaint[5] for Ejectment with Damages against the Spouses Bernard and Glenda Kessler before the Municipal Trial Court (MTC) of Moalbal, Cebu. Petitioners claimed that they are the registered owners of an agricultural land, located at Balabagon, Moalboal, Cebu, known as Lot 7452 as per Original Certificate of Title No. 02-25985[6] with an area of approximately 23,715 square meters.

Petitioners averred that the title over Lot 7452 was issued in 1981, but that they and their predecessors-in-interest have been in actual, continuous, public and adverse possession of their property in concept of owner for more than forty (40) years. They claimed that Lot 7452 has been marked by monuments after the cadastral survey was conducted in 1978, more particularly points “13” and “5” of the approved plan, which marked the boundary line of their property from that of Fernando Buhat from whom the private respondents acquired the adjacent property designated as Lot 7379. The petitioners said that the late Anastacio Faunillan constructed a stone embankment and planted a row of coconut trees to further mark the boundary line between the two properties.

On June 15, 1994, the respondents allegedly entered Lot 7452 by force, intimidation, stealth and strategy. They allegedly constructed a house thereon and caused the cutting of twenty (20) fruit-bearing coconut trees owned by petitioners. Petitioners demanded that the private respondents stop the construction and vacate the premises, but the respondents refused to return the peaceful possession thereof to the petitioners.

The petitioners went to the Barangay Captain of Balabagon, Moalboal, Cebu to file a complaint about the dispossession. Since no settlement was reached, a Certification to file action[7] was issued to them, hence the original action.

In their Answer,[8] the respondents denied petitioner's allegations in the complaint. They argued that their house was built inside their Lot 7379 with an area of 5, 320 square meters covered by Original Certificate of Title No. 1551[9] and Tax Declaration No. 12858.[10] They bought the lot from Spouses Fernando Buhat and Leonarda Beriamente through a Deed of Absolute Sale dated November 25, 1993.[11] They never entered the property in question by force, intimidation, stealth and strategy because they built their residential house on their own lot and had complied with all the legal requirements[12] before its construction. The 20 fruit bearing coconut trees were allegedly theirs and not owned by the respondents, thus they argued that petitioners have no cause of action against them.

For their special and affirmative defenses, the respondents averred that there is a pending case for Injunction and Damages with Writ of Preliminary injunction filed on April 21, 1995 by respondent Glenda Kessler as plaintiff, against the Heirs of Anastacio Faunillan as defendants before the RTC of Barili. The portion which petitioners claim as belonging to them in the ejectment case, is allegedly the same portion which is claimed by Glenda Kessler to be theirs, and to have been illegally fenced by petitioners in the said Injunction case, thus respondents posited that petitioners' complaint for ejectment should be dismissed or at least suspended, by reason of *litis pendentia*.

Moreover, respondents likewise pointed out as a defense that the case between them and petitioners is one of a boundary dispute. They submitted that it is therefore premature for petitioners to demand their eviction, considering that both parties claim ownership of the portion in litigation.

To support their argument that the case is in reality a boundary dispute and to prove consequently that they did not encroach on petitioners' property, respondents highlighted in their position paper the fact that there were at least four (4) relocation surveys conducted by Engr. Godofredo Sale, a Geodetic Engineer of CENRO to draw the boundaries of their lot which is Lot 7379 and petitioners' Lot 7452. The first was on March 1994 upon the authority of the Station Officer of DENR, Argao, Cebu[13]; the second was on August 23, 1994 upon the order of RTC Executive Judge Priscilla Agana[14]; the third, on May 26, 1997 during the ocular inspection conducted by RTC Barili, and the fourth was in July 1995 by virtue of his being a member of the court- designated Commission, created initially by the RTC 57,[15] in connection with the aforementioned Injunction case involving the parties. The said Commission was composed of Engineer Wellington Kintanar of the DENR Region 7, Land Management Service, as chairman, and Engrs. Godofredo Sale and Felipe Alison, as members, representing respondents and petitioners respectively.

In the first three relocation surveys, it was allegedly shown that the area claimed by the petitioners actually belonged to respondents. And in the survey conducted by the Commission in the Injunction case, the following favorable conclusion was pertinent in the August 28, 1995 Report[16] of Engr. Kintanar, to wit:

“Lot 7379 claimed by the plaintiff (Glenda Kessler) did not encroach Lot 7452 as per relocation and verification where the actual position of boundaries were observed. This is based on the data and the Cadastral map gathered from the records on file at the records section, Lands Management Services, Banilad, Mandaue

City.”

The report also mentioned that the parties were present during the survey and submitted to the Commission their respective copies of the Original Certificate of Title, Deed of Absolute Sale, Tax Declaration, etc.

On May 11, 2009, the MCTC rendered the first assailed decision dismissing petitioners' complaint. The court opined therein that the petitioners cannot lawfully eject respondents because the former failed to prove that the latter's house encroached on their Lot 7452. Declaring on the contrary, that the evidence of the respondents sufficiently established that their house was constructed within the parameter of their Land, lot 7379, the MCTC evidently gave weight on, among others, the findings of the RTC 57 designated Commission, thus its ratiocination:

“The Commission's Report made a conclusion that defendants did not encroach on plaintiffs' Lot 7452. The plaintiffs tried to assail the Commissioner's Report, by alleging that the Chairman of the Commission Engr. Kintanar made mistakes in the survey. But in the absence of evidence to indicate that the Chairman and the members of the Commission made errors or were moved by improper motive or bias, their repost is entitled to full faith and credit.”

Accordingly, the trial court in its dispositive, ruled that:

“WHEREFORE, the foregoing considered, the above captioned case is hereby DISMISSED for lack of cause of action for forcible entry.

SO ORDERED.”

Subsequently, petitioners interposed an Appeal before the RTC of Barili. The RTC on January 7, 2010, affirmed the decision of the MCTC and in its disquisition, it made mention of the Injunction case decided by it between the same parties. On the basis of its findings thereon that no act of encroachment was done by respondents, the court then declared that the issue of prior possession in the ejectment case is put to naught, thus it ordered the dismissal of the appeal for want of merit.

A Motion for Reconsideration of the January 7, 2010 Decision was thereafter filed by petitioners. The Motion was however denied on March 19, 2010, hence the instant Petition for Review with the following Assignment of Errors:

I.

THE CHALLENGED DECISIONS FAILED TO RESOLVE THE BOTTOM-LINE ISSUE AS TO WHO HAD A PRIOR MATERIAL AND/OR PHYSICAL POSSESSION OF THE ENCROACHED PORTION OF THE PROPERTY;

II.

THE CHALLENGED DECISIONS FAILED TO APPRECIATE THE EVIDENCE OF DEPRIVATION BY THE PRIVATE RESPONDENTS OF PETITIONERS' PRIOR POSSESSION BY FORCE, INTIMIDATION, THREAT, STRATEGY OR STEALTH;

III.

THE CHALLENGED DECISIONS FAILED TO APPRECIATE PETITIONERS' PROOF OF DAMAGES;

IV.

THE PUBLIC RESPONDENT ERRED IN DENYING PETITIONERS' MOTIONS FOR RECONSIDERATION.

OUR RULING

Forcible entry, which is an original and summary action, is governed by Section 1, Rule 70 of the Rules of Court. It reads:

SECTION 1. Who may institute proceedings, and when. -- Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or 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, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

As is explicit from the afore-cited rule, the following are the indispensable requisites for an action of forcible entry, viz:

- (a) the plaintiffs must allege their prior physical possession of the property;
- (b) they must assert that they were deprived of possession either by force, intimidation, threat, strategy or stealth(FISTS); and,
- (c) the action must be filed within one (1) year from the time the owners or legal possessors learned of their deprivation of the physical possession of the property.

Quintessentially, the rule mandatorily demands that these requisites are to show on the face of the complaint, to give the courts, jurisdiction over the action.[17]

In the case at bar, We, however, find petitioners to have successfully alleged the foregoing requisites in their complaint. We, however, find them to have been remiss in substantiating their allegations, particularly their assertion of “prior physical possession”, thus We believe that the trial courts were right in dismissing their action.

It cannot be disputed that petitioners have averred in their complaint the following, among others, to wit:

- 5. (petitioners') property has been marked by monuments right after the old cadastral survey in 1978, more particularly points 13 and 5 of the approved plan, which points and land, marked the boundary line of (petitioners') property from that of Fernando Buhat; and
- 6. aside from the monuments, a row of coconuts and a stone embankment constructed by the late Anastacio Faunillan mark the boundary of line between (petitioners') property and that of Fernando Buhat;

While these averments are apparently constitutive of their claims of “prior possession” of the portion in litigation, petitioners have left these material averments uncorroborated by any positive evidence. For as can be gleaned from the records, there is not only an absence of direct proof that the disputed property has been marked by monuments, right after the alleged conduct of a cadastral survey in favor of petitioners in the year 1978. There is likewise no proof of the stone embankment placed on the property, or of the trees allegedly planted thereon by their predecessor-in-interest. Yes, petitioners may have been right to assert that the presence of the stone embankments and the trees should have been a caveat for the respondents not to enter the disputed property, but in the absence of proof that these structures and trees existed (to ward off adverse possession), their assertion of exclusive possession, deserves no credence. Evidently, plaintiffs have not made for themselves a clear case for ejectment against respondents, having failed to prove in the first place, “prior physical possession”, which is at the core of every action for forcible entry.

In underscoring the primacy of the issue of prior physical possession in forcible entry, the Highest Court in the case of *Emerita Munoz vs. Atty. Victoriano R. Yabut, et. al.*,^[18] held that:

“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. In such cases, the possession is illegal from the beginning and the basic inquiry centers on who has the prior possession de facto. xxx Indeed, any of the parties who can prove prior possession de facto may recover such possession even from the owner himself since such cases proceed independently of any claim of ownership and the plaintiff needs merely to prove prior possession de facto and undue deprivation thereof.”

And in *Sudaria v. Quiambao*,^[19] the Supreme Court explained to wit:

“Ejectment proceedings are summary proceedings intended to provide an expeditious means of protecting actual possession or right to possession of property. Title is not involved. The sole issue to be resolved is who is entitled to the physical or material possession of the premises or possession de facto. xxx”

Needless to mention, it did not even help for petitioners that they interposed the present petition, assailing foremost the failure of the trial courts to rule on the “bottom-line issue of prior physical possession” A careful perusal of the petition reveals that petitioners’ arguments and evidence dwell heavily on the following broad issues, to wit: their undisputed ownership of Lot 7452 where the disputed lot allegedly belongs, their indefeasible title thereof, and the erroneous technical description of respondents’ title to Lot 7379. While these issues are of seeming veracity, they obviously are immaterial to the original action, particularly, to the foremost issue of prior “physical possession”, which jurisprudence has succinctly defined and has well delineated from the concept of ownership, in this wise:

“x x x the word “possession,” as used in forcible entry and unlawful detainer cases, means nothing more than physical possession, not legal possession in the sense contemplated in civil law. When the law speaks of possession, the reference is to prior physical possession or possession de facto, as contra-distinguished from possession de jure. Only prior physical possession, not title, is the issue. Issues as to the right of possession or ownership are not involved in the action; evidence thereon is not admissible, except only for the purpose of determining the issue of possession.”^[20]

“Ownership or the right to possess arising from ownership is not at issue in an action for recovery of possession. The parties cannot present evidence to prove ownership or right to legal possession except to prove the nature of the possession when necessary to resolve the issue of physical possession. The same is true when the defendant asserts the absence of title over the property. The absence of title over the contested lot is not a ground for the courts to withhold relief from the parties in an ejectment case.

The only question that the courts must resolve in ejectment proceedings is - who is entitled to the physical possession of the premises, that is, to the possession de facto and not to the possession de jure. It does not even matter if a party's title to the property is questionable, xxx Regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror. Neither is the unlawful withholding of property allowed. Courts will always uphold respect for prior possession.

Thus, a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him. To repeat, the only issue that the court has to settle in an ejectment suit is the right to physical possession.”^[21]

As a result of the foregoing, petitioners' proffered pieces of evidence such as: a. the Original Certificate of Title No. 0-25985 over Lot 7452 in petitioners' name, b. the sketch plan of Cad. 587COD,^[22] c. the pertinent lot

description of petitioner's property[23] and d. the pictures showing such disputed property,[24] all purporting to prove ownership, cannot be given any evidentiary weight in petitioners' present course of action. Considering further that respondents likewise claim ownership and possession of the disputed portion, averring mainly that such portion is part of Lot 7379, covered by OCT-1551 registered in their name; the complete absence of proof of petitioners' actual prior physical possession thereof seriously militates against their prayer for recovery and relief. For this reason, We see no need to resolve petitioners' other assigned errors. Petitioners, as plaintiffs in the complaint had the onus to discharge their case by a preponderance of evidence, but this they were not able to do, hence the dismissal of their action.

WHEREFORE, premises considered, the instant petition is DISMISSED. The assailed May 11, 2009 Decision of the 12th MCTC of Moalboal, Cebu, the January 7, 2010 Decision of the RTC Br. 60 of Barili, Cebu and its March 19, 2010 Order, in Civil Case No. CEB-BAR-595 for Ejectment With Damages are therefore AFFIRMED.

SO ORDERED.

Ingles, [**] and Lopez, JJ., concur.

[**] Vice Justice Delos Santos who is on wellness leave, per Office Order No. 13-14-GTI dated June 17, 2014.

[1] Rollo, pp. 5-17.

[2] Rollo, pp. 22-29.

[3] Rollo, pp. 30-34.

[4] Rollo, p. 35.

[5] Rollo, pp. 36-41.

[6] Rollo, p. 43.

[7] Rollo, p. 45.

[8] Rollo, pp. 75-79.

[9] Rollo, p. 121.

[10] Rollo, p. 122.

[11] Rollo, p. 123.

[12] Rollo, p. 81-89.

[13] Rollo, p. 124.

[14] Rollo, pp. 125-126

[15] Rollo, p. 128.

[16] Rollo, pp. 129-130.

[17] Rosa delos Reyes vs. Sps. Franciso Odone and Arwenia Odone, et. al., G.R. No. 178096, March 23, 2011.

[18] G.R. No. 142676, June 6, 2011.

[19] G.R. No. 164305, November 20, 2007.

[20] De Grano v. Lacaba, G.R. No. 158877, June 16, 2009.

[21] Pajuyo v. Court of Appeals, G.R. No. 146364, June 3, 2004.

[22] Rollo, p. 65.

[23] Rollo, p.66.

[24] Rollo, pp. 60-62.

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