

**CRESENCIANO DUREMDES, PETITIONER, VS. AGUSTIN DUREMDES, RESPONDENT.***G.R. No. 138256. November 12, 2003*

Ponente: CALLEJO, SR., J.

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This is a petition for review under Rule 45 of the 1997 Rules of Court, as amended, of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 34700 affirming with modification the Decision[2] of the Regional Trial Court, Branch 38, Iloilo City in Civil Case No. 16091 for recovery of possession, ownership and damages, and the Resolution[3] of the CA denying the motion for reconsideration of the said decision.

**The Antecedents**

Shirley Duremdes was the owner of a parcel of land identified as Lot No. 1786, Pcadm-478-D covered by Tax Declaration No. 14-033-0039. The parcel of land was located in Barangay Tupaz, Carles, Iloilo and had an area of 50,000 square meters. Cresenciano Duremdes and Hortencia Bataga, Shirley's parents, and the latter's brother Nelson Duremdes administered the property while Shirley was working abroad as a nurse. When she came back to the Philippines for a brief respite, she asked her parents and her brother to vacate the property because she had decided to sell it. Her parents and her brother refused. On May 24, 1984, Shirley sought the help of the Group Commander of the Civil Relations Group of the Office of the Civil Affairs of the Philippine Constabulary (PACLAP), Camp Delgado, Iloilo City for the eviction of her kins to no avail.[4] Nevertheless, Shirley agreed to sell the property to her father's brother, her uncle Agustin Duremdes. On May 31, 1989, Shirley executed a deed of conditional sale over the property in favor of Agustin for P40,000. Shirley acknowledged receipt of the said amount, and again asked her parents and brother to vacate the property. The latter adamantly refused.

In the meantime, Shirley again left for the United States of America to work as a nurse. Cresenciano still refused to vacate the property despite Agustin's demands for him to do so. Agustin then sought the assistance of the Presidential Assistance Committee, again, to no avail. Agustin also sought the assistance of the barangay captain. This time, Cresenciano alleged that the property was not in his possession but was occupied by an agricultural tenant, Herminio Tara, who also happened to be his brother-in-law. Agustin investigated the matter and discovered that Herminio had been a tenant of Cresenciano since February 3, 1979. This was later confirmed by a certification from the Ministry of Agrarian Reform. [5] Cresenciano's property was contiguous to the parcel of land Agustin had bought from Shirley.

On October 10, 1984, Agustin filed a Complaint[6] for recovery of possession, ownership and damages before the RTC of Iloilo City, Branch 38, against Cresenciano and Nelson Duremdes. He alleged that the defendants, who were only administrators of the subject property[7] while the previous owner (Shirley) was employed in the United States, refused to turn over the possession of the lot, for which reason he suffered damages.

In their answer with counterclaim, the defendants denied that they were the administrators of the land, and that they were the possessors of the same. They alleged that it was Nelson Duremdes who took care of the property in

behalf of Shirley, and that the present possessor was Herminio Tara, who claimed to be a tenant of the aforesaid property. The defendants alleged that the plaintiff knew that Herminio was in possession of the property. In fact, prior to the filing of the case, they had a conference regarding this controversy before the Ministry of Agrarian Reform in Balasan, Iloilo. The defendants also claimed that the damages allegedly suffered by the plaintiff had no factual and legal basis, and thus prayed for the dismissal of the complaint.

The plaintiff filed a motion for judgment on the pleadings. Despite the defendants' opposition, the trial court granted the motion of the plaintiff and rendered a Decision dated February 11, 1985. The dispositive portion of the decision reads as follows:

WHEREFORE, judgment is hereby rendered:

- Declaring the plaintiff as owner of the land in question;
- Ordering the defendants to vacate the land and deliver immediately possession of the same to the plaintiff;
- Ordering the defendants to deliver to the plaintiff the produce of the land since September 21, 1984, or its value to be computed according to prevailing market price until fully paid;
- Ordering the defendants to pay P1,000.00 as attorney's fees; plus
- Costs.
- The counterclaim is dismissed for lack of basis.

#### **SO ORDERED.[8]**

The defendants thereafter appealed the case to the Court of Appeals,[9] which rendered judgment reversing the decision of the trial court and remanding the case to the court a quo for further proceedings.[10] According to the appellate court:

It is true that the defendants-appellants admitted plaintiff's ownership over subject parcel of land. However, they have likewise denied being in possession of said lot. A question necessarily arises as to whether or not defendants- appellants are really in possession of the land in question or it is possessed by one Herminio Tara who is allegedly a tenant thereof. Certainly, these questions need to be ventilated and determined in a proper trial where parties can present their respective evidence. Judgment on the pleadings, even on this score alone, would surely place defendants-appellants in a quandary because they will be ordered to turn over possession of the land which they deny being in possession of in the first place. This, plus other issues postulated by the defendants-appellants in their Opposition to the Motion for Judgment on the Pleadings, certainly pose genuine issues which require the proper determination of the court for a more substantive resolution of the instant case.[11]

Dolores Duremdes, the plaintiff's wife, thereafter filed a Motion for Substitution[12] alleging that her husband, Agustin Duremdes, was now physically incapacitated due to a stroke. The court granted the motion. She thereafter filed a motion to admit an amended complaint where she reiterated the following prayer:

WHEREFORE, in view of the foregoing, it is most respectfully prayed of the Honorable Court that after due notice and hearing, judgment be rendered in favor of the plaintiff and condemns the defendants:

- To turn over possession and cultivation of the parcel of land described in paragraph 3 of the complaint to the plaintiff and to declare plaintiff to be the rightful owner of the said lot;
- To pay the sum of Fifty Thousand Pesos (P50,000.00) to compensate for the loss of produce of the land and the deprivation and enjoyment of the rights of the plaintiff;

- To condemn the defendants to pay incidental expenses of Five Thousand Pesos (P5,000.00);
- To condemn defendants to pay the sum of Ten Thousand Pesos (P10,000.00) as attorneys fees; and
- To pay moral damages in the sum of Fifty Thousand Pesos (P50,000.00).

Plaintiff prays [for] such other relief and/or remedy as maybe just and equitable under the premises.[13]

The motion was granted.[14] After trial on the merits of the case, the court a quo rendered a Decision[15] dated February 27, 1991 ordering the defendants to vacate the land and to pay damages to the plaintiff, thus:

WHEREFORE, premises considered, judgment is rendered ordering the defendants (and/or any person acting for and on their behalf) (1) to deliver to the plaintiff the 3-hectare riceland portion of subject Lot No. 1786, Pcadm-478-D; (2) to pay plaintiff jointly and severally, 12 cavans of palay annually, starting from the year 1984, representing the produce of the 3-hectare riceland portion, until said portion is delivered to plaintiff; and (3) to pay plaintiff P10,000.00 as attorney's fees.

Defendants' counterclaim is ordered dismissed for lack of merit.[16]

According to the trial court, the main issue to be resolved was whether or not the defendants were in actual possession of the land in question. It found that the claim of the defendant Cresenciano, that the actual possessor of the land was Herminio Tara, was part of a scheme to deprive the plaintiff of his right to possess the land. The court went on to explain that if the defendants could prove that the land was actually possessed by a tenant, then the latter could not be so dispossessed under the Land Reform Law. This would thereby achieve the defendant's objective of retaining the land in his possession. The trial court also made the following findings:

Taken together with the other circumstances surrounding this case, the fact that Shirley Amantillo went to the PACLAP to complain that her father, defendant Cresenciano Duremdes, refused to deliver the possession of the land which she had already sold to plaintiff has significant weight and consideration in favor of the latter. If defendant Cresenciano Duremdes in not in actual possession of the land, his daughter should not have complained against him for his refusal to deliver to plaintiff the possession thereof.

There is a veiled conspiracy between defendant Cresenciano Duremdes and his brother-in-law, Herminio Tara, which became all the more prominent and apparent when the DAR issued a certification that the said Herminio Tara is a registered tenant in a landholding owned by defendant Cresenciano Duremdes (Exh. "E"). Moreover, on cross-examination, defendant Cresenciano Duremdes confirmed that he is the Cresenciano Duremdes who is the owner of the land wherein Herminio Tara is a registered tenant (TSN, hearing of March 23, 1990, p. 7).

The opening of an account with the Rural Bank of Balasan (Iloilo) Inc. by Herminio Tara in the name of Agustin Duremdes was merely a part of the scheme and machination resorted to by the former in a veiled conspiracy with defendants to make it appear that Herminio Tara has been in actual possession of the land in question and that plaintiff refused to receive the rentals from his alleged tenant, Herminio Tara.[17]

The defendants filed a motion for reconsideration, which the trial court denied.[18]

#### The Case On Appeal

The defendants again elevated to the Court of Appeals[19] for the resolution of the following issues:

- A) Who actually are in possession of the property consisting of about two (2) hectares subject matter of this litigation;
- B) Since Herminio Tara admitted having been in actual possession of the property under litigation, and the share of the landowner Agustin Duremdes over the produce is being deposited with the Rural Bank of Balasan, should defendants be ordered to deliver the possession of the said land in favor of the plaintiffs?[20]

**A)**

Who actually are in possession of the property consisting of about two (2) hectares subject matter of this litigation;

**B)**

Since Herminio Tara admitted having been in actual possession of the property under litigation, and the share of the landowner Agustin Duremdes over the produce is being deposited with the Rural Bank of Balasan, should defendants be ordered to deliver the possession of the said land in favor of the plaintiffs;[20]

According to the defendants-appellants, the appellee was unable to possess the entire area of the subject lot because a portion of about two hectares was in the possession of Herminio Tara. In fact, a violent confrontation even ensued between appellee Agustin and Herminio when Agustin tried to take possession of the land, and Herminio suffered physical injuries when the incident occurred. The appellants also pointed out that despite all this, the appellee failed to implead Herminio as party-defendant.

It was also contended that when Shirley Duremdes complained to the PACLAP[21] against her father, she had not yet sold the property to the plaintiff. Her letter to the PACLAP was dated March 24, 1984 while the sale took place on March 31, 1984.[22] Aside from claiming that no meeting or conference ever transpired between Shirley Duremdes and the appellants before the PACLAP, the appellants also pointed out that the letter-complaint filed with the said office was against Cresenciano and Noel Duremdes, and not against Nelson Duremdes. Nelson Duremdes was not one of the defendants in the case. Because no member of the PACLAP testified regarding the letter, it practically had no probative value; the trial court thus gravely erred when it considered the said letter in ruling for the defendants. Furthermore, the lower court ignored Dolores' admission when she testified on direct and cross-examination that it was Noel Duremdes who was in possession of the land, and Herminio Tara's declaration that he was its present possessor.

The Court of Appeals upheld the trial court's ruling with modification in its Decision dated August 31, 1998. The dispositive portion reads as follows:

WHEREFORE, the decision appealed from with respect to Cresenciano Duremdes is AFFIRMED with the modification that the complaint against defendant-appellant Nelson Duremdes in Civil Case No. 16091 is hereby DISMISSED.[23]

According to the appellate court, the following circumstances indicate that Herminio was Cresenciano's tenant and, as such, was the present possessor of the subject property:

- In its reply to the letter-query of Agustin's counsel, the Agrarian Reform Team No. 189 of the then Ministry of Agrarian Reform informed that "per records of this office, Mr. Herminio Tara is a registered tenant in the landholding owned by Mr. Cresenciano Duremdes situated in Brgy. Bolo, Carles, Iloilo." (Exhibit "E")
- The said letter further disputes Cresenciano's allegation relating to Herminio's status as Agustin's tenant.
- The aforecited letter-reply vis-à-vis the certification of the Office of the Municipal Assessor (Exhibit "16") dated November 29, 1989 stating that Cresenciano does not own a property adjacent to Agustin's land clearly indicates that the land leased by Cresenciano and Noel to Herminio was Agustin's land.
- Agustin and Herminio's alleged "violent" confrontation took place on or before March 23, 1984 (Exh. 1) when the former found Herminio working on the subject land. At that time, the property was still owned by Shirley and administered by Noel Duremdes ("Noel"), son of Cresenciano.

- The Notices of harvest dated October 20, 1986, October 12, 1987 and September 5, 1988 (Exhibits "6", "7" and "8", respectively) are irrelevant and immaterial as they cover periods after the fact or filing of the complaint in the court a quo.
- The passbook purportedly showing bank deposits of Agustin's share in the harvest was opened only on October 1, 1984 after the institution of the instant case.[24]

However, the court also found that except for the certificate to file complaint issued by the Barangay Lupong Tagapamayapa, nothing in the documents and testimonies on record implicated appellant Nelson Duremdes although a certain "Noel," a son of Cresenciano, was mentioned on several occasions, he was not a party in the instant case. Hence, the court dismissed the case with regards to appellant Nelson Duremdes.

#### The Issues

According to the petitioner, the appellate court's decision clearly indicates its finding that Herminio Tara was working and leasing the land owned by the respondent, and that the former was working as an agricultural tenant on the subject land before ownership thereof passed to the respondent from Shirley Duremdes. Thus, Herminio Tara remained and should remain as such agricultural tenant over the subject land even if its ownership had already changed. The petitioner further contends that it is immaterial whose agricultural tenant Herminio Tara is. He also asserts that because a tenancy relationship is involved, jurisdiction over the case rests with the Department of Agrarian Reform and Adjudication Board (DARAB).

The petitioner asserts that, as the records of the case will show, he consistently raised the issue of the tenancy of Herminio Tara in the lower court, and later in the appellate court. He insists that the matter involving jurisdiction can still be raised before the Court because the CA, through its decision, brought the issue to the fore. The petitioner prays that the decision of the CA be set aside for lack of jurisdiction, as the subject real property is occupied and possessed by a duly registered agricultural tenant, who was not even impleaded as a party in the case.

In her Comment, the respondent moved for the dismissal of the complaint, on the ground that the petition for review was filed out of time. The period within which to file the petition for review expired on May 9, 1999; the petitioner filed the instant petition only after the lapse of 65 days therefrom. Thus, according to the respondent, it is clear from the facts and the records of the case that the petition for review was filed beyond the period allowed by the Court, and that the same was filed merely for purposes of delay and to subvert the ends of justice.[25]

The issues thus presented for the Court's resolution in the case at bar involve both procedural and factual matters: (1) whether or not the petition was filed out of time as to warrant its dismissal; (2) whether or not the DARAB has jurisdiction over the instant case, and if so, whether it can still exercise its jurisdiction, in view of an allegation of the existence of a tenancy agreement.

#### The Court's Ruling

A perusal of the records of the case indicates that the present petition for review on certiorari was indeed, filed out of time. The petitioner filed a motion for reconsideration of the CA Decision dated August 31, 1998 on September 24, 1998. The CA denied the motion in its Resolution dated March 10, 1999. Counsel for the petitioner was served with a copy of the CA Resolution denying the motion on March 24, 1999, and thereafter filed on April 8, 1999 a motion for extension of forty-five (45) days within which to file a petition for review.[26] The Court granted the motion in its Resolution dated June 16, 1999, but gave the petitioner only thirty (30) days from the expiration of the reglementary period within which to file the petition for review on certiorari, with a warning that no further extension would be given.[27] The petitioner thus had thirty (30) days from April 8, 1999 to file the

petition for review, or until May 9, 1999. The petition was filed only on July 8, 1999.[28] On this ground alone, the dismissal of the petition is inevitable.

Although it has been said time and again that litigation is not a game of technicalities, that every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved,[29] this does not mean that procedural rules may altogether be disregarded. Rules of procedure must be faithfully followed except only when, for persuasive reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.[30]

In the instant case, the respondent apologized to the Court and admitted his faux pas. In his reply, he offered the following reasons for non-compliance with the rules: (1) due to the busy schedule and other pending legal work, counsel for the petitioner was erroneously of the impression that the period granted by the Court was to start upon the receipt of the Court's resolution which granted the thirty-day extension; (2) the services of the said counsel were hired only when the present petition became necessary; and (3) the said misconception was "done in good faith."

This Court cannot countenance such flimsy and tux-worm excuses. Counsel for the petitioner, as a member of the bar, is presumed to know the law, particularly the rules of procedure. He cannot feign ignorance of the said rules. If we were to allow such lapses to go unnoticed, the administration of justice would be derailed; incompetent, irresponsible lawyers would soon permeate the Court.

The petitioner asserts that the issue in the present petition "is such that the case needs to be resolved on the merits and should not be dismissed on a mere technicality." The petitioner questions the finding of the Court of Appeals, that no tenancy agreement existed between the respondent and Herminio Tara. This is, however, a factual issue which is beyond the purview of this Court to act upon and resolve. The Court cannot be tasked to go over the proofs presented by the parties and analyze, assess and weigh them to ascertain if the trial court and appellate court were correct in regarding them superior credit.[31] The issue being raised by the petitioner does not involve a question of law, but a question of fact, not cognizable by this Court in a petition for review under Rule 45.[32]

It is a well-settled rule that findings of fact of the trial court, especially when affirmed by the Court of Appeals, are accorded the highest degree of respect, and generally will not be disturbed on appeal.[33] Such findings are binding and conclusive on the Court.[34] In *Spouses Tansipek v. Philippine Bank of Communications*,[35] we had the occasion to enumerate the exceptions to the rule, thus:

... (1) [W]hen the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. [36]

The instant case does not fall under any of the foregoing exceptions.

Neither can the petitioner find solace in the allegation that the jurisdiction in the instant case properly falls with the DARAB because of the existence of a tenancy agreement.

First. For the DARAB to have jurisdiction over the case, there must be a tenancy relationship between the parties.[37] In order for a tenancy agreement to take hold over a dispute, it is essential to establish all its indispensable elements, to wit:

1) [T]hat the parties are the landowner and the tenant or agricultural lessee; 2) that the subject matter of the relationship is an agricultural land; 3) that there is consent between the parties to the relationship; 4) that the purpose of the relationship is to bring about agricultural production; 5) that there is personal cultivation on the part of the tenant or agricultural lessee; and 6) that the harvest is shared between the landowner and the tenant or agricultural lessee.[38]

Second. The trial court found that no such tenancy agreement existed between the respondent and Herminio Tara, and that such allegation was a mere ploy to prevent the respondent from exercising dominion and ownership over the subject property. This was affirmed by the Court of Appeals. We find no cogent reason to reverse such finding.

Third. The petitioner is barred from raising the issue of jurisdiction. The petitioner actively participated in all stages of the instant case, setting up a counterclaim and asking for affirmative relief in his answer.[39] He failed, however, to question the court's jurisdiction over the suit. After relying on the jurisdiction of the regular courts, he cannot be permitted to turn around and question it. It is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction.[40]

IN VIEW WHEREOF, the petition is hereby DENIED for lack of merit, and the decision of the Court of Appeals is AFFIRMED in toto.

Costs against the petitioner.

**SO ORDERED.**

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

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[1] Penned by Associate Justice Bernardo P. Abesamis with Associate Justice Salome A. Montoya and then CA Associate Justice Conchita Carpio-Morales concurring.

[2] Penned by Judge Roger B. Patricio.

[3] Rollo, pp. 42-43.

[4] Exhibit "H."

[5] Exhibit "E."

[6] Records, pp. 1-4.

[7] Annex "D," Records, p. 9.

[8] Id. at 37.

[9] Docketed as CA- G.R. CV No. 05807, promulgated on January 21, 1988; id. at 42.

[10] Penned by Associate Justice Oscar R. Victoriano with Associate Justices Ricardo P. Tensuan and Venancio D. Aldecoa, Jr. concurring.

[11] Records, p. 45.

- [12] Id. at 53.
- [13] Id. at 57-58.
- [14] Id. at 62.
- [15] Id. at 223-229.
- [16] Id. at 229.
- [17] Id. at 228.
- [18] Id. at 245.
- [19] Docketed as CA- G.R. CV No. 34700.
- [20] CA Rollo, pp. 38-39.
- [21] Annex "B," Records, p. 7.
- [22] CA Rollo, p. 40.
- [23] Id. at 125.
- [24] Id. at 123-124.
- [25] Rollo, p. 75.
- [26] Id. at 44-45.
- [27] Id. at 8.
- [28] Id. at 22.
- [29] Cleofe Norris v. Hon. Jose J. Parentela, Jr., G.R. No. 143216, February 27, 2003.
- [30] Sebastian v. Hon. Morales, G.R. No. 141116, February 17, 2003, citing Banco Filipino Savings and Mortgage Bank v. Court of Appeals, 334 SCRA 305 (emphasis supplied).
- [31] Chan Sui Bi v. Court of Appeals, 341 SCRA 364 (2000).
- [32] Cosmos Bottling Corporation v. National Labor Relations Commission, et. al., G.R. No. 146397, July 1, 2003.
- [33] Lagman v. People, 371 SCRA 686 (2001).
- [34] Pua v. Court of Appeals, 345 SCRA 233 (2000).
- [35] 372 SCRA 456 (2001).**
- [36] Id. at 460-461.
- [37] Morta, Sr. v. Occidental, 308 SCRA 167 (1999).
- [38] Laguna Estates Development Corporation v. Court of Appeals, 335 SCRA 29 (2000).
- [39] Centeno v. Centeno, 343 SCRA 153 (2000).
- [40] Celendro v. Court of Appeals, 310 SCRA 835 (1999), citing Tijam v. Sibonghanoy, 23 SCRA 29 (1968).

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