

**ESTER JANE VIRGINIA F. ALMORA AND ALBERT F. ALMORA,
PETITIONERS, VS. HON. COURT OF APPEALS, ORLANDO PERALTA
AND RUDY PERALTA, RESPONDENTS.**

G.R. No. 116151. July 02, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before us for review on certiorari is the decision of respondent Court of Appeals in CA G.R. CV No. 28239, promulgated on June 6, 1994,[1] which reversed the decision of the court a quo[2] and dismissed the complaint in an accion publiciana with damages filed by herein petitioners.

Briefly, the antecedents of the case are:

On February 13, 1985, petitioners filed a complaint against private respondents Orlando Peralta and Rudy Peralta with the Regional Trial Court in Baguio City. In their complaint, petitioners sought the recovery of possession of a parcel of land located in Abatan, Buguias, Benguet, with an area of about 830 square meters, which was occupied by herein private respondents.[3] As found by the lower court, the disputed property is public land, such being a part of the Mount Data National Reservation Park, over which Ben Almora, the late father of petitioners, was granted an occupancy permit by the Bureau of Forestry, and over which Ben Almora and petitioners herein have consistently paid real property taxes since the property's declaration in 1945 until 1987.[4]

As borne out by the evidence of plaintiffs-petitioners in the lower court, the land covered by the occupancy permit was subsequently divided into two lots, the southern portion of which was denominated as Lot A with an area of one hectare, and the northern portion of which was called Lot B, with an area of four hectares.[5] It is not controverted that on May 30, 1958, Ben Almora leased the disputed property and the building situated thereon in favor of Federico Peralta, the now deceased father of private respondents, as evidenced by a Contract of Lease, in which Ben Almora represented himself to be the "true and lawful owner" of the leased property,[6] and in which Federico Peralta acknowledged the said true and lawful ownership of Ben Almora.[7] The Contract of Lease likewise contained a stipulation that if the lessee faithfully and continuously pays the monthly rentals for a period of three years, he will become the lawful and exclusive owner of the building subject of the lease, but excluding the lot which shall continue to be rented thereafter.[8]

As presented in evidence by petitioners, Federico Peralta failed to pay the rentals as they fell due, thus prompting Ben Almora to file a case for unlawful detainer and recovery of unpaid rentals against Peralta with the Municipal Trial Court of Buguias, Benguet. The MTC ruled in favor of Almora, ordering Peralta to vacate the premises of the leased property and to pay the arrears in rentals. The MTC decision was affirmed by the defunct Court of First Instance of Baguio and Benguet on December 29, 1972, which decision on appeal became final and executory, no appeal having been interposed to the Court of Appeals or Supreme Court.[9]

In spite of said decision, the Peraltas refused to vacate the premises of the disputed property; rather, they continued to occupy it even when the house of Federico Peralta standing thereon was burned down on January 14, 1971.

When Federico Peralta died, his three children, namely, Orlando, Rodolfo and Milagros, built their respective houses on the lot and continued to occupy the same. Before his death, Ben Almora sold the land in question, covered by and forming part of the property declared under Tax Declaration No. 9577, together with his other lands, to his children, petitioners herein, through a Deed of Sale of Unregistered Lands dated August 1, 1981.[10]

Private respondents did not dispute the fact of the lease between Ben Almora and their father, Federico Peralta, but contended that their father, along with the other lessees of Lots A and B, ceased to pay rentals upon learning that Ben Almora had no title to the lands he was leasing out, but was merely issued an occupancy permit by the Bureau of Forestry.[11] They also pointed out that the permit granted to Ben Almora embodied specific restrictions against the alienation or subletting of the subject property.[12] On August 12, 1959, after refusing to pay rentals, Federico Peralta filed a Miscellaneous Sales Application of his own with the Bureau of Lands, over the portion of Lot A that he was occupying. The other lessees followed suit.[13]

These conflicting claims to occupy and use the disputed lots reached the Secretary of Agriculture and Natural Resources (SANR) and the Office of the President for resolution. Per Decision No. 1039 dated July 18, 1974, series of 1974, the Office of the President decided in favor of Federico Peralta and the other lessees-applicants, upholding their right to also file applications for permits to occupy and use the respective portions occupied by them as against the claim of Ben Almora that he already owned the said properties by virtue of prescription, and directing that Almora and all the occupants of the land be allowed to continue their occupation thereof upon the issuance of occupancy permits by the Bureau of Forest Development.[14]

On April 30, 1990, the Regional Trial Court in Baguio City rendered a decision in favor of plaintiffs, petitioners herein, in Civil Case No. 533-R ordering private respondents to vacate the premises of the property and to restore the possession thereof to petitioners, on the basis of Ben Almora's and plaintiffs' actual physical possession and occupation of the property prior to defendants and the latter's predecessor-in-interest, Federico Peralta. In upholding plaintiffs-petitioners' claim, the court a quo stated:

"Plaintiffs and their predecessor-in-interest Ben Almora entered, occupied, improved and possessed the land in question way back in 1945 whereas defendants and their predecessor-in-interest Federico Peralta took possession of the land in question only by May 30, 1958 when Federico Peralta leased the same from Ben Almora. The prior possession of plaintiffs and their predecessor-in-interest Ben Almora, therefore, antedates that of defendants by about 13 years. More, defendants' entry and possession of the land in question was by virtue of a lease from plaintiffs and therefore cannot be said even as adverse possession at the inception. A lessee clearly cannot deny the ownership of his lessor (Tui vs. CA, 37 SCRA 99)."[15]

The RTC went on to stress that its decision is focused solely on the issue of who has prior possession of the land in question, and does not, nor is it meant to, impede on the jurisdiction of the Director of Lands to alienate, sell or dispose of public lands, such as the one in dispute, under the provisions of Commonwealth Act No. 141, or the Public Land Act, as amended.[16] It further held, citing *Pitargue vs. Sorilla*[17] and *Reynoso vs. Court of Appeals*[18], that the fact that the Bureau of Lands has jurisdiction to alienate and dispose of public lands does not deprive regular courts, particularly the RTC, of the jurisdiction to determine who is in actual prior possession for the purpose of preventing breaches of the peace and disorder, and the same is not considered as interfering with the function of the Bureau of Lands.[19]

The Court of Appeals reversed the decision of the RTC, instead giving credence to the following arguments of defendants, private respondents herein:

1. Plaintiffs failed to establish their claim that they and their predecessor-in-interest are the lawful and absolute owners of the disputed land, in the light of the clear finding of the lower court and of the Office of the President

that Ben Almora was merely granted an occupancy permit thereon, which permit "does not confer upon the permittee any right of alienation." [20]

The Court of Appeals also upheld the argument of private respondents that "considering xxx that (Federico Peralta) was prohibited to lease or alienate the same, it follows that he was guilty of bad faith in representing himself as the owner of the said land, and naturally as a necessary consequence, the said contract of lease can only be viewed as nothing but a null and void instrument from the beginning and without force and effect whatsoever insofar as the land is concerned. As a further consequence, the said deed of sale executed by Ben Almora in favor of the plaintiffs is likewise a nullity and without force and effect insofar as Lots A and B are concerned for the same reason that Ben Almora was not the real owner thereof xxx ." [21]

2. The question of prior possession has already been resolved in the unlawful detainer case filed by Ben Almora against Federico Peralta in October 1960, which was decided in favor of Almora, and which decision was affirmed on appeal by the then Court of First Instance of Baguio and Benguet in Civil Case No. 1783, on December 29, 1972. As argued by private respondents, the decision in the earlier case would have been sufficient to oust the Peraltas from possession of the land had the said decision been implemented by way of a writ of execution within the prescribed period of five years from the date of its finality. [22] However, Ben Almora did not avail of his right to have the decision executed accordingly; neither did he seek to have the judgment revived within the next five years following the lapse of the first five years. [23] Resultantly, the claim is deemed to have been abandoned and Ben Almora's successors-in-interest cannot be allowed to recover the property through this belated accion publiciana for the reason that such is barred by res judicata.

Private respondents further argued that the issue of lawful possession was likewise put to rest by the Decision of the Office of the President, which declared that

" xxx the only just and equitable solution to this case is to allow (Ben) Almora and his brother and all the occupants of Lots A and B to continue their respective occupation of the same upon the issuance of the necessary permits by the Bureau of Forest Development. xxx

xxx Ben Almora and his brother Galap Almora and the appellants Cobcobo, Aquisio, Mangali, Garcia, (Federico) Peralta and Basilio and the Benguet Development Co., Inc. are hereby ordered to file their respective applications for the necessary permits for the use or occupation of the lots on which their houses or improvements are situated." [24]

3. Plaintiffs-petitioners are guilty of forum-shopping, for instituting numerous actions in various courts to recover possession of the disputed property. In addition to the unlawful detainer case above-discussed which Ben Almora and plaintiffs failed to have executed, it was also Ben Almora who filed the petition with the Director of Forestry seeking the ejectment of Federico Peralta and the other lessees of the land in question, which petition triggered a thorough investigation that finally culminated in the Decision of the Office of the President No. 1039, s. 1974, rendered on July 15, 1974, and which has since become final and executory. [25] Yet another action was filed by Ben Almora in the Municipal Trial Court of Atok-Buguias, Benguet, entitled Ben Almora vs. Federico Peralta, Rudy Peralta, et. al., for forcible entry and unlawful detainer with preliminary prohibition and mandatory injunction. [26] The complaint was dismissed in an Order of Dismissal dated February 11, 1978, which order Ben Almora questioned on appeal to the Court of First Instance of Baguio and Benguet as Civil Case No. 378. The CFI, in turn, rendered a decision on April 18, 1979, affirming in toto the Order of Dismissal of the MTC. [27] It is the contention of herein private respondents that the case at bar, an accion publiciana instituted 27 years since the execution of the lease contract in 1958, and involving substantially the same parties, seeks to recover possession over the disputed property on the basis of the same claim of ownership and right of possession as has been asserted and ruled upon in the above-adverted cases.

In its decision, the Court of Appeals also took note of the fact that petitioners herein failed to file their appellee's brief in the said Court within the prescribed period, a matter which the CA treated as "(giving) rise to a presumption that the appellants' brief bore the torch of truth --- and therefore should be given full faith and credence". The Court pointed out that this rule "rests on the universal principle of human conduct which leads us to repel an unfounded imputation of claim (*Wheat vs. Croom*, 7 Ala. 349)" and that "such principle (on tacit admission) also stands aloft under the canopy of Section 32, Rule 130 of the New Rules on Evidence." [28]

In this petition for review on certiorari, petitioners raise the following grounds:

- "1. The Hon. Court of Appeals seriously erred in not considering the evidence as to the ownership and lawful possession of petitioners' predecessor-in-interest over the land in controversy;
2. The Hon. Court of Appeals committed a serious error in disregarding the uncontroverted evidence of the petitioners and taking as gospel truth all the arguments and misrepresentations of the private respondents herein; and
3. The Hon. Court of Appeals failed to consider in the rendition of its decision the evidence and the law applicable on the matter."

In the course of this appeal, private respondents brought up several procedural matters which we summarize as follows: (1) the petition was filed out of time, resulting in this Court's failure to acquire jurisdiction and take cognizance of the appeal; [29] (2) no motion for reconsideration was filed in the Court of Appeals, thus depriving the said court of an opportunity to correct any errors as it may have made; [30] and (3) the petition raises questions of fact which are not the proper subject of review in a petition for review under Rule 45.

The records bear that the decision of the Court of Appeals was received by petitioners on June 14, 1994, and that on June 29, 1994, petitioners filed a motion for extension of time with this Court, praying for an additional 15 days within which to file a petition for review. [31] Inasmuch as this Petition was filed by registered mail on July 13, 1994, We find that the petition was filed with this Court in due time.

Private respondents next contend that this Petition should not be given due course for failure of petitioners to file a motion for reconsideration of the decision of the Court of Appeals, thus depriving respondent court of the opportunity to correct on reconsideration such errors as it may have committed. [32] Rule 45, Section 1 of the Rules of Court, however, distinctly provides that

"A party may appeal by certiorari from a judgment of the Court of Appeals, by filing with the Supreme Court a petition for certiorari within fifteen (15) days from notice of judgment, or of the denial of his motion for reconsideration filed in due time. (Emphasis supplied)"

The conjunctive "or" clearly indicates that the 15-day reglementary period for the filing of a petition for certiorari under Rule 45 commences either from notice of the questioned judgment or from notice of denial of the appellant's motion for reconsideration. [33] A prior motion for reconsideration is not indispensable for a petition for review on certiorari under Rule 45 to prosper. The reliance of private respondents in the cases cited in their Comment [34] is unfounded, for all of these cases addressed petitions for certiorari grounded on grave abuse of discretion, or what is now known as special civil action of certiorari under Rule 65 of the Rules of Court. For such action to commence, the Rules require that the petitioner be left with "no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law." [35] A motion for reconsideration of an assailed decision is deemed a plain and adequate remedy provided by law. [36]

Where, under Rule 45, certiorari is resorted to as a mode of appeal, the indispensability of a motion for reconsideration is negated, and the party aggrieved may validly file a petition for review on certiorari with the

Supreme Court within 15 days from notice of judgment of the Court of Appeals.

Thirdly, in their assignment of errors, petitioners would have us appreciate and rule upon evidence of ownership and lawful possession of their predecessor-in-interest over the land in question which, allegedly, was disregarded by respondent court in the rendition of its decision. In other words, petitioners seek to involve us in a re-evaluation of the factual veracity and probative value of the evidence they submitted in the lower court, contrary to the dictates of Rule 45 that only questions of law may be raised and resolved on petition.[37] Absent any whimsical or capricious exercise of judgment, and unless the lack of any basis for the conclusions made by the lower courts be amply demonstrated, the Supreme Court will not disturb such factual findings.[38]

Be that as it may, We do not feel precluded from expressing our displeasure at petitioners' action in raising for our review these questions of fact and charging respondent court of misappreciating the evidence in the light of their failure to file an appellee's brief with respondent court, which brief would have been the proper vehicle for presenting petitioners' arguments. Neither did petitioners file a motion for reconsideration before assailing the decision of the respondent court on certiorari, a fact which, while not detrimental to this Petition's being given due course, is gravely indicative of petitioner's disinterest in pursuing its case in the Court of Appeals, and of availing of all the remedies accorded them by law. For the alleged failure of respondent court to accord petitioners their desired relief, petitioners have only themselves to blame.

Having set aside these procedural issues, We proceed to evaluate the merits of this Petition.

Petitioners would have us reverse the decision of respondent court and affirm the ruling of the RTC of Baguio City, i.e., to restore possession of the property to plaintiffs-petitioners on the basis of prior possession thereof, and pending the Bureau of Lands' determination as to who among the various applicants is entitled to the land.

It is not controverted that the possession of plaintiffs-petitioners antedated that of private respondents by 13 years, their predecessor-in-interest, Ben Almora, having entered the land in question in 1945 while Federico Peralta leased the land from Ben Almora only in 1958.

This leads us to the question: Do private respondents hold a better right of possession over the property than petitioners, who had prior possession thereof?

We hold in the affirmative. A perusal of the entire records of the case shows that Federico Peralta was granted an occupancy permit over the disputed property by the Bureau of Forestry. In the Order denying Ben Almora's motion for reconsideration of Decision No. 1039, s. 1974, supra, the Office of the President declared:

"But even assuming that the motion for reconsideration of Almora was filed within the reglementary period, this Office still finds no compelling reason to disturb its decision. As regards the claim of Almora that he has acquired ownership over the disputed lots by virtue of his alleged possession thereof for more than thirty years, this Office maintains that in order to acquire a land by acquisitive prescription the possession and occupation must be in the concept of owner: open, continuous, exclusive and notorious. (*Molina vs. De Bacud*, L-20195, April 27, 1967, 19 SCRA 1956)

The possession of the Almoras of the contested lots was not exclusive and was in fact interrupted by the adverse possessions of the other claimants who were similarly granted occupancy permits by the Bureau of forestry (now Bureau of Forest Development). (Emphasis supplied)

In view of the foregoing, the instant motion for reconsideration is hereby denied." [39]

The granting of the occupancy permits was raised in the Answer dated June 3, 1985[40] and Memorandum dated August 15, 1985,[41] respectively, of defendants-private respondents filed in the RTC of Baguio City, and was not denied by plaintiffs-petitioners in their Reply dated June 21, 1985,[42] also filed in the aforecited court, which

acknowledged the granting of such permits but alleged that the same was done in unlawful collaboration with officers of the Bureau of Forest Development. Such granting of permits was also mentioned in the Decision of the RTC of Baguio City,[43] and in the Decision of the Court of Appeals.[44]

The issuance of an occupancy permit to Federico Peralta as a claimant in the administrative case vested upon him and private respondents, as his successors-in-interest, possessory rights over the land in dispute to the exclusion of all others, except the State and such persons as may hold legal and equitable title under law. Such issuance also resulted in the dispossession of petitioners and the tacit cancellation of petitioners' permit over the same land, to the extent of the property covered by the permit issued to Peralta, as the fact of possession cannot be recognized at the same time in two different persons.[45]

It is also not disputed that Federico Peralta filed a Miscellaneous Sales Application over the disputed property upon learning that such land, as he was then leasing from Ben Almora, was not owned by Almora. This Court has, time and again, recognized the possessory rights of a sales applicant over a public land before the approval of his application.[46] In *Reynoso vs. Court of Appeals*, 170 SCRA 546, citing *Pitargue vs. Sorilla*, 92 Phil. 5, We held that-

" xxx even pending the investigation of, and resolution on, an application by a bona fide occupant, xxx by the priority of (the occupant's) application and record of his entry, he acquires a right to the possession of the public land he applied for against any other public land applicant, which right may be protected by the possessory action of forcible entry or by any other suitable remedy that our rules provide."

As the present possessors of the property, by virtue of a permit to occupy granted by the governmental authority vested with the power to issue the same, prior to the perfection of a sales application over the same property, private respondents' possessory rights are preferred over anyone else's, and clearly surpass the claim of petitioners of prior possession, which has long since terminated.

Neither may we accord credence to petitioners' claim of ownership of the disputed land. Petitioners source this claim of ownership from Executive Order No. 180, dated May 10, 1956, and Executive Order No. 87, series of 1967, which grant to all Igorot vegetable farmers occupying farm lots within the Mount Data National Park Reservation and Central Cordillera Forest Reserve an opportunity to acquire the lots they are cultivating. Under the provisions of said Executive Orders, all interested and qualified persons shall file applications for grant of title in accordance with the Public Land Act and subject to the approval of a screening committee composed of government representatives.[47]

Firstly, recovery upon claim of ownership has no place in an *accion publiciana*. Where the object of the parties is to recover dominion over the property as owner, the appropriate action to file is an *accion reivindicatoria*, and not a plenary action to recover possession as the case herein, which involves restitution of possession only, when the cause of dispossession is not among those covered by the grounds for forcible entry and unlawful detainer, or when possession has been lost for more than one year and can no longer be maintained under Rule 70 of the Rules of Court.[48]

Secondly, and granting *arguendo* that this Court may lawfully pass upon the issue of ownership, there is no indication in the records that Ben Almora or petitioners filed the necessary application for grant of title over the disputed land. Plaintiffs-petitioners cannot possibly rely on acquisitive prescription as the means by which they obtained ownership over the land,[49] as the Executive Orders clearly lay down a procedure for application for, and award of title to, properties in the Mount Data National Reservation Park.

IN VIEW OF THE FOREGOING, the Petition is DENIED and the Decision of the Court of Appeals dismissing the Complaint in Civil No. 533-R is hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Vitug, Panganiban, and Purisima, JJ., concur.

Romero, J., abroad on official business leave.

[1] Penned by Justice Ramon Mabutas, Jr., with the concurrence of Justices Arturo B. Buena and Jainal D. Rasul.

[2] Civil Case No. 533-R, Regional Trial Court of Baguio City, Branch 6, presided over by Judge Ruben C. Ayson.

[3] Rollo, 51.

[4] Ibid., 11, 52.

[5] Ibid., 8. Office of the President Decision No. 1039, s. 1974 (see subsequent discussion) discloses that Ben Almora "filed an application for a special use permit of Lots A and B, which was granted under Permit No. 9143-F. In 1932, the permit was cancelled for the reason that the land is needed for forest protection purposes. In 1935, Almora was granted Private Camp Permit No. Cs-28-J for Lot A only with an area of 5,305 square meters. This permit, which expired in the same year (1935), was renewed under Pc-53 in 1948, covering the same lot (Lot A). Almora was never again permitted to occupy Lot B."

[6] Ibid., 8-10.

[7] Ibid.

[8] Ibid.

[9] Ibid., 10.

[10] Ibid.

[11] Ibid., 10-11.

[12] Ibid., 11.

[13] Ibid.

[14] Ibid., 12; Office of the President Decision No. 1039, s. 1974, 4.

[15] Ibid., 13.

[16] Ibid., 15.

[17] 92 Phil. 5.

[18] 170 SCRA 546.

[19] Rollo, 14-15.

[20] Ibid., 19-20.

[21] Ibid., 20.

[22] Ibid., 24-25; Sec. 6, Rule 39, Rules of Court.

[23] Ibid., Id.

[24] Decision of the Office of the President No. 1039, s. 1974, 4-5.

[25] Rollo, 26.

[26] Ibid.

[27] Ibid.

[28] Ibid., 18.

[29] Ibid., 76; Comment of Private Respondents, 2, citing *Gutierrez vs. Court of Appeals*, G.R. No. L-25972, November 26, 1968; *Roman Catholic Bishop of Tuguegarao vs. Director of Lands*, 34 Phil. 623; *Estate of Cordova vs. Albado*, 34 Phil. 920; *Miranda vs. Guanzon*, 92 Phil. 168.

[30] Ibid.

[31] Ibid.

[32] Ibid.

[33] In *Refugia vs. Court of Appeals*, 258 SCRA 347, if a motion for reconsideration is filed during the 15-day reglementary period, the losing party has only the remaining period within which to file a petition for review.

[34] Rollo, 76; *Confederation of Citizens Labor Union (CCLU) vs. NLRC*, 60 SCRA 450; *Sy It vs. Tiangco*, 4 SCRA 436; *Del Pilar Transit, Inc. vs. Public Service Commission*, 31 SCRA 372.

[35] Sec. 1, Rule 65, Rules of Court.

[36] *Solis vs. National Labor Relations Commission*, 263 SCRA 629.

[37] Sec. 2(2), Rule 45, Rules of Court; *Engineering and Machinery Corporation vs. Court of Appeals*, 252 SCRA 156.

[38] *Tañedo vs. Court of Appeals*, 252 SCRA 80.

[39] Records of the Case, 45-46.

[40] Ibid., 19.

[41] Ibid., 41-44; Memorandum (in support of motion to dismiss incident to preliminary hearing on the affirmative defenses), 1-4.

[42] Ibid., 25.

[43] Rollo, 52.

[44] Ibid., 8.

[45] Art. 538, Civil Code.

[46] See *Pitargue vs. Sorilla*, 92 Phil. 5; *Lequigan vs. Katalbas*, 105 Phil. 645; *Reynoso vs. Court of Appeals*, 170 SCRA 546.

[47] See Executive Order No. 180, s. 1956; Secs. 1-3, Executive Order No. 87, s. 1967.

[48] *Del Rosario vs. Celosia*, 26 Phil. 404; Sec. 1, Rule 70, Rules of Court.

[49] Under the provisions of Sec. 48(b) of Commonwealth Act No. 141, as amended, or the Public Land Act,

public agricultural lands may be acquired through open, continuous, exclusive and notorious possession and occupation under a bona fide claim of acquisition of ownership.

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