

**FRANCISCO DEE, REPRESENTED IN THIS INSTRUMENT BY
FORTUNATO T. DEE, PETITIONER, VS. COURT OF APPEALS, HON.
REYNALDO G. ROS, IN HIS CAPACITY AS PRESIDING JUDGE, BRANCH
80, REGIONA...**

G.R. No. 133542. January 29, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari under Rule 45 of the Resolution[1] of the Court of Appeals in CA-G.R. SP No. 46719 which dismissed the petition for review filed by the petitioner on the ground that he failed to comply with Section 2, Rule 42 of the Rules of Court, as amended.

The petition stemmed from an action of forcible entry with damages filed by herein petitioner with the Municipal Trial Court of Morong, Rizal, against respondent Rodolfo Tingson.

In his complaint, the petitioner alleged, inter alia, that he is the registered owner of a parcel of land with an area of 91,252 square meters located at Sitio Bayukan, Brgy. Sampaloc, Tanay, Rizal, covered by Transfer Certificate of Title No. M-19409. At about 12:00 midnight of January 17, 1996, the respondent, with the assistance of his family members, surreptitiously and clandestinely, with the use of force, strategy and stealth, forcibly and unlawfully entered and occupied the eastern portion of his property with an area of about 15,000 square meters. The existing barbed wire fences were destroyed and appropriated and the respondent thereafter erected his own on the claimed portion of his property. Even before the incident, the petitioner, through his caretaker, had already repeatedly complained before the barangay about the respondent's unlawful entry and unauthorized clearing-out activities. After appearing before the barangay confrontation several times, the parties agreed to have the subject area surveyed. It was also agreed that pending the resolution of the ongoing conflict, no party shall move or perform any untoward action on the contested portion of the property. Thus, according to the petitioner, respondent acted in absolute bad faith when he forcibly entered and fenced off the petitioner's land as above described.[2]

In his Answer, the respondent alleged that, the parcel of land that was fenced were Lots 6717 and 6107, both portions of Plan M-126276 and adjoining Lot 6103, also a portion of Plan M-126276, which is embraced by Original Certificate of Title No. M-6898 of the Registry of Deeds of Rizal (Morong Registry) in his name. He had been, for several years, clearing and tilling the said lots, planting mango seedlings and other fruit trees. He also alleged that he applied with the Bureau of Lands/DENR for the issuance of a free patent therefor in his or his children's name. Furthermore, Lots 6717 and 6107 did not adjoin the petitioner's land except at one corner point along the National Road, at which the latter's fence along the National Highway consisting of a single strand of barbed wire attached to madre de cacao branches/twigs also ends. According to the petitioner, his lot adjoins one presently occupied by Mr. Epistola, known as Plan M-139665. Furthermore, the only agreement arrived at between the parties at the barangay office was the maintenance of the status quo until the determination of the

extent of the petitioner's landholding through a survey to be conducted on January 17, 1996. The barangay captain suggested that the technical description of Lot 6103 be utilized in the survey, but the respondent vehemently objected, contending that if, as claimed by the petitioner, Lots 6717 and 6107 were within his land his (petitioner's) surveyor should utilize the technical description of his lot as mentioned in his title (TCT No. M-19409). No survey was ever conducted because of the aforementioned disagreement between the parties.[3]

The trial court limited the issues to be litigated by the parties in its Pre-Trial Order:

- 1) Who is the owner and actual possessor of the disputed parcel of land.
- 2) Whether or not the defendant and plaintiff had an agreement with the barangay prior to the alleged unlawful entry.
- 3) Whether or not the plaintiff suffered damages by reason of the unlawful entry by the defendant into the subject premises.
- 4) What is the nature of the disputed parcel of land.[4]

After the parties had submitted their respective affidavits and position papers, the MTC set the case for clarificatory questions on February 3, 1997 and ordered the respondents to bring to the court the original technical description of Cadastre Lot 393, Case No. 6 as approved by the Director of Lands. On the said date, the respondent submitted the required copy of Exhibit "1" and agreed to submit case for decision.[5] After due proceedings, the MTC rendered judgment on July 11, 1997 in favor of the petitioner, thus:

WHEREFORE, judgment is hereby rendered:

- Ordering the defendant and all those claiming rights under him to immediately remove, at his sole expense, the fence and other improvements erected or introduced by him on the subject premises and to surrender peacefully to the herein plaintiff the possession, control, and enjoyment of the subject lot;
- Ordering the defendant to pay the plaintiff the following:
 - P1,000.00 a month for the use and occupation of the premises until the same is vacated;
 - P20,000.00 as attorney's fees plus P1,000 per court hearing; and
 - Costs of suit.[6]

Synthesizing and analyzing the evidence of the parties, the trial court declared:

To prove his claim of such prior physical possession, plaintiff submitted to the Court: (a) a joint affidavit of Spouses Cecilia and Hermie Areno and George Tapia, dated June 14, 1996, in which it is alleged, among others, that Cecilia has been the plaintiff's land caretaker replacing her father who died on June 17, 1990; and (b) an affidavit by Renato Jaramilla, of even date, where he states that in August 1995, upon the instruction of the plaintiff's caretaker in the person of Cecilia Areno, he and two others constructed a fence and planted crops on the disputed land.

For his part, defendant did not present any proof which could controvert the allegations contained in the duly sworn statements of above-named affiants. Neither was there any independent evidence to show that defendant had been in actual possession of the disputed property at least in or before August 1995. His evidence basically tend to show merely that he is an applicant for a homestead patent before the DENR and such application, to the mind of the Court, does not make for a convincing evidence to prove actual possession of a certain real property. It is even doubtful that Lots 6717 and 6107 are included in the application for the reason as stated in Page 8(3) of the plaintiff's position paper.

Admittedly, defendant and his companions entered and worked on the land at or past midnight of January 17, 1996. Nevertheless, Cecilia Areno, et al.'s affidavit serves to substantiate plaintiff's claim of defendants'

surreptitious entry into the land.[7]

On appeal, the Regional Trial Court rendered its judgment reversing the decision of the MTC, thus:

WHEREFORE, the decision of the Municipal Trial Court of Tanay is reversed, and the said Court is ordered to conduct further proceedings to determine the extent of the property of the plaintiff. No pronouncement as to costs. The Branch Clerk of Court is ordered to transmit the records of this case to the said court.[8]

The RTC ruled that a survey of the subject property was important to determine whether the petitioner owned the subject property or, as claimed by the respondent, is part of the public land. The petitioner filed a motion for reconsideration but the RTC issued an Order dated January 23, 1998 denying the said motion. The Court ruled that:

In the case at bar, it is clear that the plaintiffs-appellees was (sic) not sure of the extent of his property as shown by the fact [that] they in fact agreed to have the property resurveyed, but did not materialize when they cannot agree as to which title to use in the resurvey. The Court cannot really understand why the plaintiffs refused to have the property resurveyed using the technical description of his property. This only strengthened the belief of this Court that they are not sure of the boundary of their property.

The decision of this Court to require the Court a quo to conduct further proceedings to determine the extent of the property of the plaintiff does not contravene the summary nature of an ejectment case, but rather to determine whether the defendant-appellant violated the rights of the plaintiffs-appellees. There is nothing in the Rules of Summary Procedure that prevents the Court from conducting survey of the land if only to find the truth.[9]

Aggrieved, the petitioner filed a petition for review with the Court of Appeals assailing the RTC decision. The petitioner alleged that the trial court erred as follows:

ASSIGNMENT OF ERRORS

I

THE REGIONAL TRIAL COURT GRAVELY ERRED AND ACTED OUT OF AND IN EXCESS OF JURISDICTION WHEN IT SET ASIDE THE JUDGMENT OF THE MUNICIPAL TRIAL COURT AND ORDERED FURTHER PROCEEDINGS AND A SURVEY OF THE SUBJECT LOT.

II

THE REGIONAL TRIAL COURT GRAVELY ERRED WHEN IT ORDERED THE CONDUCT OF “FURTHER PROCEEDINGS” AND A SURVEY OF THE SUBJECT LOT IN FLAGRANT VIOLATION OF THE REVISED RULES ON SUMMARY PROCEDURE.

III

THE REGIONAL TRIAL COURT GRAVELY ERRED WHEN IT RULED THAT THERE IS NO FORCIBLE ENTRY SHOULD IT APPEAR IN THE SURVEY THAT THE LAND POSSESSED AND OCCUPIED BY THE PETITIONER AND FORCIBLY ENTERED BY THE RESPONDENT BELONG IN OWNERSHIP TO THE LATTER.

IV

THE REGIONAL TRIAL COURT GRAVELY ERRED WHEN, NOTWITHSTANDING RESPONDENT’S CATEGORICAL ADMISSION OF FORCIBLE ENTRY, IT REVERSED AND SET ASIDE THE JUDGMENT OF THE MUNICIPAL TRIAL COURT ON THE GROUND OF UNCERTAINTY OF OWNERSHIP ON THE PART OF THE HEREIN PETITIONER.

V

THE REGIONAL TRIAL COURT GRAVELY ERRED WHEN IT DISREGARDED THE CATEGORICAL ADMISSION BY THE DEFENDANTS OF THE LATTER'S "MIDNIGHT AND SURREPTITIOUS INVASION" OF THE LAND OCCUPIED BY THE HEREIN PETITIONER.[10]

In its Resolution of February 18, 1998, the CA dismissed the petition for review for the petitioner's failure to comply with Section 2(d), Rule 42 of the Rules of Court.

The petitioner filed a motion for reconsideration of the CA resolution, appending thereto clear and legible copies of the Decisions of the MTC and RTC and the Order of the RTC dated January 23, 1998. However, the CA denied the said motion, on the additional ground that the Certificate of Non-Forum Shopping in the petition was executed merely by counsel and not by the petitioner himself as required by the last paragraph of Section 2, Rule 42.

In his petition at bench, the petitioner avers that the CA gravely erred in dismissing his petition on technical grounds and in not resolving the same on its merits in the interest of substantial justice. The petitioner asserts that aside from the certification against forum shopping signed by his counsel, his petition embodied a complete certification against forum shopping which he signed. He further asserts that his failure to attach to his petition clear and legible copies of the MTC and RTC Decisions as well as the January 23, 1998 Order of the RTC was "unintended and caused solely by the fact that there are no available photo-copying machine of good quality in the area of Tanay, Rizal, aside from the fact that the duplicate original typed on onion-skin papers are somewhat blurred apparently from the use of over-used carbon paper by the court personnel." He asserts that good quality xerox machines are available only in metro towns like Antipolo or Cainta, both in the province of Rizal, which is a good 35 to 40 kilometers distance from Tanay, Rizal.[11] Thus, the CA should have delved into and resolved the issue of whether or not a survey of the subject property is proper under the Rules of Summary Procedure, as amended.

The petitioner impugns the decision of the RTC, contending that it committed grave abuse of discretion when it reversed the decision of the MTC and ordered the conduct of a survey of the subject lot. He contends that an action for forcible entry is covered by the Rules on Summary Procedure which proscribes a survey of the subject property. Even if such a survey were allowed, the rules for ordinary civil action should apply, and not the Rules on Summary Procedure. According to the petitioner, a survey was unnecessary and irrelevant, as the appeal can and should be decided on the basis of the pleadings of the parties and their evidence on record.

In his comment on the petition, the respondent averred that the petitioner's petition for review under Rule 45 of the Rules of Court, as amended, was improper because the assailed RTC Decision was merely an interlocutory order. The respondent also asserted that even assuming that the petitioner had appended legible copies of the required pleadings, he still failed to comply with Section 2, Rule 42 of the Rules of Court, as amended.

For his part, the petitioner insists that the assailed Decision of the RTC is final and not merely interlocutory.

The petition is granted.

In his petition before the CA, the petitioner embodied the following certification:

4. CERTIFICATION THAT PETITIONER HASNOT COMMENCED ANY OTHER ACTION

Petitioner and his counsel certify herein as well as in the verification and certification page that they have not commenced any other action or proceeding before this Honorable Court, the Court of Appeals or any other court or agency.

To the best of their knowledge, no such action or proceeding is pending in the Supreme Court, the Court of

Appeals or any other tribunal or agency.

That if there is any such action or proceeding which is either pending or may have been terminated, the herein Petitioner and undersigned counsel shall state the status thereof; and if they should thereafter learn that a similar action or proceedings has been filed or is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency, they undertake to report the facts within five (5) days therefrom to the Court or agency wherein the original pleading and sworn certification contemplated herein have been filed.[12]

We believe that the foregoing is a substantial compliance of the Rules.

We have reviewed the records of the CA and find that the petitioner complied with Section 2, Rule 42 of the Rules of Court, as amended, which reads:

SEC. 2. Form and contents. – The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.

The petitioner shall also submit together with the petition a certification under oath that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The appended copies of the RTC and MTC Decisions as well as the Order of the RTC denying the petitioner's motion for reconsideration are legible enough. More importantly, the petitioner raised a very important issue in his petition which calls for a definitive resolution: whether or not under Section 10 of the Rules on Summary Procedure, the trial court may allow the survey of the subject property despite the parties' agreement to submit the case for decision without the need of a survey.

Rule 1, Section 6 of the Rules of Court provides that the said rules shall be liberally construed in order to promote their objective of receiving a just, speedy and inexpensive disposition of every action and proceedings. The settled rule is that litigations should, as much as possible, be decided on their merits and not on technicalities.[13] Every party litigant must be accorded the complete opportunity for the proper determination of the case, free from the unacceptable plea of technicalities.[14] The Court, in the exercise of equity and jurisdiction, may disregard procedural lapses to enable the case for its merits based on the records and the evidence of the parties.[15]

On the issue of whether or not a petition for review under Rule 42 of the Rules of Court was the petitioner's proper remedy from the Decision of the RTC, the same should be raised in the Court of Appeals, and not before this Court.

IN THE LIGHT OF THE FOREGOING, the petition is GRANTED. The records of the instant case are ordered REMANDED to the Court of Appeals for further proceedings.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Court of Appeals, Fourth Division. Penned by Justice Ramon A. Barcelona with Associate Justices Minerva P. Gonzaga-Reyes and Demetrio G. Demetria concurring.

[2] Rollo, pp. 44-47.

[3] Id. at 50-54.

[4] Id. at 55.

[5] Id. at 81.

[6] Id. at 87.

[7] Id. at 86-87.

[8] Id. at 112.

[9] Id. at 97-98.

[10] Id. at 28.

[11] Id. at 10.

[12] Rollo, pp. 23-24.

[13] Galdo v. Rosete, 84 SCRA 238 (1978).

[14] Heirs of Morales v. Court of Appeals, 67 SCRA 304 (1975).

[15] Tesorero v. Mathay, 185 SCRA 124 (1990).

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