

**TINING RESUENA, ALEJANDRA GARAY, LORNA RESUENA,
ELEUTERIO RESUENA, EUTQUIA ROSARIO AND UNISIMA RESUENA,
PETITIONERS, VS. HON. COURT OF APPEALS, 11TH DIVISION AND
JUANITO BORROM...**

G.R. NO. 128338. March 28, 2005

Ponente: TINGA, J.

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TINGA, J.:

This is a Rule 45 Petition for Review on Certiorari of the Decision[1] of the Court of Appeals affirming that of the Regional Trial Court (RTC) of Cebu,[2] which in turn reversed that of the Metropolitan Trial Court (mtc) of Talisay, Cebu.[3]

The facts are as follows:

Private respondent, the late Juanito Borromeo, Sr.[4] (hereinafter, respondent), is the co-owner and overseer of certain parcels of land located in Pooc, Talisay, Cebu, designated as Lots Nos. 2587 and 2592 of the Talisay-Manglanilla Estate. Respondent owns six-eighths (6/8) of Lot No. 2587 while the late spouses Inocencio Bascon and Basilisa Maneja (Spouses Bascon) own two-eighths (2/8) thereof. On the other hand, Lot No. 2592 is owned in common by respondent and the heirs of one Nicolas Maneja. However, the proportion of their undivided shares was not determined a quo.

Prior to the institution of the present action, petitioners Tining Resuena, Alejandra Garay, Lorna Resuena, Eleuterio Resuena, and Unisima Resuena resided in the upper portion of Lot No. 2587, allegedly under the acquiescence of the Spouses Bascon and their heir, Andres Bascon. On the other hand, petitioner Eutiquia Rosario occupied a portion of Lot No. 2592, allegedly with the permission of the heirs of Nicolas Maneja, one of the original co-owners of Lot No. 2587. Respondent claims that all petitioners have occupied portions of the subject property by virtue of his own liberality.

Respondent developed portions of Lots Nos. 2587 and 2592 occupied by him into a resort known as the Borromeo Beach Resort. In his desire to expand and extend the facilities of the resort that he established on the subject properties, respondent demanded that petitioners vacate the property. Petitioners, however, refused to vacate their homes.

On 16 February 1994, respondent filed a Complaint[5] for ejectment with the MTC against the petitioners. After a summary proceeding, the MTC, in a Decision[6] dated 10 October 1994, found that Lots Nos. 2587 and 2592 were owned in common by respondent with other persons. The MTC ruled that respondent did not have a preferential right of possession over the portions occupied by petitioners, since Lots Nos. 2587 and 2592 were not yet partitioned nor the disputed portions assigned to respondent as his determinate share. Thus, the MTC held that respondent had no right to evict petitioners therefrom. Consequently, respondent's Complaint was dismissed.

Notably, the MTC held that respondent and the spouses Bascon were the owners in common of Lot No. 2587 and

their respective shares had not yet been determined by partition as proven by a testimony given by respondent in Civil Case No. R-14600, viz:

Q. And the participation there of Inocencio Bascon is 2/8 of the said parcel of land?

A. Yes sir.

Q. And until the present that parcel of land is undivided?

A. It is not yet partitioned, but during the time of Basilisa Maneja we had already made some indications of the portions that we came to occupy.

Q. That is the parcel of land where you have your beach resort?

A. Yes, sir; and that was our agreement, verbally, that with respect to the portion of the land towards the sea-shore it will be my share and that portion of the land towards the upper part will be theirs.”[7]

On appeal, the RTC reversed the Decision of the MTC. It held that Article 487 of the Civil Code, which allows any one of the co-owners to bring an action in ejectment, may successfully be invoked by the respondent because, in a sense, a co-owner is the owner and possessor of the whole, and that the suit for ejectment is deemed to be instituted for the benefit of all co-owners.[8] The RTC also ruled that assuming petitioners were authorized to occupy a portion of the co-owned property, they could resume this occupation when the properties shall have been partitioned and allocated to the ones who gave them permission to reside therein. It thus held:

WHEREFORE, judgment of the lower court is hereby reversed and the defendants are hereby directed to vacate the premises in question without prejudice to their going back to the land after partition shall have been effected by the coheirs and/or co-owners among themselves but to the specific portion or portions adjudicated to the person or persons who allegedly authorized them to occupy their portions by tolerance.[9]

The Court of Appeals affirmed the Decision of the RTC; hence, this petition which involves the following assignment of errors:[10]

- That with grave abuse of discretion, amounting to excess of jurisdiction, the honorable eleventh division of the court of appeals erred in NOT APPLYING and/or in NOT DECLARING private respondent Juanito Borromeo estopped in filing this ejectment case against the herein six (6) petitioners.
- That with grave abuse of discretion, the honorable eleventh division of the court of appeals erred in incorrectly applying the statute of frauds, considering that the verbal agreement entered into by and between spouses Inocencio Bascon and Basilisa Maneja on the one hand and Juanito Borromeo on the other more than twenty (20) years ago today, was already an EXECUTED CONTRACT.
- That with grave abuse of discretion, amounting to excess of jurisdiction, the honorable eleventh division of the court of appeals erred in ignoring outright Article 493 of the new Civil Code of the Philippines, considering that the six (6) petitioners are only ASSIGNEES, pure and simple, of co-owners spouses Ignacio Bascon and Basilisa Maneja and/or Andres Bascon, the adopted son of the said spouses.
- That granting arguendo that the herein six (6) petitioners have to be ejected, the eleventh division of the court of appeals erred in NOT remanding this case to the court of origin for the reception of evidence for damages, pursuant to and in accordance with Art. 546, New Civil Code.

The petition cannot prosper.

At the outset it must be stated that petitioners ground their petition on respondent's testimony in Civil Case No. R-14600 that he had agreed with co-owner, Basilisa Maneja, on the portions they each were to occupy in Lot No. 2587 prior to the partition of the property. However, respondent's testimony and, consequently, the agreement

alluded to therein pertains solely to Lot No. 2587—which, admittedly, all of petitioners occupy, save for Eutiquia Rosario who occupies Lot No. 2592. No argument was presented in this petition as regards the latter's claim. Having no basis to review Eutiquia Rosario's claim to be allowed to continue in her occupation of Lot No. 2592, this Court maintains the holding of the RTC on this matter, as affirmed by the Court of Appeals, that respondent has the right to eject petitioner Eutiquia Rosario from Lot No. 2592.

With regard to the other five (5) petitioners, the Court notes that their first three assignments of errors are interrelated and built on each other. Petitioners allege that respondent's testimony in Civil Case No. R-14600, expressing that the upper two-eighths (2/8) portion of Lot No. 2587 would be occupied by Basilisa Maneja, constituting as it does a waiver of said portion, has estopped respondent from claiming the portion. Basilisa Maneja and her husband allegedly relied on this agreement when the spouses assigned the upper portion of Lot No. 2587 to petitioners. Moreover, petitioners claim that their occupation of the upper portion of Lot No. 2587 had consummated the verbal agreement between respondent and Basilisa Maneja and brought agreement beyond the purview of the Statute of Frauds.

A careful perusal of the foregoing issues reveals that petitioners assumed the following as proven facts: (1) respondent had indicated to Basilisa Maneja the portions they were to occupy in Lot No. 2587; and (2) the Spouses Bascon assigned to petitioners their portions of Lot No. 2587. By claiming these as the bases for their assignment of errors, petitioners in essence are raising questions of fact.[11]

The issues raised by petitioners on the application of estoppel, statute of frauds, and the assignment of properties owned in common in their favor, while ostensibly raising questions of law, invite this Court to rule on questions of fact. This runs counter to the settled rule that only questions of law may be raised in a petition for review before the Court and the same must be distinctly set forth.[12]

It is not the function of this Court to weigh anew the evidence already passed upon by the Court of Appeals for such evidence is deemed final and conclusive and may not be reviewed on appeal. A departure from the general rule may be warranted, among others, where the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the trial court, or when the same is unsupported by the evidence on record.[13]

In the instant case, the RTC and the Court of Appeals rendered judgment merely on questions of law as applied to the facts as determined by the MTC. Consequently this Court must proceed on the same set of facts without assuming, as petitioners have done, the veracity of claims which have been considered, but not accepted as facts, by the courts below.

Guided by the foregoing, this Court finds in this case that filtered of the muddle from petitioners' assignment of errors, it is unmistakable that respondent has a right to eject the petitioners from Lot No. 2587.

Article 487 of the Civil Code, which provides simply that "[a]ny one of the co-owners may bring an action in ejectment," is a categorical and an unqualified authority in favor of respondent to evict petitioners from the portions of Lot. No. 2587.

This provision is a departure from *Palarca v. Baguisi*,[14] which held that an action for ejectment must be brought by all the co-owners. Thus, a co-owner may bring an action to exercise and protect the rights of all. When the action is brought by one co-owner for the benefit of all, a favorable decision will benefit them; but an adverse decision cannot prejudice their rights.[15]

Respondent's action for ejectment against petitioners is deemed to be instituted for the benefit of all co-owners of the property[16] since petitioners were not able to prove that they are authorized to occupy the same.

Petitioners' lack of authority to occupy the properties, coupled with respondent's right under Article 487, clearly settles respondent's prerogative to eject petitioners from Lot No. 2587. Time and again, this Court has ruled that persons who occupy the land of another at the latter's tolerance or permission, without any contract between them, are necessarily bound by an implied promise that they will vacate the same upon demand, failing in which a summary action for ejectment is the proper remedy against them.[17]

Petitioners pose the strange claim that respondent had estopped himself from filing an ejectment case against petitioners by his aforequoted testimony in Civil Case No. R-14600. Such testimony is irrelevant to the case at bar, as it does nothing to strengthen the claim of petitioners that they had a right to occupy the properties. This testimony merely indicates that there might have been an agreement between the Spouses Bascon and Borromeo as to which of them would occupy what portion of Lot No. 2587. Yet this averment hardly establishes a definitive partition, or moreover, any right of petitioners to dwell in any portion of Lot No. 2587. Besides, "[e]stoppel is effective only as between the parties thereto or their successors in interest;" thus, only the spouses Bascon or their successors in interest may invoke such "estoppel." A stranger to a transaction is neither bound by, nor in a position to take advantage of, an estoppel arising therefrom.[18]

For the same reason, it is of no moment whether indeed, as petitioners claim, there was a verbal contract between Basilisa Maneja and Borromeo when the latter indicated the portions they each were to occupy in Lot No. 2587. Such verbal contract, assuming there was one, does not detract from the fact that the common ownership over Lot No. 2587 remained inchoate and undivided, thus casting doubt and rendering purely speculative any claim that the Spouses Bascon somehow had the capacity to assign or transmit determinate portions of the property to petitioners.

Thus, in order that the petition may acquire any whiff of merit, petitioners are obliged to establish a legal basis for their continued occupancy of the properties. The mere tolerance of one of the co-owners, assuming that there was such, does not suffice to establish such right. Tolerance in itself does not bear any legal fruit, and it can easily be supplanted by a sudden change of heart on the part of the owner. Petitioners have not adduced any convincing evidence that they have somehow become successors-in-interest of the Spouses Bascon, or any of the owners of Lot No. 2587.

Indeed, there is no writing presented to evidence any claim of ownership or right to occupancy to the subject properties. There is no lease contract that would vest on petitioners the right to stay on the property. As discussed by the Court of Appeals,[19] Article 1358 of the Civil Code provides that acts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property must appear in a public instrument. How then can this Court accept the claim of petitioners that they have a right to stay on the subject properties, absent any document which indubitably establishes such right? Assuming that there was any verbal agreement between petitioners and any of the owners of the subject lots, Article 1358 grants a coercive power to the parties by which they can reciprocally compel the documentation of the agreement.[20]

Thus, the appellate court correctly appreciated the absence of any document or any occupancy right of petitioners as a negation of their claim that they were allowed by the Spouses Bascon to construct their houses thereon and to stay thereon until further notice. On this note, this Court will no longer belabor petitioners' allegation that their occupation of Lot No. 2587 is justified pursuant to the alleged but unproven permission of the Spouses Bascon.

All six (6) petitioners claim the right to be reimbursed "necessary expenses" for the cost of constructing their houses in accordance with Article 546 of the Civil Code.[21] It is well-settled that while the Article allows full reimbursement of useful improvements and retention of the premises until reimbursement is made, applies only to a possessor in good faith, i.e., one who builds on land with the belief that he is the owner thereof. Verily, persons

whose occupation of a realty is by sheer tolerance of its owners are not possessors in good faith.[22]

The lower courts have made a common factual finding that petitioners are occupying portions of Lots No. 2587 and 2592 by mere tolerance. Thus, petitioners have no right to get reimbursed for the expenses they incurred in erecting their houses thereon.

WHEREFORE, premises considered, the Petition is DENIED and the Decision of the Court of Appeals AFFIRMED. Costs against petitioners.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Dated 07 October 1996 in CA-G.R. SP No. 39058 rendered by the Eleventh Division of the Court of Appeals, penned by Justice Ramon Mabutas Jr., concurred IB by Justice Minerva P. Gonzaga-Reyes and Justice Salvador J. Valdez, Jr. The Court of Appeals held, thus:

WHEREFORE, premises considered, the appealed decision (dated April 28, 1995) and the order (dated September 8, 1995) of the respondent court (Branch 18, Regional Trial Court in Cebu City) in Civil Case No. CEB-16727 are hereby AFFIRMED, with costs against the petitioners/appellants.

SO ORDERED.

[2] Branch 18, in Civil Case for Ejectment No. CEB-16727 rendered by Judge Galicano C. Arriesgado.

[3] Branch 01, in Civil Case for Ejectment No. 695 rendered by Judge Mario V. Manayon.

[4] Owing to the death of Juanito Borromeo, Sr. on 23 December 1997, this Court, in its Resolution dated 06 September 1999, allowed his heirs, namely, Juanito Borromeo, Jr., Virginia Borromeo-Guzman, and the heirs of Andres Borromeo, Sr. namely: Jacqueline, John, and Andres Jr., all surnamed Borromeo, to be substituted for the deceased-widower. Rollo, p. 146.

[5] Id. at 63-65.

[6] Id. at 90-96.

[7] Id. at 94

[8] Citing Sering v. Plazo, G.R. No. L-49731, 29 September 1988, 166 SCRA 84, 85; Rollo, p. 99.

[9] Id. at 101.

[10] In their Petition dated 26 February 1997; Id. at 21.

[11] For a question to be one of law it must involve no examination of the probative value of the evidence presented by the litigants or any of them. And the distinction is well known: There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts. *Ramos v. Pepsi-Cola Bottling Co.*, L-2253, 125 Phil. 701 (1967).

[12] 1997 Rules of Civil Procedure, Rule 45, Section 2.

[13] See e.g., *Gloria Changco v. Court of Appeals, et al.*, 429 Phil. 226 (2002).

[14] 38 Phil. 177 (1918).

[15] Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, 19978, Vol. IV, p. 170 citing 2 Castan 199-200.

[16] Sunga, et. al. v. De Guzman, et. al., G.R. No. L-25847, 19 June 2004; Sering v. Plazo, G.R. No. L-49731, 29 September 1988, 84 SCRA 85.

[17] Banco de Oro Savings & Mortgage Bank v. Court of Appeals, et al., G.R. No. 85448, 21 February 1990, 182 SCRA 464, 469.

[18] Supra note 15 at p. 667.

[19] Rollo, p. 34.

[20] Tapeç, et al. v. Court of Appeals et al., G.R. No. 111952, 26 October 1994, 237 SCRA 749, 758.

[21] Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

[22] Pada-Kilario, et al. v. Court of Appeals, et al., 379 Phil. 515 (2000); Refugia, et al. v. Court of Appeals, et al., 327 Phil. 982 (1996).

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