

**BRUNO TORRALBA, ET AL., PETITIONERS AND APPELLANTS, VS.
ZACARIAS ROSALES, ET AL., RESPONDENTS AND APPELLEES.***G.R. No. L-21072. April 29, 1966*

Ponente: CONCEPCION, J.

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Appeal from a decision of the Court of First Instance of Agusan dismissing the petition herein.

On December 2, 1958, respondent Zacarias Rosales instituted forcible entry Case No. 356 of the Municipal Court of Butuan City, against herein petitioners, Bruno and Carmen Torralba, and one Francisco Lincuna, to oust them from a parcel of land described in the complaint therein, situated in Tomampi, Banza, Butuan City, upon the ground that said defendants had, on October 28, 1958, by means of force, intimidation, strategy and stealth, entered and occupied the Northern portion of said land, with an area of about 400 square meters, and gathered the fruits thereof. Thereupon (on December 3, 1958), said municipal court issued, upon the posting of a bond, a writ of preliminary injunction directing said defendants to refrain from continuing with their alleged acts of usurpation and to restore Rosales, during the pendency of the action, in the possession of the area above referred to. In due course, judgment was (on February 10, 1959) rendered for Rosales and against the defendants, who moved for a new trial, which was denied. A second motion for new trial, likewise, failed. Thereafter, the defendants in said case tried to appeal, but the same was dismissed, the notice of appeal having been filed beyond the reglementary period.

Soon thereafter, or on July 13, 1959, said Bruno and Carmen Torralba, and their children, Francisca T. Bolongabong, Maura T. Cultura, Rosario B. Torralba and Eduardo Torralba, commenced in the Court of First Instance of Agusan the present action for certiorari and prohibition, with preliminary injunction, against Rosales, the municipal Judge of Butuan City and a deputy sheriff for the Province and the City of Butuan, to annul the decision rendered in said forcible entry case, as well as the writ of execution therein issued and an auction sale scheduled to be held in connection therewith, upon the ground that the municipal court had no jurisdiction over the subject matter of said case, the title to the aforementioned land having allegedly been put in issue therein.

In its appealed decision, the Court of First Instance of Agusan overruled this pretense of petitioners herein, and correctly. Indeed, the complaint of Rosales was predicated upon his prior possession, of which he was allegedly deprived by force, intimidation, strategy and stealth. Moreover, this allegation was admitted in paragraph 5 of the answer of the Torralbas, subject only to the qualification that "it was not only on or about October 28, 1958, but on different occasions for many years before the said date that" the Torralbas "as owners in fee simple of the portion of the property in question, exercised their right of ownership to use and enjoy the products of their own property, but always failed and in vain, as the plaintiff surreptitiously and clandestinely, * * * gathered ahead * * * the fruits * * * properly and lawfully belonging to the herein defendants". Thus, the main issue, in the forcible entry case was merely whether Rosales had been forcibly deprived of his possession by the Torralbas. Although the latter had invoked their alleged title in and to the land in question, this was evidently done merely to bolster up their alleged better right to continue in possession of the area from which they had forcibly ejected Rosales.

Wherefore, the decision appealed from should be, as it is hereby, affirmed, with costs against petitioners herein. It is so ordered.

Bengzon, C.J., Bautista Angelo, Reyes, J.B.L., Barrera, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

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