

SPOUSES VIRGINIA G. GONZAGA G.R. No. 130841 and ALFREDO GONZAGA, Petitioners, vs. COURT OF APPEALS, BIENVENIDO AGAN, and ROWENA AGAN, Respondents.

G.R. No. 130841. February 26, 2008

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This Petition for Certiorari under Rule 65 seeks to reverse and set aside the Resolution dated April 10, 1997[1] of the Court of Appeals (CA) in CA-G.R. SP No. 43793, denying the petition for review of petitioners-spouses Virginia and Alfredo Gonzaga of the Decision dated December 20, 1996 of the Davao City Regional Trial Court (RTC), Branch 33; and the Resolution dated August 29, 1997[2] of the CA, denying petitioners' Motion for Reconsideration.

The Facts

Petitioners are the registered owners of a residential lot covered by Transfer Certificate of Title No. T-240379,[3] with an area of 247 square meters, more or less, and located in Ecoland Subdivision, Phase IV, Matina, Davao City. Petitioners admitted that they do not reside at this property.[4]

In May 1995, petitioners decided to construct a house on the said parcel of land and engaged the services of a civil engineer to prepare the corresponding construction plan. Petitioners claimed that there was no occupant on the land when construction began in June 1995.

Sometime in June 1995, petitioners went to inspect the above lot and discovered that a shanty belonging to private respondents Bienvenido and Rowena Agan had been built on the land in question.

A demand later made on private respondents to vacate the lot in question went unheeded.[5]

Thus, on April 26, 1996, petitioners filed a Complaint dated April 18, 1996[6] against private respondents for Forcible Entry, Damages, and Attorney's Fees with Prayer for Temporary Restraining Order and Preliminary Injunction with the Municipal Trial Court in Cities (MTCC) in Davao City. The case entitled *Spouses Virginia Gonzaga and Alfredo Gonzaga v. Bienvenido Agan and Rowena Agan* was docketed as Civil Case No. 3001-E-96. As alleged by petitioners, private respondents put up the structure by stealth and strategy.

In their Answer dated June 10, 1996,[7] private respondents alleged that they are the occupants of a portion of what is known as the "Sabroso Village." They further alleged that their shanty is within the land covered by a Free Patent Application dated February 9, 1992 in the name of Ponciano Sabroso,[8] who knew of the shanty's existence for a long time and consented to their stay in the village.

The Ruling of the MTCC

Thereafter, the MTCC rendered a Decision dated August 26, 1996[9] in favor of petitioners, the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs, the spouses Virginia G. Gonzaga and Alfredo Gonzaga, and against the defendants Bienvenido Agan and Rowena Agan, ordering the defendants to vacate plaintiffs' property covered by TCT No. T-240379 and to remove their improvements and structures, or shanty therefrom, and further defendants are ordered to pay plaintiffs the reasonable value of the use of the land occupied by them, at P1,000.00 a month, from June 1995, until they vacate, and the sum of P10,000.00 for attorney's fees, and pay the costs.

SO ORDERED.

In so ruling, the MTCC held that private respondents failed to rebut allegations that they entered petitioners' property by stealth. The MTCC found as untenable private respondents' counter-allegation that they gained entry to the land in 1983 that is allegedly covered by the Free Patent Application of Ponciano Sabroso.

The Decision of the RTC

Unconvinced, private respondents appealed the above MTCC ruling to the Davao City RTC docketed as Civil Case No. 24,772-96. Eventually, the RTC rendered a Decision dated December 20, 1996, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the appealed decision is REVERSED and judgment is entered dismissing the complaint for lack of cause of action for forcible entry.

The counterclaim is likewise dismissed.

No costs.

SO ORDERED.[10]

The RTC predicated its ruling on the premise that petitioners, although claiming to be owners of the subject property, failed to prove prior actual physical possession, a necessary element in an action for ejectment. To the RTC, petitioners should have not commenced an action for forcible entry but an accion publiciana suit.

Thus, petitioners filed with the CA on March 4, 1997 a petition for review docketed as CA-G.R. SP No. 43793.

The Ruling of the CA

On April 10, 1997, the CA issued the first assailed Resolution, denying due course to petitioners' petition for review mainly on the strength of the following observations:

A perusal of the complaint would show that apart from claiming ownership of the lot in question, petitioners have not asserted prior possession thereof, much less the manner of their dispossession, which is essential in an action for forcible entry.

As correctly pointed out by respondent Court, plaintiffs' action should be one for recovery of possession or an accion publiciana, not for forcible entry.[11]

From this Resolution, petitioners sought reconsideration. However, the CA, in its second assailed Resolution dated August 29, 1997, denied petitioners' Motion for Reconsideration.

Hence, we have this Petition for Certiorari.

The Issues

The issues raised in the petition are set forth in the following assignment of errors

I.

The court a quo committed grave abuse of discretion in failing to give due course to the petition for review filed therewith as it committed a gross mistake in appreciating the facts of the case.

II.

The court a quo erred in holding that petitioners' action should not be for forcible entry but for accion publiciana.[12]

The Ruling of this Court

The petition must be dismissed.

At the outset, it must be pointed out that petitioners invoked the certiorari jurisdiction of the Court under Rule 65 when an appeal under Rule 45 is the proper remedy and should have been filed.

Under the first paragraph of Section 1 of Rule 65, the remedy of certiorari may only be availed of in the absence of any other remedy in the ordinary course of law open to the petitioner. The provision states:

Section 1. Petition for certiorari.³⁴When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. (Emphasis supplied.)

In the instant case, the CA had already finally disposed of the case with the issuance of the Resolution dated April 10, 1997 denying due course to petitioners' petition for review of the RTC's decision, and the Resolution dated August 29, 1997 denying petitioners' Motion for Reconsideration. Thus, the remedy of an appeal under Rule 45 was then already available to petitioners.

Sec. 1 of Rule 45 states:

Section 1. Filing of petition with Supreme Court.—A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

Petitioners, therefore, then had 15 days from their receipt on September 10, 1997 of the Resolution dated August 29, 1997, or until September 25, 1997 within which to file a petition for review under Rule 45. Instead, they filed on September 25, 1997 the instant Petition for Certiorari dated September 18, 1997.

Clearly, the proper remedy in the instant case should have been the filing of a petition for review under Rule 45. This Court has repeatedly ruled that reviews under Rules 45 and 65 of the Rules of Court are mutually exclusive and the remedy of certiorari under Rule 65 cannot be made a substitute for a petitioner's failure to timely appeal under Rule 45.[13] Thus, under Sec. 5(f) of Rule 56,[14] a petition for certiorari interposed when an appeal is proper and available may be dismissed.

The foregoing notwithstanding, even if we overlook the procedural infirmity of the instant petition and treat it as

an appeal under Rule 45, the recourse must still be dismissed.

As it were, the issues raised by petitioners revolve around the matter of possession before private respondents allegedly entered forcibly the property. Petitioners argue that, contrary to the findings of the CA and RTC, they had prior possession of the subject property. Pursuing the point, petitioners state that absolute ownership necessarily connotes possession.

Petitioners' posture is specious.

Sec. 1 of Rule 70 prescribes the rules when an action for forcible entry and unlawful detainer is proper, thus:

Section 1. Who may institute proceedings, and when.³⁴ 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 or 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 person 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. (Emphasis supplied.)

It is quite clear from the foregoing provision that for a forcible entry suit to prosper, the person lawfully entitled to the possession of the property must allege and prove that he was deprived of such possession by means of force, intimidation, threat, strategy, or stealth. And when the law speaks of possession, the reference is to prior physical possession or possession de facto, as contra-distinguished from possession de jure.

To borrow from Justice Edgardo Paras, for a complaint for forcible entry to prosper, the plaintiff must allege in his complaint that he had prior physical possession of the land and that the defendant unlawfully deprived him of such possession through any of the grounds provided in Rule 70, Sec. 1.[15]

The requirement of prior physical possession in ejectment cases was explained by this Court in *Mediran v. Villanueva*, to wit:

Juridically speaking, possession is distinct from ownership, and from this distinction are derived legal consequences of much importance. In giving recognition to the action of forcible entry and detainer the purpose of the law is to protect the person who in fact has actual possession; and in case of controverted right, it requires the parties to preserve the status quo until one or the other of them sees fit to invoke the decision of a court of competent jurisdiction upon the question of ownership. It is obviously just that the person who has first acquired possession should remain in possession pending this decision; and the parties cannot be permitted meanwhile to engage in a petty warfare over the possession of the property which is the subject of dispute. To permit this would be highly dangerous to individual security and disturbing to social order. Therefore, where a person supposes himself to be the owner of a piece of property and desires to vindicate his ownership against the party actually in possession, it is incumbent upon him to institute an action to this end in a court of competent jurisdiction; and he can not be permitted, by invading the property and excluding the actual possessor, to place upon the latter the burden of instituting an action to try the property right.[16] (Emphasis supplied.)

In *Heirs of Pedro Laurora v. Sterling Technopark III*, the Court stressed the basic inquiry in forcible entry cases:

The only issue in forcible entry cases is the physical or material possession of real property—possession de facto, not possession de jure. Only prior physical possession, not title, is the issue. If ownership is raised in the pleadings, the court may pass upon such question, but only to determine the question of possession.[17]

Of the same tenor, but formulated a bit differently, is what the Court wrote in *Bejar v. Caluag*:

To make out a suit for illegal detainer or forcible entry, the complaint must contain two mandatory allegations: (1) prior physical possession of the property by the plaintiff; and (2) deprivation of said possession by another by means of force, intimidation, threat, strategy or stealth. This latter requirement implies that the possession of the disputed property by the intruder has been unlawful from the very start. Then, the action must be brought within one year from the date of actual entry to the property or, in cases where stealth was employed, from the date the plaintiff learned about it.[18] (Emphasis supplied.)

Clearly then, complainants in forcible entry cases must allege and eventually prove prior physical possession. Else, their cases fail, as here.

Petitioners' claim that they have prior physical possession by virtue of their absolute ownership of the subject land is untenable. Obviously, they equate possession as an attribute of ownership to the fact of actual possession. They are of course wrong, possession *de facto* and possession flowing from ownership are different legal concepts.

We agree with the CA and RTC that the proper remedy in the instant case is to file an *accion publiciana* case, a plenary action for recovery of possession in ordinary civil proceedings in order to determine the better and legal right to possess, independently of title.[19] It differs from a forcible entry action in that it does not require prior physical possession in order to prosper. Additionally, considering that more than one (1) year has already elapsed from the time that possession of the subject land was allegedly taken from petitioners, and that an action for forcible entry may only be filed within one (1) year from the plaintiff's deprivation of possession of the land, an *accion publiciana* is the only remedy available to petitioners now to determine who has the better right to possession of the land.

WHEREFORE, we DISMISS the petition, and AFFIRM the CA's Resolutions dated April 10, 1997 and August 29, 1997 in CA-G.R. SP No. 43793.

Costs against petitioners.

SO ORDERED.

Quisumbing, Carpio, Carpio Morales and Tinga, JJ., concur.

[1] Rollo, pp. 189-192. Penned by Associate Justice Artemio G. Tuquero and concurred in by Associate Justices Artemon D. Luna (Chairperson) and Hector L. Hofilena.

[2] Id. at 220-221.

[3] Id. at 112.

[4] Id.

[5] Id.

[6] Id. at 64-77.

[7] Id. at 78-88.

[8] Id. at 58 & 78.

[9] Id. at 145-147.

[10] Id. at 60.

[11] Supra note 1, at 192.

[12] Rollo, p. 15.

[13] Chua v. Santos, G.R. No. 132467, October 18, 2004, 440 SCRA 365, 372-373.

[14] Rule 56, Sec. 5(f) states:

Section 5. Grounds for dismissal of appeal.³⁴The appeal may be dismissed motu proprio or on motion of the respondent on the following grounds:

x x x x

(f) Error in the choice or mode of appeal.

[15] 2 Rules of Court Annotated 163 (1st ed., 1990).

[16] 37 Phil. 752, 761 (1918).

[17] G.R. No. 146815, April 9, 2003, 401 SCRA 181, 184-185.

[18] G.R. No. 171277, February 15, 2007, 516 SCRA 84, 91.

[19] Id. at 90.

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