

SPS. REV. ELMER J. BAÑES & ANGELA BAÑES, SPS. REV. MANUEL DEL ROSARIO & GUIA DEL ROSARIO, AND PRESENT: SPS. PEDRO SAN RAMON & NENITA SAN RAMON, PETITIONERS, VS. LUTHERAN CHURCH ...

G.R. No. 142308. November 15, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This refers to the petition for review on certiorari under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 44333 dated November 12, 1999 and its Resolution[2] dated February 15, 2000 denying petitioners' motion for reconsideration.

The facts are as follows:

On August 16, 1990, certain members of the Lutheran Church in the Philippines (LCP) filed an action against its President, Thomas Batong, and six other members of the Board of Directors,[3] before the Securities and Exchange Commission (SEC), for accounting and damages with prayer for preliminary injunction and appointment of a management committee. This resulted in the division of the LCP into two factions, namely: the Batong/ Saguilayan group which includes herein petitioners and the Ladlad/Almazan group which includes herein respondents Almazan, et al.

On October 16, 1992, the SEC issued a writ of preliminary injunction, which reads as follows:

...It is hereby ordered that you, the above-named respondents,[4] your agents, representative or any person acting for or under your instruction refrain from representing yourselves or from acting as board of directors or officers of the Lutheran Church in the Philippines, Inc. (LCP) and from holding any convention or general or special membership meeting as well as election of the members of the LCP Board of Directors, until further order from this Hearing Officer.[5]

By virtue of said injunction, on August 13, 1993,[6] herein respondents, with the aid of certain members of the Department of Interior and Local Government, the Philippine National Police, and Sheriff Primo Alimurong of the Regional Trial Court (RTC), Manila, tried to dispossess petitioners, as previous clergymen and occupants of the residential houses located at 4443 Old Sta. Mesa Street, Manila, owned by LCP and form part of the compound where the principal office of LCP is located. Petitioners however refused to leave the same. Thus, the main gate of the subject property was padlocked by respondents, preventing the petitioners and their families from going in and out of said place. Security guards were also stationed at the premises with an instruction not to allow petitioners entry and exit.[7]

Almost a month thereafter, on or September 9, 1993, petitioners Manuel G. Del Rosario and Elmer J. Bañes wrote letters addressed to Rev. Eduardo Ladlad, as LCP President.

Del Rosario's letter reads:

Dear Rev. Ladlad:

Greetings in Christ's love and peace.

This is to request for an extension of my family's stay at the residence we are presently staying and which I was told to leave on or before September 10, 1993. If it is all possible, please let us stay up to the Schools' semestral break so as to give us sufficient time to look for a place where we could settle in and which will not so much affect the travel time of my girls to go to and come home from school.

We hope that your Board will favorably grant this request for the sake of Christian charity with which we are making the appeal. And, thank you so much for the benign audience you accorded us last night.

In Christ,

(sgd.)

Manuel G. del Rosario

(In his own handwriting)

P.S.Ed,

I assure you that we will leave the place even before the semestral break as soon as we get a place to move into. Hope you take much considerations on the difficulty of looking for a place we can afford to stay.

Ditto[8]

Bañes's letter reads as follows:

Dear Rev. Ladlad,

Grace, Mercy and Peace from God our Father and Lord!

The house where we live in for some two years now, meant so many things to us...

...

Now we don't have a place to go. I'm sure Eddie, you know my situation. We can't hardly afford to rent a decent house. Please do extend your helping hand to me and my family.

May I propose that we stay in the Caloocan Property – the lower portion of the house. The Upper portion is for Rev. Saquilayang's office and Chapel of Immanuel Lutheran Church.

We will definitely leave the Yellow house once we find a place to live.

Thank you very much.

May we expect a favorable response soonest.

...

In Christ,

(sgd)

Rev. Elmer J. Bañes[9]

Petitioners Bañes and Del Rosario eventually left the premises.[10] Petitioners-spouses San Ramon did not write any letter but they were able to leave the premises by befriending the guards posted at the gate.[11]

On December 3, 1993, petitioners filed an action for forcible entry with prayer for issuance of temporary restraining order and preliminary mandatory injunction against the respondents herein. Metropolitan Trial Court

(MeTC), Branch 13, Manila granted petitioners' prayer for the issuance of temporary restraining order.[12] The case, docketed as Civil Case No. 142991-CV, was subsequently raffled to MeTC, Branch 7 and on March 2, 1994, the court, through Judge Emelita Habacon-Garayblas, issued an order granting petitioners' prayer for injunctive relief, pertinent portions of which read:

...it appearing that plaintiffs are suffering and will continue to suffer great and irreparable damage and injury unless restored in the physical possession of the premises in dispute; and it further appearing that at present defendants threaten to continue demolishing the houses of the plaintiffs on the basis of these considerations, the Court finds that the issuance of a writ of preliminary mandatory injunction pending final determination of the principal issues is proper and in order. The Court therefore resolves to grant the application for writ of preliminary mandatory injunction.[13]

On March 5, 1994, respondents filed a (belated) motion to suspend resolution of the prayer for issuance of preliminary mandatory injunction and for inhibition. On March 16, 1994, Judge Habacon-Garayblas inhibited herself from further hearing the case and ordered its record to be returned to the office of the Executive Judge for re-raffle. The case was re-raffled to Branch 18 on March 18, 1994.[14]

Respondents then went to the RTC by way of prohibition with prayer for the issuance of temporary restraining order and preliminary mandatory injunction, docketed as Civil Case No. 94-69789, questioning the correctness of the issuance of preliminary mandatory injunction in favor of the petitioners. On March 21, 1994, RTC, Branch 42, Manila, issued a temporary restraining order in favor of herein respondents.[15] On April 8, 1994, the RTC Branch 42, Manila issued an Order stating that inasmuch as the case emanated from a case before the SEC, respondents are entitled to the injunctive relief prayed for.[16] Pertinent portions of said Order read:

On the petitioners' (herein respondents) application for a writ of preliminary injunction, admittedly the parties in the case before the lower court are members of the Lutheran Church of the Philippines. And the evidence submitted by the petitioners, as well as the transcript of the proceedings in the lower court which were attached to the respondents' opposition to the application for preliminary injunction established that the case in the lower court is an off-shoot of a case that emanated from a case before the Securities and Exchange Commission, whose orders were elevated to the Court of Appeals.

From the admitted facts, as well as evidence adduced, this Court finds that the petitioners are entitled to the injunctive relief prayed for.

WHEREFORE, upon the filing of a bond in the amount of Fifty Thousand Pesos (P50,000.00) let a writ of preliminary injunction be issued enjoining the respondents, particularly the Presiding Judge of the Metropolitan Trial Court from further conducting proceedings in Civil Case No. 142991 until further orders from this Court.[17]

Petitioners elevated said Order to the CA, docketed as CA-G.R. SP No. 34504 via a petition for certiorari, which rendered a decision on October 13, 1995, annulling and setting aside the injunction issued by the RTC, the fallo of which reads:

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is GRANTED. The assailed orders are hereby ANNULLED and SET ASIDE and the writ of preliminary injunction issued by respondent court is DISSOLVED.

SO ORDERED.[18]

Respondents' motion for reconsideration was denied.

The case was thereafter remanded to the MeTC, Branch 18, presided by Judge Thelma Ponferrada who rendered her decision dated May 2, 1996, thus:

The fact of dispossession of the subject property is not disputed. The sole issue as defined in the preliminary conference order of January 16, 1996... is whether or not such dispossession constitutes forcible entry under Section 1, Rule 70 of the Rules of Court.

From the evidence on record, the Court believes and so finds that the dispossession of the subject property was effected without the required attendant circumstances of force, intimidation, threat, strategy or stealth.

...

WHEREFORE, judgment is hereby rendered dismissing this case without pronouncements as to costs.[19]
(Emphasis supplied)

In ruling that there was no force, intimidation, threat, strategy and stealth, Judge Ponferrada gave weight to: the letter of petitioner Rev. Elmer Bañes to the LCP President asking that they be allowed to live in the LCP's Caloocan property and signifying that they (Spouses Bañes) will leave the "yellow house" once they find another place to live in; the testimony of petitioner Angela Bañes that the sheriff did not approach her concerning the enforcement of the writ and that she is not aware that the sheriff approached her husband; the testimony of petitioner Nenita San Ramon that she and her husband were able to leave the premises by befriending the guard posted in their compound; and the joint affidavit of the petitioners which stated that the guards and the counsel of LCP, Atty. Almazan, stopped Nenita San Ramon from leaving the premises to prevent her from appearing in the criminal complaint she filed against them.[20]

Petitioners appealed the MeTC decision to the RTC, docketed as Civil Case No. 96-79078. The RTC, on April 15, 1997, reversed and set aside the MeTC decision.[21] The decretal portion of the RTC decision reads:

WHEREFORE, on the basis of the foregoing considerations, the decision of the lower court is hereby set aside and a new one is hereby entered:

- Ordering the defendants and those who derived possession from them to vacate, surrender and restore possession of the questioned premises to the plaintiffs;
- Ordering defendants to jointly and solidarily pay each of the plaintiffs' spouses the sum of P5,000.00 a month, starting from October 15, 1993 until defendants vacate and surrender the questioned premises to the plaintiffs, as and for reasonable compensation for the use and occupation of the premises;
- Ordering defendants to jointly and solidarily pay each plaintiff spouses the sum of P20,000.00 as and for attorney's fee; and
- The cost of suit.[22]

Respondents thereafter went to the CA on a petition for review, docketed as CA-G.R. SP. No. 44333. On November 12, 1999, the CA rendered herein assailed judgment wherein it found that while herein respondents (petitioners in the CA) committed acts contrary to what is sanctioned by the laws, still, herein petitioners (respondents in the CA) are not entitled to favorable judgment in their forcible entry case as evidence show that they were willing to vacate the premises, thus:

Petitioner in utilizing the preliminary injunction order of SEC in evicting the respondents from the subject premises, indeed committed an act contrary to what is sanctioned by the laws...

...

Respondent court erred in failing to consider the above-quoted letters to the president of LCP. For indeed, the letter shows the willingness of the private respondents to voluntarily vacate the subject premises, only they were requesting for an extension of their stay there. Which was obviously allowed by the petitioners, since the

respondents were able to stay there until October 1993, and respondents spouses were allowed, as requested, to stay at the Caloocan property of LCP without paying rental. Such expression of willingness to voluntarily vacate the subject premises clearly negates the elements of force and intimidation in a forcible entry case.

Further, the letter of Rev. Del Rosario to the president of LCP convinced this Court that there is lack of force and intimidation in the present case to constitute a forcible entry. . . .

...

Respondent court also erred in failing to consider the testimony of private respondent Angela Banes on February 17, 1994, proving that their request to allow them to transfer to the Caloocan property of LCP was given due course by the petitioners. . . .

The above-quoted testimony of Angela Banes (sic) renders the award of damages, in the amount of P5,000.00 monthly as reasonable rent in favor of the respondents by the respondent court, improper, as the respondents were allowed by LCP to stay in the said property without payment of rental. Therefore, since private respondents were allowed to stay at the petitioner's place for free, they could not possibly spend for rental. Clearly, respondent court erred in awarding payment of reasonable rent in favor of the respondents.

WHEREFORE, foregoing premises considered, finding cogent reasons to reverse the decision of the Regional Trial Court, Branch 34, Manila, dated April 15, 1997 in the Civil Case No. 96-79078, entitled "Sps. Rev. Elmer J. Banes, et al. vs. Oscar Almazan, et al., the same is hereby SET ASIDE, adopting the decision of Metropolitan Trial Court of Manila, Branch 18, and present petition for review is hereby DISMISSED for lack of merit.

No pronouncement as to cost.

SO ORDERED.[23]

Their motion for reconsideration having been denied,[24] petitioners now come before this Court alleging that the CA erred:

I

...IN IGNORING THE LAW OF THE CASE WITH RESPECT TO THE ISSUE OF DISPOSSESSION OF THE PRIVATE RESPONDENTS WHICH WAS ALREADY LITIGATED BY THE PARTIES AND ESTABLISHED IN CA-G.R. NO. 34504-Sp. Proc. No. (sic)

II

...IN OVERTURNING THE FACTUAL FINDINGS OF THE TRIAL COURT ON THE PRESENCE OF FORCE AND INTIMIDATION IN THE DISPOSSESSION OF PETITIONERS BECAUSE SAID FINDINGS ARE ENTITLED TO GREAT WEIGHT AND RESPECT AS THE TRIAL JUDGE PERSONALLY HEARD THE EVIDENCE

III

...IN ALLOWING PRIVATE RESPONDENTS TO RAISE THE ABSENCE OF FORCE OR INTIMIDATION AS A DEFENSE CONSIDERING THAT (1) THIS DEFENSE WAS NOT TIMELY RAISE (SIC) BY PRIVATE RESPONDENTS IN THEIR ANSWER; AND (2) RESPONDENTS JUDICIALLY ADMITTED IN THEIR PLEADINGS THE USE OF FORCE OR INTIMIDATION TO DISPOSSESS PETITIONERS

IV

...IN RULING THAT NO FORCE OR INTIMIDATION WAS EMPLOYED IN DISPOSSESSING

PETITIONERS AS THIS IS NOT IN ACCORD WITH THE EVIDENCE AND INCONSISTENT WITH THE FINDINGS OF THE TRIAL JUDGE WHO HEARD THE EVIDENCE AND THE RTC

V

...IN RULING THAT PETITIONERS ARE NOT ENTITLED TO ATTORNEY'S FEES AND REASONABLE COMPENSATION FOR THE PREMISES AS THIS IS NOT IN ACCORD WITH SECTION 17, RULE 70 AND THE RULE LAID DOWN IN VAZQUEZ VS. GARCIA[25]

Petitioners argue that: it is settled in the October 13, 1995 Decision of the CA, in CA-G.R. SP No. 34504, that the acts of respondents in forcibly evicting the petitioners under the guise of a writ of injunction issued by the SEC is not sanctioned by law;[26] an entry of judgment of the said decision was made on June 7, 1996, thus said issue is barred by the rule on conclusiveness of judgment as provided in Section 49, Rule 39 of the Rules of Court;[27] the parties already litigated the issue of dispossession and the CA declared that petitioners had been in possession of the subject premises long before the SEC case was filed and it was only because petitioners refused to recognize the duly constituted board of directors that they were made to suffer by being taken out of the house they had long been occupying; the findings of Judge Habacon-Garayblas of MeTC Branch 7, Manila, that respondents, together with several armed security guards, forcibly took possession of the residential houses, occupied by petitioners, and evicted petitioners therefrom are also entitled to great weight; the CA erred in allowing the respondents to belatedly raise the defense that petitioners voluntarily vacated the subject premises because an appellant can only include in his assignment of errors those questions of law or fact that have been raised in the court below and which are within the issues framed by the parties; the CA's findings that there was an absence of force and intimidation to dispossess petitioners directly conflict with the findings of the RTC; the RTC's conclusions are consistent and find basis in the original findings of Judge Habacon-Garayblas who actually heard and received the evidence; the CA, in CA-G.R. SP No. 44333, held that petitioners offered no resistance to their illegal eviction hence no force or intimidation was employed, but, there is no necessity that the force offered or intended to be offered be resisted if the failure to resist is due to intimidation or a well founded belief that resistance will be useless; the CA, in CA-G.R. SP No. 44333, erred in ruling that petitioners are not entitled to attorney's fees and reasonable compensation for the premises; the award of reasonable compensation is warranted under Section 17, Rule 70 in forcible entry cases and irrespective of whether the plaintiff is paying rents thereon or not; as ruled in Vazquez vs. Garcia which was cited in the RTC decision, the plaintiff steps into the shoes of the lessor and as such cannot recover damages other than the reasonable value of the use and enjoyment of the property.[28]

Petitioners then prayed that the decision dated November 12, 1999 of the CA be reversed and set aside, the writ of preliminary injunction issued by the same be dissolved and the decision dated May 2, 1996[29] of the RTC of Manila in Civil Case No. 96-79078 be affirmed in toto.[30]

Respondents in their Comment contend that: petitioners were former clergymen of the LCP, who, during their tour of duty, were given the privilege to use and occupy the subject properties not in their own right but as mere agents/representatives of respondent LCP; petitioners admitted this, as manifested by their letters to the officers of LCP asking for an extension of time to stay at the subject premises and look for a new place to live in; eventually, petitioners transferred to another property also owned by respondent LCP without paying any rents thereon; petitioners filed a complaint for forcible entry against respondent LCP and its officers a few months after they were recalled by respondents and despite being allowed to stay in the subject premises in accordance with their letters requesting for extension to stay therein; the case for forcible entry has no basis in fact and in law; and the November 12, 1999 decision of the CA in CA-G.R. SP No. 44333 has become final and executory and can no longer be reviewed by this Court since the motion for reconsideration earlier filed by petitioners with the CA was

denied for being pro forma as "it has not raised any new issue or substantial argument so as to merit its grant," and therefore, it has not interrupted the time to appeal.[31]

On the issues raised by petitioners, respondents counter that: the ruling in CA-G.R. SP No. 34504 cannot be considered as the law of the case in the present case since the two cases involved different issues; CA-G.R. SP No. 34504 dwelt on the writ of injunction issued by the trial court and reached the CA by certiorari while the present case involves the alleged forcible entry committed by respondents and reached the CA by way of petition for review; petitioners who participated in the proceedings before the MeTC of Manila, Branch 18 and the appeal proceedings before the RTC of Manila, Branch 34 are also estopped from raising this issue; petitioners did not possess the subject properties in their own right but as mere agents and/or representatives of the respondent LCP, thus, they never had any cause of action to file a case for forcible entry; it was Branch 18 of the MeTC of Manila which was tasked to rule on the main issue of alleged forcible entry and said court held in its May 2, 1996[32] decision that the dispossession of the petitioners was effected without force, intimidation, threat, strategy or stealth; petitioners were willing to voluntarily leave the subject premises and merely requested for an extension of their stay therein, showing there was no force, intimidation or stealth; furthermore, such request was allowed as petitioners were able to stay thereat until October 1993; the absence of force, intimidation, stealth and strategy was also confirmed by the CA; and there being no forcible entry in this case, there can be no justification for the award of damages and/or attorney's fees and it will be absurd for the respondent LCP to pay rentals for the use of its own properties unto its own former employee acting as an agent of the former.[33]

Before going to the merits, the Court shall first address a matter raised by respondents, i.e., considering that the motion for reconsideration filed by petitioners in CA-G.R. SP No. 44333 was denied for being pro forma, said motion did not toll the period of filing an appeal thus the decision of the CA on November 12, 1999 has become final.

True, a pro forma motion for reconsideration does not suspend the running of the period to appeal.[34] However, it is also axiomatic that Rules on the perfection of appeals must occasionally yield to the loftier ends of substantial justice and equity.[35] In the present case, petitioners filed their motion for extension of time to file a petition for review within 15 days from receipt of the denial of their motion for reconsideration of the decision in CA-G.R. SP No. 44333, which was granted. Then they filed their petition for review with this Court within the extended period. Under the premises and considering the merits of the case which ultimately negate the finding of the CA that the motion for reconsideration was pro forma, justice would be better served if we consider the present petition for review as duly filed.

The crux of the present petition is: Whether petitioners were removed from the premises by force, intimidation, threat, strategy or stealth.

Petitioners argue that the CA, in CA-G.R. SP No. 34504, already ruled that the act of respondent LCP in dispossessing petitioners of the subject property is not sanctioned by law and that it was only because petitioners refused to recognize the new set of directors that they were made to suffer by taking them out of the house they have been occupying. Such findings, petitioners claim, should be considered as the law of the case.

We are not persuaded.

Law of the case is the opinion delivered on a former appeal.[36] It applies to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal.[37] It further means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which

such decision was predicated continue to be the facts of the case before the court.[38]

As a rule, a decision on a prior appeal of the same case is held to be the law of the case whether that question is right or wrong, the remedy of the party deeming himself aggrieved being to seek a rehearing.[39] Indeed, courts must adhere thereto, whether the legal principles laid down were "correct on general principles or not," or "whether the question is right or wrong"[40] because public policy, judicial orderliness and economy require such stability in the final judgments of courts or tribunals of competent jurisdiction.[41]

In this case however, a review of the decision of the CA in CA-G.R. SP No. 34504, which petitioners claim should be considered as the law of the case with respect to the matter of dispossession made by the respondents, reveals that what the CA resolved in said case was not the fact of dispossession of petitioners but whether the controversy falls under the jurisdiction of regular courts or with the SEC which would justify an injunction to stop the proceedings before the MeTC. It said:

. . . We...deem it necessary to settle the issue of whether or not the action for forcible entry in this particular case arose out of an intra-corporate controversy such that it is the Securities and Exchange Commission (SEC) and not the ordinary court which has jurisdiction over the same.[42]

...

Although the controversy is between a religious corporation and its members regarding the possession of corporate property, We are of the opinion that the primary concern of the petitioners is to be relieved of the unlawful and violent acts employed by the private respondents which amounted to the disturbance of the former's quiet and peaceful possession thereof.[43]

Said decision made it plain that it has not made any factual findings yet but resolved the matter based only on the pleadings submitted by the parties. We quote:

From the allegations of the complaint in the forcible entry case (Civil Case No. 142991) with the MTC (sic) of Manila, Branch 18, the existence of an intra-corporate relationship between the parties is not clearly evident notwithstanding the fact that the Lutheran Church in the Philippines (LCP) was a named defendant. A perusal of the complaint reveals that the petitioners, plaintiffs therein were in actual and peaceful possession of the subject premises since 1980 by virtue of their position as clergymen of the LCP who were entitled to housing privileges and that sometime in August 1993, they were forced to vacate the same by people "purporting to act in behalf of LCP"... supposedly sanctioned by a writ of injunction issued by the SEC.

With respect to petitioners Pedro and Nenita San Ramon, they allegedly executed an agreement with the LCP wherein she was to undertake the repairs of the house and pay P6,000.00 a month as rent.

It is clear therefrom that petitioners had been in possession of the property in question from 1980 and even at the time the SEC case was instituted by the LCP. It was in 1993 when the private respondents ousted petitioners from the property allegedly with the use of force, threat and intimidation.

...

All the elements necessary to establish a case for forcible entry were sufficiently alleged by the petitioners. For the private respondents to enforce their legal right to possession, they should have resorted to the proper action in law.

...

The acts of the private respondents as alleged by the petitioners in forcibly evicting them under the guise of a writ of injunction issued by the SEC is not sanctioned by law. While among the acts sought to be enjoined by the writ against the illegally constituted board and their representatives is the holding of LCP properties, the

said writ cannot be validly utilized herein.[44] (Emphasis supplied)

Petitioners capitalize on the statement of the CA that:

Suffice it to state that petitioners had been in possession of the subject premises long before the SEC case was filed. However, because of the fact that petitioners refused to recognize the duly constituted board of directors, they are now made to suffer the consequences of their acts by being taken out of the possession of the house they had long been occupying.[45] (Emphasis supplied)

Nonetheless, such statement should be qualified by the fact that the CA merely relied on the allegations made by the petitioners in their complaint in reaching its conclusion that the regular courts have jurisdiction on the case. As pronounced by the CA near the end of its decision:

Hence, in the light of the foregoing, We find that the respondent judge acted with grave abuse of discretion amounting to lack of jurisdiction when it issued the assailed orders. Considering that the issue in forcible entry cases is one of prior possession, such issue may be properly resolved in the ordinary courts by applying civil law principles. The authority of the SEC to settle this issue cannot be conceded.[46]

Since a reading in its entirety of the decision of the CA in CA-G.R. SP No. 34504 reveals that no factual conclusions were made yet, particularly on the matter of dispossession, the doctrine of the law of the case cannot apply in this case.

Now on the matter of whether there was force, intimidation, threat, strategy or stealth in this case.

There is forcible entry or desahucio when one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy or stealth. In such cases, the possession is illegal from the beginning and the basic inquiry centers on who has the prior possession de facto.[47] In filing forcible entry cases, the law tells us that two allegations are mandatory for the municipal court to acquire jurisdiction: first, the plaintiff must allege prior physical possession of the property, and second, he must also allege that he was deprived of his possession by any of the means provided for in Section 1, Rule 70 of the Rules of Court i.e., by force, intimidation, threat, strategy or stealth.[48] It is also settled that in the resolution thereof, what is important is determining who is entitled to the physical possession of the property.[49] Indeed, any of the parties who can prove prior possession de facto may recover such possession even from the owner himself[50] since such cases proceed independently of any claim of ownership and the plaintiff needs merely to prove prior possession de facto and undue deprivation thereof.[51]

In order to constitute force that would justify a forcible entry case, the trespasser does not have to institute a state of war. The act of going to the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property which is all that is necessary and sufficient to show that the action is based on the provisions of Section 1, Rule 70 of the Rules of Court.[52]

As expressly stated in David vs. Cordova[53]

...The words "by force, intimidation, threat, strategy or stealth" include every situation or condition under which one person can wrongfully enter upon real property and exclude another, who has had prior possession therefrom. If a trespasser enters upon land in open daylight, under the very eyes of the person already clothed with lawful possession, but without the consent of the latter, and there plants himself and excludes such prior possessor from the property, the action of forcible entry and detainer can unquestionably be maintained, even though no force is used by the trespasser other than such as is necessarily implied from the mere acts of planting himself on the ground and excluding the other party.[54]

In this case, the very testimony which was quoted by Judge Ponferrada in concluding that there was no force

mentions the presence of guards at the premises which prevented the ingress and egress of petitioners from the premises. Said portion reads:

...Nenita San Ramon testified in this wise:

Q

When did you leave the premises Madam witness?

A.

I left on August 27, sir.

Q.

Why did you leave the premises?

A.

Actually, according to the guard, upon order of Atty. Almazan, the people inside cannot come out of the compound, sir.

Q.

And so what happened next?

A.

I tried to befriendly (sic) with the guard and they looked for Atty. Almazan. And then when they found out that Atty. Almazan was not in the vicinity, they told me that I can go out of the compound sir.

Q.

Who was with you if any, when you left the premises?

A.

My husband sir.

Q.

Who else?

A.

None, sir, except my husband sir.

Q.

Were you allowed to return to the compound, after you left on August 27, madam witness?

A.

No more sir.

Q.

Who prohibited you from entering?

A.

The guard sir.

Q.

Were you able to bring out with you any items from your house?

A.

Our dresses only.[55]

Clearly, the presence of such men in the subject property restricting petitioners' mobility constitutes force contemplated by Section 1, Rule 70 of the Rules of Court.

The MeTC, through Judge Ponferrada, and the CA in the herein assailed decision ratiocinated that since petitioners Bañes and Del Rosario wrote the LCP through its president, on September 9, 1993, months after respondents sought the ouster of petitioners from the property, expressing that they are willing to vacate the premises upon finding another place to live in, no force was employed by the respondents, thus there was no forcible entry.

We do not agree.

It is true that petitioners Bañes and Del Rosario wrote LCP expressing their willingness to voluntarily vacate the premises upon finding another place to live in, but this is after respondents had padlocked the premises and used armed men to prevent their coming to and from the premises. Otherwise stated, said letters do not negate the initial use of force by respondents which constituted forcible entry. It is undisputed that respondents owned the property occupied by petitioners, still their use of force in evicting petitioners therefrom was not justified.

Indeed, regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror.[56] The owner who has title over the property cannot take the law into his own hands to regain possession of said property.[57] He must go to court.[58]

Sec. 17, Rule 70 of the Rules of Court provides that:

Sec. 17. Judgment. – If, after trial, the court finds that the allegations of the complaint are true, it shall render judgment in favor of the plaintiff for the restitution of the premises, the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises, attorney's fees and costs. If it finds that said allegations are not true, it shall render judgment for the defendant to recover his costs. If a counterclaim is established, the court shall render judgment for the sum found in arrears from either party and award costs as justice requires.

However, while we find that there was forcible entry in this case, we cannot grant the prayer of petitioners-spouses Bañes that they be restored to the subject premises. It is established that they stayed on the

property for free as privilege of petitioner Elmer Bañes as a clergyman of LCP and that after the initial forcible entry of respondents, petitioner Elmer Bañes expressed, through his letter, his willingness to vacate the property upon finding a new place to live in and proposed that he stay in the Caloocan property of respondent LCP. It is on record that the spouses Bañes are now staying in another property owned by the LCP in Caloocan City without paying rent.[59] It can be said, therefore, that they have lost their cause of action to ask for restitution having transferred, as they have requested, to another property of LCP without paying any rentals.

The situation is different insofar as petitioners spouses Del Rosario and spouses San Ramon are concerned. Evidence do not disclose that they asked for or were given by LCP another place to stay in.

We are therefore left with no recourse but to affirm the RTC in Civil Case No. 96-79078 ordering the respondents and those who derived possession from them to vacate, surrender and restore possession of the questioned premises to petitioners Del Rosario and San Ramon. This, notwithstanding the reality that the stay of petitioners Del Rosario is dependent on whether the latter still has the privilege to stay in the premises as a clergyman of respondent LCP. Said issue is best resolved in an action for unlawful detainer which respondents should have filed against petitioners in the first place.

Likewise, the claim that petitioners-spouses San Ramon had no valid lease contract with respondent LCP is not a proper defense in the forcible entry case filed by herein petitioners inasmuch as petitioners-spouses San Ramon, just like petitioners-spouses Del Rosario, ought not to have been forcibly driven out of the premises without due process of law which is the filing of the proper unlawful detainer case against them in the proper court by respondent LCP instead of it making use of the writ of preliminary injunction issued by the SEC in forcing them to leave the premises.

Respondents cannot justify their forcible entry in the premises occupied by petitioners by claiming that the latter have no valid right to the continued possession of the property. Respondents should have filed the appropriate unlawful detainer case against them instead of forcing them out of the premises.

Furthermore, although we are affirming the RTC Decision dated April 15, 1997 in Civil Case No. 96-79078 that there is forcible entry committed by respondents against petitioners, we find it not equitable and not within the contemplation of the above-quoted provisions of Section 17, Rule 70 that petitioners be awarded by the RTC the amount of P5,000.00 a month as reasonable compensation for the use and occupation of the premises. Evidently, that portion of Section 17, Rule 70 which awards reasonable compensation for the use and occupancy of the premises refers to unlawful detainer cases and not to forcible entry suits like the present case.

If at all, the rentals that petitioners could have been entitled to would be those rentals which petitioners had to pay for the use of the houses where they eventually transferred. However, it is undisputed that petitioners-spouses Bañes transferred to another property of respondent LCP at Caloocan City, without being charged any rentals. Thus, they are not entitled to the amount of P5,000.00 a month awarded by the RTC.

With regard to petitioners-spouses Del Rosario and spouses San Ramon, they failed to present evidence showing that they were paying rentals for the places they are now occupying. Hence, the RTC award of P5,000.00 has no valid basis.

We sustain the award for attorney's fee in accordance with Rule 70,

Sec. 17 of the Rules of Court[60] and Art. 2208 of the Civil Code.[61]

WHEREFORE, the petition is GRANTED. The CA Decision in CA-G.R. SP No. 44333 dated November 12, 1999 is annulled and set aside. The Decision of the Regional Trial Court, Manila, Branch 34 in Civil Case No.

96-79078 dated April 15, 1997 is AFFIRMED with MODIFICATIONS that: (a) petitioners-spouses Rev. Elmer J. Bañes and Angela Bañes are not entitled to restitution of the subject property; and (b) the award of P5,000.00 a month to each of petitioners-spouses as and for reasonable compensation for the use and occupation of subject premises is DELETED.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., and Tinga, JJ., concur.
Chico-Nazario, J., on leave.

[1] Penned by Associate Justice Omar U. Amin (now retired) and concurred in by Associate Justices Hector L. Hofileña (now retired) and Jose L. Sabio, Jr., rollo, pp. 42-54.

[2] Rollo, pp. 56-58.

[3] Juanito Basalong, Augusto Catangui, Paul Garcia, Guido Rivera, Victorio Saguilayan and Danilo Zamora; Records, Vol. I, p. 113.

[4] Ibid.

[5] Records, Vol. I, p. 113.

[6] Decision dated April 15, 1997 of RTC, Manila, Br. 34 in Civil Case No. 96-79078, RTC Rollo, p. 77.

[7] Rollo, pp. 45-46, CA Decision in CA-G.R. SP No. 44333 dated November 12, 1999.

[8] Records, Vol. I, p. 218.

[9] Id., p. 219.

[10] Rollo, p. 46, CA Decision in CA-G.R. SP No. 44333 dated November 12, 1999.

[11] Id., pp. 113-114, MeTC Decision dated May 2, 1996.

[12] Id., p. 46.

[13] Records, Vol. I, pp. 410-411.

[14] Rollo, p. 47, CA Decision in CA-G.R. SP No. 44333 dated November 12, 1999.

[15] Ibid.

[16] Records, Vol. III, p. 1199.

[17] Ibid.

[18] Rollo, p. 100.

[19] Id., pp. 111-115.

[20] Rollo, pp. 111-114.

[21] Id., pp. 121-125.

[22] Id., p. 125.

[23] Id., pp. 49-54.

[24] *Id.*, p. 58.

[25] *Id.*, pp. 20-21.

[26] *Id.*, p. 22.

[27] Rule 39, Section 49. Effect of Judgment. --- The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

xxx

b) In other cases the judgment or order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity;

c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

[28] *Rollo*, pp. 24-37.

[29] Should be April 15, 1997.

[30] *Rollo*, p. 37.

[31] *Id.*, pp. 145-146.

[32] Should be April 15, 1997.

[33] *Id.*, pp. 153-163.

[34] *PCI Bank vs. Court of Appeals*, G.R. No. 120739, July 20, 2000, 336 SCRA 258, 264.

[35] *Remulla vs. Manlongat*, G.R. No. 148189, November 11, 2004, 442 SCRA 226.

[36] *Pelayo vs. Perez*, G.R. No. 141323, June 8, 2005, citing *Cucueco vs. Court of Appeals*, G.R. No. 139278, October 25, 2004, 441 SCRA 290.

[37] *Ibid.*

[38] *Ibid.*

[39] *President of Philippine Deposit Insurance Corp. vs. Reyes*, G.R. No. 154973, June 21, 2005.

[40] *Ibid.*

[41] *Kabankalan Catholic College vs. Kabankalan Catholic College Union-PACIWU-TUCP*, G.R. No. 157320, June 28, 2005.

[42] *Rollo*, p. 94.

[43] *Id.*, p. 96.

[44] *Id.*, pp. 95-97.

[45] *Id.*, p. 97.

[46] *Id.*, pp. 99-100.

[47] David vs. Cordova, G.R. No. 152992, July 28, 2005,

[48] David vs. Cordova, supra; Sps. Tirona vs. Alejo, G.R. No. 129313, October 10, 2001, 367 SCRA17, 30.

[49] Solanda Enterprises vs. Court of Appeals, G.R. No. 123479, April 14, 1999, 305 SCRA 645, 646.

[50] Gener vs. Faustino, G.R. No. 130730, October 19, 2001, 367 SCRA 631, 643.

[51] Bongato vs. Malvar, supra.

[52] David vs. Cordova, supra.

[53] supra.

[54] Ibid.

[55] Rollo, pp. 113-114.

[56] Pajuyo vs. Court of Appeals, G.R. No. 146364, June 3, 2004, 430 SCRA 492.

[57] Ibid.

[58] Ibid.

[59] Rollo, p. 53, Decision in CA-G.R. SP No. 44333 dated November 12, 1999.

[60] Sec. 17. Judgment. --- If after trial the court finds that the allegations of the complaint are true, it shall render judgment in favor of the plaintiff for the restitution of the premises, the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises, attorney's fees and costs. If it finds that said allegations are not true, it shall render judgment for the defendant to recover his costs. If a counterclaim is established, the court shall render judgment for the sum found in arrears from either party and award costs as justice requires.

[61] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

...

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

...

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation must be reasonable.

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