

**SPOUSES RAFAEL BENITEZ AND AVELINA BENITEZ, PETITIONERS,
VS. COURT OF APPEALS, SPOUSES RENATO MACAPAGAL AND
ELIZABETH MACAPAGAL, RESPONDENTS.**

G.R. No. 104828. January 16, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

May possession of a lot encroached upon by a part of another's house be recovered in an action for ejectment?

This is the main question raised by the petition for review on certiorari assailing the Resolution[1] of the Court of Appeals, Sixth Division,[2] dated March 24, 1992, in CA-G.R. SP No. 26853 denying due course to petitioner's appeal and affirming the decision of the Regional Trial Court of Pasig in Civil Case No. 61004, which in turn affirmed the decision of the Metropolitan Trial Court of San Juan, Metro Manila, Branch 58.

The Facts

On January 22, 1986, petitioners Rafael and Avelina Benitez purchased a 303-square-meter parcel of land with improvement from the Cavite Development Bank, covered by Transfer Certificate of Title No. 41961 (now, TCT No. 55864).

Subsequently, private respondents Renato and Elizabeth Macapagal bought a 361-square-meter lot covered by TCT No. 40155. On September 18, 1986, they filed Civil Case No. 53835 with the Regional Trial Court of Pasig, Branch 157 against petitioners for the recovery of possession of an encroached portion of the lot they purchased. The parties were able to reach a compromise in which private respondents sold the encroached portion to petitioners at the acquisition cost of One Thousand Pesos (P1,000.00) per square meter.

On July 17, 1989, private respondents purchased still another property, a 285.70 square-meter-lot covered by TCT No. 3249-R, adjacent to that of petitioners. After a relocation survey was conducted, private respondents discovered that some 46.50 square meters of their property was occupied by petitioners' house. Despite verbal and written demands, petitioners refused to vacate. A last notice to vacate was sent to petitioners on October 26, 1989.

On January 18, 1990, private respondents filed with the Metropolitan Trial Court of San Juan, Branch 58, Civil Case No. 61004 for ejectment against petitioners. The MeTC of San Juan decided in favor of the former, with the following disposition:[3]

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered for the plaintiffs and against the defendants ordering them and all persons claiming rights under them to vacate and surrender possession of the subject premises to the plaintiffs as well as to pay the following:

1. The amount of P930.00 a month starting July 17, 1989 until they finally vacate the subject premises;
2. The amount of P5,000.00 for and as attorney's fees; and

3. Cost of suit."

On appeal, the Regional Trial Court of Pasig, Branch 167, affirmed said decision.[4] The RTC said:[5]

"The controversy in this case is not an encroachment or overlapping of two (2) adjacent properties owned by the parties. It is a case where a part of the house of the defendants is constructed on a portion of the property of the plaintiffs. So that as new owner of the real property, who has a right to the full enjoyment and possession of the entire parcel covered by Transfer Certificate of Title No. 41961, plaintiffs have the right to demand that defendants remove the portion of the house standing on plaintiff's realty. . . ."

The dispositive portion thereof reads:[6]

"WHEREFORE, finding no reversible error in the decision appealed from, it being more consistent with the facts and the law applicable, the same is hereby AFFIRMED in toto. Costs against the defendant-appellants.

SO ORDERED."

On further appeal, the respondent Court found no merit in petitioners' plea. In a Resolution dated March 24, 1992, the Sixth Division of said Court found the petition to be a mere rehash of the issues and arguments presented before the lower courts. It ruled in part that:[7]

"3) Petitioners were fully aware that part of their house encroached on their neighbor's property, while respondents became aware of it only after purchasing said property. Petitioners cannot claim good faith as against the respondents.

"4) Since petitioners are not builders in good faith, they cannot demand that respondents sell the disputed portion; what the law provides is that the builders in bad faith can be ordered to dismantle said structure at their own expense. In the interim period that petitioners' structure remains, they should pay reasonable rent until they remove the structure."

The dispositive portion thereof reads:[8]

"For reasons indicated, We find the appeal without merit and deny it due course, with costs against the petitioners.

SO ORDERED."

Hence, this petition.

The Issues

The main issue is whether the possession of the portion of the private respondents' land encroached by petitioners' house can be recovered through an action of ejectment, not accion publiciana. Corollarily, petitioners question (a) the validity of the imposition of "rental" for the occupancy of the encroached portion, (b) the denial of their claimed pre-emptive right to purchase the encroached portion of the private respondents' land, and (c) the propriety of a factual review of the CA's finding of bad faith on the part of petitioners.

In a nutshell, petitioners insist that the MeTC had no jurisdiction over the case at bar because its real nature is accion publiciana or recovery of possession, not unlawful detainer. It is not forcible entry because private respondents did not have prior possession of the contested property as petitioners possessed it ahead of private respondents. It is not unlawful detainer because petitioners were not the private respondents' tenants nor vendee unlawfully withholding possession thereof. Said court also has no jurisdiction to impose payment of "rentals" as there is no lessor-lessee relationship between the parties. They pray for a review of the factual finding of bad faith, insisting that the facts uphold their position. Due to their alleged good faith, they claim the pre-emptive right

to purchase the litigated portion as a matter of course. Finally, they insist that the award of attorney's fees is unwarranted as private respondents allegedly had knowledge of the encroachment prior to their acquisition of said land.

Private respondents counter that petitioners are estopped from questioning the jurisdiction of the MeTC after they voluntarily participated in the trial on the merits and lost; that there is no law giving petitioners the option to buy the encroached property; and that petitioners acted in bad faith because they waived in their deed of sale the usual seller's warranty as to the absence of any and all liens and encumbrances on the property, thereby implying they had knowledge of the encroachment at the time of purchase .

The Court's Ruling

The petition lacks merit and should be denied.

First Issue: MeTC Has Jurisdiction

The jurisdictional requirements for ejectment, as borne out by the facts, are: after conducting a relocation survey, private respondents discovered that a portion of their land was encroached by petitioners' house; notices to vacate were sent to petitioners, the last one being dated October 26, 1989; and private respondents filed the ejectment suit against petitioners on January 18, 1990 or within one (1) year from the last demand.

Private respondents' cause of action springs from Sec. 1, Rule 70 of the Revised Rules of Court, which provides:

"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 landlord, 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 landlord, 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 inferior 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. . . ."

That petitioners occupied the land prior to private respondents' purchase thereof does not negate the latter's case for ejectment. Prior possession is not always a condition sine qua non in ejectment.[9] This is one of the distinctions between forcible entry and unlawful detainer. In forcible entry, the plaintiff is deprived of physical possession of his land or building by means of force, intimidation, threat, strategy or stealth; thus, he must allege and prove prior possession. But in unlawful detainer, the defendant unlawfully withholds possession after the expiration or termination of his right thereto under any contract, express or implied. In such a case, prior physical possession is not required. [10]

Possession can also be acquired, not only by material occupation, but also by the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right.[11] Possession of land can be acquired upon the execution of the deed of sale thereof by its vendor. Actual or physical occupation is not always necessary.

In the case before us, considering that private respondents are unlawfully deprived of possession of the encroached land and that the action for the recovery of possession thereof was made within the one- year reglementary period, ejectment is the proper remedy.[12] The MeTC of San Juan had jurisdiction.

In addition, after voluntarily submitting themselves to its proceedings, petitioners are estopped from assailing the jurisdiction of the MeTC.[13] This Court will not allow petitioners to attack the jurisdiction of the trial court after

receiving a decision adverse to their position.

Second Issue: Compensation For Occupancy

Petitioners erroneously construed the order of the MeTC to pay private respondents Nine Hundred Thirty Pesos (P930.00) a month starting July 17, 1989 until they (petitioners) finally vacate the subject premises as "rentals". Technically, such award is not rental, but damages. Damages are recoverable in ejectment cases under Section 8, Rule 70 of the Revised Rules of Court.[14] These damages arise from the loss of the use and occupation of the property, and not the damages which private respondents may have suffered but which have no direct relation to their loss of material possession.[15] Damages in the context of Section 8, Rule 70 is limited to "rent" or "fair rental value" for the use and occupation of the property.[16]

There is no question that petitioners benefited from their occupation of a portion of private respondents' property. Such benefit justifies the award of the damages of this kind. *Nemo cum alterius, detrimenti locupletari potest*. No one shall enrich himself at the expense of another.

Third Issue: Option To Sell Belongs To Owner

Article 448 of the Civil Code[17] is unequivocal that the option to sell the land on which another in good faith builds, plants or sows on, belongs to the landowner.

The option is to sell, not to buy, and it is the landowner's choice. Not even a declaration of the builder, planter, or sower's bad faith shifts this option to him per Article 450 of the Civil Code.[18] This advantage in Article 448 is accorded the landowner because "his right is older, and because, by the principle of accession, he is entitled to the ownership of the accessory thing." [19] There can be no pre-emptive right to buy even as a compromise, as this prerogative belongs solely to the landowner. No compulsion can be legally forced on him, contrary to what petitioners asks from this Court. Such an order would certainly be invalid and illegal. Thus, the lower courts were correct in rejecting the petitioners' offer to buy the encroached land.

Fourth Issue: A Review of Factual Findings Is Unwarranted

Petitioners ask this Court to review the alleged error of the respondent Court in appreciating bad faith on their part. According to them, this is contradictory to the fact that private respondents acquired their lot and discovered the encroachment after petitioners bought their house. After careful deliberation on this issue, this Court finds this petition for review inadequate as it failed to show convincingly a reversible error on the part of the respondent Court in this regard. Thus, for very good reasons, this Court has consistently and emphatically declared that review of the factual findings of the Court of Appeals is not a function that is normally undertaken in petitions for review under Rule 45 of the Rules of Court. Such findings, as a general rule, are binding and conclusive.[20] The jurisdiction of this Court is limited to reviewing errors of law unless there is a showing that the findings complained of are totally devoid of support in the records or that they are so glaringly erroneous as to constitute reversible error.[21]

Even respondent Court has taken note of the inadequacy of the petition before it, as it wryly said:[22]

"The Petition for Review is not certainly a manifestation of clarity nor an example of a well-organized summation of petitioners' cause of action.

xxx xxx xxx

A careful scrutiny of the above issues discloses that they are mere repetitions in a rehashed form of the same issues with the same supporting arguments raised by petitioners when they appealed from the decision of the (MeTC) to the RTC. x x x."

This petition is no different. We share the foregoing sentiments of the respondent Court. In essence, respondent Court merely affirmed the decision of the MeTC. The Court of Appeal's finding of petitioners' bad faith did not alter nor affect the MeTC's disposition. Petitioners want this Court to declare them in good faith and to determine their rights under Article 448, Civil Code. However, the mere fact that they bought their property ahead of the private respondents does not establish this point. Nor does it prove that petitioners had no knowledge of the encroachment when they purchased their property. Reliance on the presumption in Article 526 of the Code is misplaced in view of the declaration of the respondent Court that petitioners are not builders in good faith.

What petitioners presented are mere allegations and arguments, without sufficient evidence to support them. As such, we have no ground to depart from the general rule against factual review.

In sum, the petition has not shown cogent reasons and sufficient grounds to reverse the unanimous ruling of the three lower courts. The MeTC, RTC and the Court of Appeals were all in agreement in sustaining private respondents' rights. And we uphold them.

WHEREFORE, the petition is DENIED. The assailed Resolution is hereby AFFIRMED.
SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 25 - 27.

[2] Penned by Associate Justice Jose C. Campos, Jr. and concurred in by Associate Justices Alfredo M. Marigomen and Fortunato A. Vailoces.

[3] Rollo, pp. 25-26.

[4] Penned by Judge Alfredo C. Flores, C.A. Rollo, pp. 10-13.

[5] CA Rollo, pp. 11-12.

[6] CA Rollo, p. 13.

[7] Rollo, p. 27.

[8] Ibid.

[9] Pharma Industries Inc., vs. Pajarillaga, 100 SCRA 339, 345, October 17, 1980.

[10] Sumulong vs. Court of Appeals, 232 SCRA 372, 382-383, May 10, 1994 and Javelosa vs. Court of Appeals, G.R. No. 124292, promulgated on December 10, 1996, p. 10.

[11] Pharma Industries Inc., vs. Pajarillaga, op cit.

[12] Del Castillo vs. Aguinaldo, 212 SCRA 169, 173-174, August 5, 1992.

[13] Tejones vs. Gironello, 159 SCRA 100, 104, March 21, 1988 and Romualdez vs. Regional Trial Court, Br. 7, Tacloban City, 226 SCRA 408, 414, September 14, 1993.

[14] Rule 70, Section 8 provides:

"Section 8. Immediate execution of judgment. How to stay same. — If judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond, approved by the justice of the peace or municipal court and executed to the plaintiff to enter the

action in the Court of First Instance and to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as found by the judgment of the justice of the peace or municipal court to exist. In the absence of a contract, he shall deposit with the court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment, on or before the tenth day of each succeeding month or period. . . ."

[15] Hualam Construction and Dev't. Corp. vs. Court of Appeals, 214 SCRA 612, 624-625, October 16, 1992 and Araos vs. Court of Appeals, 232 SCRA 770, 776, June 2, 1994.

[16] Ibid. and De Guzman vs. Court of Appeals, 195 SCRA 715, 721, April 8, 1991.

[17] Article 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

[18] Article 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.

[19] Depra vs. Dumlao, *supra.*, p. 483.

[20] De la Serna vs. Court of Appeals, 233 SCRA 325, 329, June 21, 1994; Tay Chun Suy vs. Court of Appeals, 229 SCRA 151, 156, January 7, 1994; First Philippine International Bank vs. Court of Appeals, 252 SCRA 259, 307-308, January 24, 1996; and Liberty Construction & Development Corp. vs. Court of Appeals, G.R. No. 106601, promulgated on June 28, 1996, p. 7.

[21] Meneses vs. Court of Appeals, 246 SCRA 162, 171, July 14, 1995; The Municipality of Candijay, Bohol vs. Court of Appeals, 251 SCRA 530, 534, December 28, 1995; and Tañedo vs. Court of Appeals, 252 SCRA 80, 91, January 22, 1996.

[22] Rollo, p. 26.

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