NATIVIDAD VALLAR NAPONE, PETITIONER, VS. EVELYN DE LA CRUZ, FOR AND IN BEHALF OF HER PRINCIPAL SUSAN DE LA CRUZ, RESPONDENT.

Ponente: CONTRERAS, J.

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CONTRERAS, J.:

Before this Court is a Petition for Review, under Rule 42 of the 1997 Rules of Civil Procedure, seeking to set aside and/or reverse the Decision[1] dated November 29, 2011 of the Regional Trial Court (RTC) of Mambajao, Camiguin, Branch 28 in Civil Case No. 804 which affirmed the Decision[2] dated March 30, 2011 of the 2[nd] Municipal Circuit Trial Court (MCTC) of Catarman and Sagay, Camiguin in Civil Case No. 275.

The Facts

The facts of the present controversy borne by the records are: The subject property of this case is a parcel of land (Lot No. 2029) with a total area of seven hundred eighty one (781) square meters, located in Poblacion Sagay, Camiguin, covered by Tax Declaration No. G-001700, registered in the name of Remegio Vallar, the grandfather of Natividad Vallar Napone (petitioner for brevity).

Spouses Remegio and Vicenta Vallar, during their lifetime, executed a general power of attorney and letters of administration in favor of one of their children, Francisco Vallar (Francisco for brevity), to administer all their properties, including the subject property. After the death of Remegio and Vicenta, Francisco continued to administer all the properties of his parents in representation of his siblings namely: Zosimo D. Vallar, Anastacio D. Vallar, Victoria V. Dadulo, Hospecia V. Jaquilmac, Rosa V. Campeon, Erlinda V. Gomez and Timoteo Vallar, the father of petitioner.

On September 19, 2008, upon the death of Francisco, his brother, Anastacio Vallar (Anastacio for brevity), was constituted by the heirs of Remegio and Vicenta to administer Lot No. 2029. He was also authorized to sell the same, including the warehouse/bodega erected thereon.

On July 22, 2009, Anastacio, in his own capacity and as an attorney-in-fact of the other co-owners, namely: Zosimo Vallar, Heirs of Francisco Vallar, Arnold Jaquilmac, Adelfa Campeon and Erlinda Gomez, sold to Susan de la Cruz, through her agent and attorney-in-fact, Evelyn de la Cruz (Evelyn, for brevity), a two hundred fifty-two (252)-square-meter portion of Lot No. 2029 for Two Hundred Seventy-Four Thousand pesos (PHP 274,000.00). The said sale included the warehouse, but it did not include the share of the heirs of Timoteo Vallar, Sr.

On September 7, 2009, with the intervention and approval of the municipal mayor, Gaudencio de la Cruz (Gaudencio for brevity), Evelyn's father, together with four carpenters, entered the uninhabited and unoccupied warehouse and demolished the dilapidated portions of it which were in danger of falling and leaning towards the house of Anastacio Vallar. Since they were not able to finish their work that day, Gaudencio and the four carpenters decided to return the next day.

However, on September 8, 2009, upon their arrival in the area to finish the demolish work, Gaudencio and the carpenters were prevented by petitioner from entering the warehouse. Petitioner, who was inside the warehouse holding a scythe, was accompanied by men armed with bolos, picos, bara de cabra and other weapons. Petitioner also threatened Gaudencio and the carpenters that if they will enter the warehouse, something bad will happen to them. Because of this, Gaudencio immediately reported the incident to Evelyn who then went to the Sagay Police Station to report the incident and seek assistance.

Without any delay and assisted by two police officers, Evelyn went to the warehouse. They asked petitioner to open the door and settle their problem but petitioner refused. Instead, she continued to withhold possession of the property and threaten the life and personal safety of Evelyn and her family. This prompted Evelyn to refer their dispute to the Katarungang Pambarangay of Bonbon, Sagay, Camiguin for mediation and conciliation. But petitioner refused to obey the summons and appear on the date set for the meeting. Consequently, on September 17, 2009, the Punong Barangay issued a Certification to File Action.[3]

On May 20, 2010, Atty. Marciano Aparte, Jr., the counsel for Susan de la Cruz, sent a Notice to Vacate[4] ordering petitioner and her brother Ramon S. Vallar to vacate the premises within fifteen days from receipt of such demand. But petitioner and her brother did not heed the demand.

Thus, on September 2, 2010, Evelyn filed a case, for and in behalf of her principal Susan, before the MCTC for forcible entry and unlawful detainer against petitioner and her brother Ramon, docketed as Civil Case No. 275.

On March 30, 2011, after the submission of the parties of their respective position papers, the MCTC rendered a Decision,[5] the dispositive portion of which reads as follows:

> WHEREFORE, in view of the foregoing disquisitions and pursuant to applicable laws and jurisprudence on the matter and evidence at hand, judgment is hereby rendered in favour of the plaintiff and against defendant NATIVIDAD VALLAR NAPONE. Accordingly, defendant Natividad Vallar Napone is ordered:
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> 1)
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> To IMMEDIATELY vacate the warehouse and lot where the warehouse is erected and to return possession thereof to EVELYN DE LA CRUZ, attorney-in-fact of plaintiff SUSAN DE LA CRUZ;
>
> 2)
>
> To pay plaintiff in the amount of THIRTY THOUSAND PESOS (PHP 30,000.00) representing attorney's fees; and
>
> 3)
>
> To pay the cost of this suit.
>
> As to defendant Ramon Vallar, the case against him is DISMISSED for lack of merit.
>
> SO ORDERED.

Aggrieved, petitioner filed an Appeal before the RTC, Branch 28, Mambajao, Camiguin, assailing the MCTC Decision.

On November 29, 2011, the RTC rendered a Decision[6] in Civil Case No. 804 affirming the Decision of the MCTC, the dispositive portion of which reads:

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> Therefore, the Lower Court did not commit any error when it declared that plaintiff had prior physical possession of the lot and bodega in question and not defendant. Likewise, the Court sustains the findings of the Court a quo to award damages to Plaintiff because Article 2208 of the Civil Code entitles a person attorney's fees and expenses when he is forced to litigate due to the act or omission of another or incur expenses to protect his interest.
>
> In view of all the foregoing, this Court dismisses the appeal of defendant-appellant for lack of merit.
>
> SO ORDERED.

Hence, this petition.

Issues

Petitioner contends that the court a quo ERRED:

> (1)
>
> In holding that respondent had prior physical possession of the lot and warehouse in question; and
>
> (2)
>
> In holding that respondent is entitled to an award of attorney's fees and expenses.

Simply put, the crux of the controversy revolves on who has prior possession of the subject property.

The Court's Ruling

Petitioner contends that the court a quo committed reversible error in the appreciation of facts when it declared that respondent has prior physical possession of the subject property. She asserts that she has been occupying the subject property as early as the late part of 2004 or the early part of 2005 when she operated therein a KTV bar, a sari-sari store and a vulcanizing shop. She claims that she never abandoned the said property from the moment she commenced operating her business until September 7, 2009, when respondent allegedly entered the property. Accordingly, since respondent has no prior physical possession of the land in question, then the forcible entry case must fail.

Such contention deserves scant consideration.

Section 1, Rule 70 of the Rules of Court provides when an action for forcible entry, and unlawful detainer, is proper:

> 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.

Under the foregoing provision, for a forcible entry suit to prosper, the plaintiff must allege and prove: (1) prior physical possession of the property; and (2) unlawful deprivation of it by the defendant through force,

intimidation, strategy, threat or stealth.[7] As in any civil case, the burden of proof lies with the complainant (the respondent in this case) who must establish their case by preponderance of evidence. In the present case, the respondent sufficiently alleged and proved the required elements.

Anent the first element, we affirm the lower court's finding that respondent has prior physical possession of the subject property. Records reveal that when respondent's father, Gaudencio de la Cruz and his laborers entered the property on September 7, 2009 to demolish the dilapidated portions of the bodega, the subject property was uninhabited and unoccupied. Petitioner was not even actually occupying the subject property when respondent took possession of the property by virtue of the Deed of Sale. This fact is bolstered by the affidavit[8] of Anastacio Vallar, petitioner's uncle, dated February 26, 2011, where he deposed:

> xxx xxx xxx
>
> 3. That after Francisco Vallar's death on September 19, 2008, by common agreement of the heirs, I was designated to administer Lot 2029 and the bodega constructed thereon because the lot and the bodega is adjacent to my house. In fact the wall of the bodega is kissing the wall of my house.
>
> 4. That as such administrator of Lot 2029 and the bodega, later on I was empowered to sell these properties by my five (5) co-heirs, namely Zosimo D. Vallar, Heirs of Francisco D. Vallar, Heir of Hospecia V. Jaquilmac, Heir of Rosa V. Campion and Erlinda V. Gomez, to Susan de la Cruz.
>
> 5. That it is not true as claimed by Natividad Napone that she lived in the bodega sometime in late 2004 or early 2005 because the bodega was still in the administration of Francisco Vallar who had the physical possession of the bodega and lot as administrator.
>
> 6. That there was a time, sometime in 2004 that Natividad Napone operated a videoke inside the bodega but after three (3) days she was stopped and her permit was cancelled by the municipal mayor because of the request of the neighbors for the reason that it was very disturbing during night time, as may be shown by a letter of the mayor dated November 16, 2004, hereto attached as Annex D-5. All the complaining neighbors even attended the session of the municipal council to voice out their intention.
>
> 7. That the bodega was closed after the cancellation of the permit and remained unoccupied until the bodega and lot was sold to Susan de la Cruz.
>
> 8. That at the time of the sale of the bodega, the bodega was in my possession as administrator until my above-mentioned co-heirs issued a special power of attorney to sell in my favor. [Emphasis supplied]

Thus, it is beyond cavil that as between petitioner and respondent, the latter has prior possession de facto.

We also reject the argument of petitioner that even if she did not reside in the bodega, she continued to possess the property because she kept on visiting the place and because of her intent to continue her business operations when financial conditions would get better. This argument is unworthy of belief and credence. The moment petitioner stopped operation of her businesses (i.e. KTV bar, sari-sari and vulcanizing shop), consequentially, her actual possession of the subject property ceased. This is tantamount to abandoning the property. She cannot, therefore, claim that she has been occupying the subject property from the time she commenced her business operations until the time when respondent took possession of the property. As held in a plethora of cases, the word "possession" in forcible entry suits refers to nothing more than prior physical possession or possession de facto, not possession de jure or legal possession in the sense contemplated in civil law.[9]

It is also worth noting that petitioner did not present any evidence to corroborate its claim of actual possession of the subject property. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules.[10] On the other hand, respondent presented Affidavits, Deed of Sale, Special Power of Attorney and

Minutes of the Meeting, among others, in order to substantiate its assertion of actual possession. Pitted against respondent's evidences, petitioner's claim of actual possession appallingly fails. Courts are not blessed with the ability to read what goes on in the minds of people. That is why parties to a case are given all the opportunity to present evidence to help the courts decide on who are telling the truth and who are lying, who are entitled to their claim and who are not. We cannot depart from these guidelines and decide on the basis of compassion alone because, aside from being contrary to the rule of law and our judicial system, this course of action would ultimately lead to anarchy.[11]

With regard to the second element, records reveal that respondent was unlawfully deprived of her possession by petitioner through force, intimidation and threat. Anastacio Vallar, petitioner's uncle, whose house is immediately adjacent to the subject property, testified that petitioner prevented respondent's father and his carpenters from entering the subject property by means of force, threats and intimidation. As stated in his affidavit[12] dated February 26, 2011:

> 14. That in the morning of September 8, 2009, I went to the premises of the bodega. There were already plenty of people inside the bodega including Natividad Napone. I saw Ramon Vallar coming back and forth bringing several persons to the bodega.
>
> 15. That when Gaudencio de la Cruz and his carpenters arrived they were blocked by several men, about six of them and threatened by Natividad Napone that something harmful would happen to them if they would enter the bodega. Natividad Napone at that time was armed with a scythe, the other men were armed with picos, bolos, bara de cabra and other weapons.
>
> 16. That because Natividad Napone and her hired men prevented Gaudencio de la Cruz and his carpenters including Evelyn de la Cruz from entering the bodega by means of force, threats and intimidation, they went away. After they left, Natividad Napone and her hired men constructed a fence enclosing the front portion of the bodega and removed the galvanized iron sheets that served as a wall of the bodega and carried them away and even sold them. [Emphasis supplied]

We give credence to the foregoing avowal of Anastacio Vallar, petitioner's uncle. In the absence of evidence showing any reason or motive for the witness to perjure himself, We can conclude that no improper motive exists, and his testimony is worthy of full faith and credit.

On the issue of attorney's fees, petitioner argues that the award of attorney's fees and expenses in favor of respondent is bereft of merit both in fact and in law.

We disagree. Article 2208 (2) of the Civil Code clearly provides that attorney's fees can be recovered "when the defendant's act of or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest." Here, the act of petitioner in entering the warehouse through force and intimidation compelled respondent to file a forcible entry case. Thus, the award of attorney's fees by the MCTC in favor of respondent is deemed proper.

Ergo, no reversible error was committed by the RTC when it affirmed the Decision of the MCTC granting the forcible entry case filed by respondent and awarding attorney's fees in their favor.

Be that as it may, the judgment of the Court in this forcible entry case will not bar an action between the same parties respecting ownership or title to a definite portion of the land. Rule 70, Section 18 of the Rules of Court is clear that the judgment rendered in an action for forcible entry or detainer shall be conclusive with respect to the possession only and shall in no wise bind the title or affect ownership of the land or building.

WHEREFORE, premises considered, the instant petition is hereby DISMISSED, and the assailed Decision dated

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November 29, 2011 of the Regional Trial Court of Mambajao, Camiguin, Branch 28, in Civil Case No. 804 is hereby AFFIRMED.

SO ORDERED.

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

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[1] Rollo at pp. 10-17.

[2] Rollo at pp. 18-26.

[3] Rollo at p. 93.

[4] Rollo at p. 91.

[5] Rollo at pp. 18-26.

[6] Rollo at pp. 10-17.

[7] Gonzaga v. Court of Appeals, G.R. No. 130841, February 26, 2008

[8] Rollo at pp. 61-63.

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

[10] Philippine National Bank v. CA, 266 SCRA 136, January 6, 1997.

[11] Emilia Manzano V. Miguel Perez Sr., Leoncio Perez, Macario Perez, Florencio Perez, Nestor Perez, Miguel Perez Jr. And Gloria Perez, G.R. No. 112485, August 9, 2001.

[12] Rollo at pp. 61-63.

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