

AMOR IRISH D. LOZANO, PETITIONER, VS. HOLY TRINITY COLLEGE OF GENERAL SANTOS CITY AND ITS AGENTS AND ASSIGNS, AND THE PRESIDING JUDGE OF BRANCH 23, REGIONAL TRIAL COURT, GENERAL...

Ponente: CONTRERAS, J.

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CONTRERAS, J.:

The instant petition stemmed from a complaint for Forcible Entry in Civil Case No. 6203-2 filed by Holy Trinity College of General Santos City (private respondent), represented by Rey Alabano, before the Municipal Trial Court in Cities (MTCC), Branch 2, General Santos City, against Dominador Dizon (Dizon) and Milagros M. Balabagno (Balagbano).

The facts as summarized by the RTC are as follows:

Ricardo Manansala (Ricardo for brevity) is the owner/claimant of an untitled parcel of land described as Cadastral Lot No. 5345, Ts-217 containing an area of 450 square meters situated along Balagtas Street, General Santos City. The lot was awarded to Ricardo by the Board of Liquidators in Resolution No. 430, Series of 1995 on November 15, 1995. The land was declared for taxation purposes in the name of Ricardo under Tax Declaration No. F-2429. However, the siblings of Ricardo, namely: Julieta M. Tagalog, Nida M. Javier, Mila M. Balagbano, Romeo Manansala and Orlando Manansala claim to be co-owners of the said lot. Sometime in March 2010[,] Ricardo offered to Josemar T. Albano to have his house and dirty kitchen rented by Holy Trinity College, which accepted the offer. On April 5, 2010[,] a Contract of Lease was executed between Holy Trinity College represented by its President Rey T. Albano and Ricardo. Among others, the terms and conditions of the contract are: that the lease is for a fixed period of 5 years beginning on June 1, 2010 to May 30, 2015; the monthly rent of P3,000.00; and that the lessee has the right of first refusal if the property would be sold during the term of the contract. Pursuant to the right of pre-emption in the Contract of Lease, Ricardo sold to the lessee the subject lot for the sum of P3,000,000.00 and they executed a Conditional Deed of Sale, wherein a partial payment was paid and the balance of P2,850,000.00 shall be paid upon the occupants vacating the land and the execution of the Deed of Absolute Sale. Considering that the effectivity of the lease would still be on June 1, 2010[,] Albano agreed to the request of the lessor that the latter would continue to receive boarders who would enroll for the summer classes, but if the boarders would not move out upon the effectivity of the lease contract, the school would collect the boarder's payment. On June 1, 2010[,] there were 5 boarders who remained in the boarding house and requested the school that their boarding house payments be included in their school fees. Since June 1, 2010, the effectivity of the lease contract[,] Albano visited the house to check of the living conditions of the boarders and decided to have the dirty kitchen repaired and renovated for the convenience of the boarders and to accommodate working students and student athletes. On June 8, 2010, Dominador Dizon (Dizon for brevity) brought with him the Transfer of Rights, which was already signed by the siblings of Ricardo as witnesses, and let the (sic) Ricardo, who was confined in the Mindanao Medical Center affixed his thumb print on the said Transfer of Rights, conveying the subject property to Amor Irish D. Lozano, daughter of Dizon. At 9:00 o'clock in the morning of July 2, 2010, Albano and Ernesto Asperga went to the subject property and evaluated the dirty kitchen on how it could be renovated to accommodate working students and student athletes[,] and Mila M. Balagbano (Balagbano for brevity), who

was present, did not object to the plan. But at 1:00 o'clock in the afternoon, when Asperga, with carpenters and working students, returned to the area leased, were surprised when they were not allowed to enter the property to renovate the dirty kitchen by Balagbano who angrily and loudly told them: "May masamang mangyari sa inyo kung ipagpatuloy ninyo and pagrepair ng bahay. Binili ito ni Mr. Dizon. Inutusan niya ako na paalisin kayo ditto. " (Something bad will happen to you if you insist on repairing the house. Mr. Dizon bought this property already. He told me to drive you away.) Asperga called Albano and told the latter the incident and what to do and Albano told him to leave the place to avert any untoward incident. After Asperga and his companions left, the entrance going to the dirty kitchen was closed with a bamboo fence. Albano, hoping to settle amicably the problem, brought the matter to the Punong Barangay, but they were not settled. Thus, the filing of the forcible entry case.[1]

On November 4, 2011, the MTCC rendered[2] judgment in favor of private respondent and against Dizon and Balagbano, ordering the latter to vacate subject property and to pay private respondent jointly and severally Php5,000.00 monthly rental for the use and occupation of the subject lot, Php20,000.00 attorney's fees, and cost of suit. The MTCC found that private respondent was in prior possession of the subject property and that Dizon and Balagbano deprived it of such possession by means of stealth and strategy.[3]

On appeal, docketed as SPL. Civil Case No. 720, the Regional Trial Court (RTC), Branch 23, General Santos City affirmed[4] with modification the MTCC's decision by deleting the monetary award given to private respondent. The RTC ruled that private respondent had sufficiently established by preponderance of evidence that it had prior physical possession and that it was deprived of its possession by intimidation and threats.[5]

Dizon and Balagbano sought reconsideration[6] of the decision but the same was denied by the RTC in a Resolution[7] dated July 23, 2014.

Eventually, private respondent moved for execution[8] of the decision but Amor Irish D. Lozano (petitioner) opposed[9] the same, alleging that being the real owner of subject property, the MTCC decision, as affirmed by the RTC, is unenforceable as against her considering that she was not impleaded nor summoned in Civil Case No. 6203-2. She claimed possessory rights over subject property by virtue of the "Transfer of Rights"[10] dated June 8, 2010 executed in her favor.

Recently, on January 13, 2015, petitioner filed the instant petition, with prayer for preliminary prohibitory injunction (PPI) and temporary restraining order (TRO), seeking to have the MTCC and RTC decisions annulled or nullified on the grounds of extrinsic fraud[11] and lack of jurisdiction.[12]

We are inclined to dismiss outright the instant petition for failure by petitioner to show prima facie merit in this petition so as to warrant due course.

Petitioner alleges that the deliberate exclusion by private respondent in impleading her, as indispensable party in the forcible entry case, despite the latter's knowledge that she has transfer rights over subject property and that Dizon and Balabagno are merely acting as her representatives, constitutes extrinsic fraud. She claims that extrinsic fraud was perpetrated against her because her non-inclusion deprived her a day in court.

We begin by evaluating Rule 3 of the Revised Rules of Court on the provision of indispensable parties. Section 7 of Rule 3 provides:

Section 7. Compulsory joinder of indispensable parties. — Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

Jurisprudence holds that a party is indispensable, not only if he has an interest in the subject matter of the controversy, but also if his interest is such that a final decree cannot be made without affecting this interest or

without placing the controversy in a situation where the final determination may be wholly inconsistent with equity and good conscience.[13] He is a person whose absence disallows the court from making an effective, complete, or equitable determination of the controversy between or among the contending parties.[14]

There is no way We can consider petitioner an indispensable party in the forcible entry case even if she claims ownership over subject property on account of the “Transfer Rights” executed in her favor. This is because the trial court can, and in fact, was able to dispose the case completely despite her non-inclusion. It bears stressing that ownership is not the issue in forcible entry actions. The issue in such actions is who among the parties has prior possession de facto.[15] The MTCC decided the case based on who had prior physical possession. It found private respondent in prior possession of subject property and that Dizon and Balagbano forcibly entered subject property and actually dispossessed private respondent.

Having considered petitioner not an indispensable party, We now examine whether the grounds relied upon by petitioner qualify as basis for annulling the assailed orders.

Under Section 2, Rule 47 of the Rules of Civil Procedure, the only grounds for annulment of judgment are extrinsic fraud and lack of jurisdiction, thus:

Sec. 2. Grounds for annulment. The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief. [Emphasis supplied.]

Extrinsic fraud.

The ground of extrinsic fraud relied upon by petitioner does not come within the meaning of extrinsic fraud, as laid down in the case of *Heirs of Pael v. Court of Appeals*,[16] to wit:

In *Cosmic Lumber Corporation v. Court of Appeals*,[17] this Court had occasion to state that fraud may assume different shapes and be committed in as many different ways, and here lies the danger of attempting to define fraud. For man in his ingenuity and fertile imagination will always contrive new schemes to fool the unwary. Mi

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Fraud is extrinsic where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had any knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority connives at his defeat; these and similar cases which show that there has never been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained to set aside and annul the former judgment and open the case for a new and fair hearing.

In the instant case, there is no clear indicium that fraudulent scheme was committed by private respondent to keep petitioner away from court. At the outset, it is worth noting that petitioner admitted[18] having allowed Dizon to hold office on the subject property and that Dizon appointed Balagbano as a caretaker. That being said, petitioner cannot feign ignorance of the existence of the original case filed before the MTCC. A reading of the rollo would also reveal absence of circumstances showing that it was difficult or impossible for herein petitioner not to be notified of the case, especially since petitioner is the daughter of Dizon.

Even granting that petitioner’s non-inclusion in the original case constitutes extrinsic fraud, We must dismiss the petition just the same. It must be emphasized that Section 2 (par. 2), Rule 47 of the Rules of Civil Procedure does

not allow a direct recourse to a petition for annulment of judgment if other appropriate remedies are available. Apparently, petitioner herein failed to avail of the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies. Failing to avail of the mentioned remedies without sufficient justification, petitioner cannot resort to the action for annulment of judgment under Rule 47, otherwise, she would benefit from her inaction or negligence.[19]

Lack of jurisdiction.

Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim.[20]

Petitioner in this case alleges lack of jurisdiction over her person as a ground for annulling the assailed decisions. She insists that her non-joinder as an indispensable party rendered the private respondent's complaint for forcible entry fatally defective and the assailed decisions of the MTCC and the RTC null and void; hence, the same decisions will not bind her.

The fact that petitioner was not impleaded in Civil Case No. 6203-2 is of no moment. The decision of the MTCC, as affirmed by the RTC, binds the petitioner despite her not being impleaded in the case. This is in consonance with the decision in *Lao v. Lao*,[21] where the Supreme Court held that a judgment in an ejectment suit is binding not only upon the defendants in the suit but also against those not made parties thereto, if they are members of the family. Undisputedly, petitioner is the daughter of Dizon, one of the original defendants.

At any rate, it is very likely that the result of the forcible entry case would still be the same had petitioner been given opportunity to protect her interest, as the alleged owner, for a judgment rendered in an action for forcible entry is effective with respect to the possession only.

All told, petitioner failed to make out a case for annulment of judgment based on extrinsic fraud and lack of jurisdiction.

An action to annul a final judgment is an extraordinary remedy, which is not to be granted indiscriminately by the Court. It is a recourse equitable in character allowed only in exceptional cases. The reason for the restriction is to prevent this extraordinary action from being used by a losing party to make a complete farce of a duly promulgated decision that has long become final and executory.[22]

WHEREFORE, the instant petition is DISMISSED.

SO ORDERED.

Lloren, J., Ch., and Santos, JJ., concur.

[1] Rollo, pp. 41-42.

[2] Rollo, pp. 35-40.

[3] Rollo, p. 38.

[4] Rollo, pp. 41-49.

[5] Rollo, p. 48.

[6] Rollo, pp. 50-55.

[7] Rollo, pp. 58-60.

[8] Rollo, pp. 61- 63.

[9] Rollo, pp. 65-69.

[10] Rollo, p. 25.

[11] Rollo, p. 9.

[12] Rollo, p. 12.

[13] Marmo vs. Anacay, G.R. No. 182585, November 27, 2009.

[14] Marmo vs. Anacay, G.R. No. 182585, November 27, 2009 citing Moldes v. Villanueva, G.R. No. 161955, August 31, 2005, 468 SCRA 697, 707-708; Servicewide Specialists, Inc. v. Court of Appeals, 376 Phil. 602, 612 (1999).

[15] The Episcopal Diocese of Northern Philippines, etc. vs. The District Engineer, Mountain Province Engineering District, Department of Public Works and Highways, G.R. No. 178606, December 15, 2009.

[16] G.R. No. 133547. February 10, 2000.

[17] 265 SCRA 168, 179 (1996).

[18] G.R. No. 142676, June 6, 2011 citing Domalsin v. Valenciano, G.R. No. 158687, January 25, 2006, 480 SCRA 115, 132.

[19] Spouses Arcena vs. Queen City Development Bank and Court of Appeals, June 16, 2010.

[20] Nudo v. Hon. Caguioa, G.R. No. 176906, August 4, 2009.

[21] G.R. No. 149599, May 16, 2005 citing Oro Cam Enterprises, Inc. v. Court of Appeals, 377 Phil. 469 (1999).

[22] Republic of the Philippines (Department of Environment and Natural Resources) v. Technological Advocates For Agro-Forest Programs Association, Inc. (TAFPA, Inc.), G.R. No. 165333, February 9, 2010.

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