

**OSCAR L. RIVERA, PETITIONER, VS. SERAFIN O. ROMAN,
RESPONDENT.***G.R. NO. 142402. September 20, 2005*

Ponente: AUSTRIA-MARTINEZ, J.

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Before us is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals (CA) dated March 23, 1998 in CA-G.R. CV No. 27491, which affirmed in toto the Decision dated December 20, 1989 of the Regional Trial Court, Branch 1, Balanga, Bataan (RTC) dismissing the complaint for accion publiciana, replevin, legal redemption and damages; and the CA Resolution dated February 29, 2000, which denied petitioner's motion for reconsideration.

The factual background of the case is as follows:

Vicente de Lara and his wife Agueda dela Cruz, both now deceased, were owners in their lifetime of six parcels of land with a total area of 139,459 square meters located in Orani, Bataan, covered by Original Certificates of Title Nos. 3450, 3451, 3698, 10882, 11121 and 12412, and also known as the Kabatkalan fishpond. Upon the death on September 5, 1946[2] of the last of the two spouses above-mentioned, the Kabatkalan fishpond devolved by inheritance upon their four children, namely: (a) Placida, now deceased, survived by her children Plaridel Lara, Loreta Rivera, Estelita[3] Rivera, Rosita Rivera, Jorge[4] Rivera and herein petitioner Oscar Rivera; (b) Petra, likewise deceased, survived by her children Leon, Jr. and Ma. Fe, all surnamed Dacayo; (c) Maria, also deceased, survived by her children Florentino, Ester and Natividad, all surnamed Pagsanhan; and (d) Eugenia, who died without issue.

Sometime in the later years of the 70s, respondent Serafin Q. Roman leased the Kabatkalan fishpond from the co-heirs for a period of five years.[5] However, prior to the termination of respondent's lease, petitioner, along with half-brother Plaridel and cousin Leon Dacayo, Jr. leased the Kabatkalan fishpond from their aunt, Maria Pagsanhan, who acted in representation of all the heirs. The Contract of Lease, which was executed on February 15, 1981, stated that the term of the lease is for one year "beginning January 1, 1981 and ending December 31, 1981." [6] The lease was with the consent of respondent who was paid by the new lessees the value of his remaining stock in the Kabatkalan fishpond.[7]

Sometime in the early months of 1983, the co-heirs, with the exception of petitioner and his brother Jorge, executed a Memorandum Agreement with respondent wherein the co-heirs offered to sell to respondent their collective shares totaling 125,511 square meters of the Kabatkalan fishpond.[8]

Subsequently, on March 3, 1983, the co-heirs, except petitioner and Jorge, executed in favor of the respondent a Deed of Absolute Sale over their collective shares of the Kabatkalan fishpond.[9] Four days later, or on March 7, 1983, Jorge executed a separate Deed of Absolute Sale over his share of the Kabatkalan fishpond in favor of respondent.[10]

More than two years later, or on October 22, 1985, an Extrajudicial Partition with Absolute Sale was executed by the co-heirs, allotting their respective shares as follows:

- Plaridel Lara – 20,918 square meters;
- Leon L. Dacayo, Jr. – 20,198 square meters;
- Fe L. Dacayo – 20,198 square meters;
- Loreta Rivera – 6,972 square meters;
- Rosita Rivera - 6,972 square meters;
- Estelita Rivera - 6,972 square meters;
- Oscar Rivera - 6,972 square meters;
- Jorge Rivera - 6,972 square meters;
- Ester L. Pagsanhan – 13,945 square meters;
- Florentino L. Pagsanhan - 13,945 square meters;
- Natividad L. Pagsanhan - 13,945 square meters.

In addition, the co-heirs, except petitioner and Jorge, again sold their allotted shares to respondent.[11]

Meanwhile, on August 2, 1982, petitioner obtained a P5,000.00 loan from Orani Rural Bank, Inc. On September 7, 1982, he obtained a P30,000.00 loan from the same bank. For failure to pay his obligations, the bank filed on December 12, 1985 a complaint for sum of money with the Regional Trial Court, Branch 2, Balanga, Bataan. On June 16, 1986, the trial court ordered petitioner to pay the bank the total amount of P35,000.00 as principal obligation, with interest and other charges.[12] When petitioner failed to pay his judgment debt, a Writ of Execution was issued on July 25, 1986. On August 15, 1986, a Notice of Levy upon Real Property pursuant to Writ of Execution was issued against petitioner's share in the Kabatkalan fishpond.[13] At the public auction on November 10, 1986, respondent was the highest and winning bidder.[14]

Prior thereto, on August 6, 1986, petitioner filed a complaint for accion publiciana, replevin, legal redemption and damages against respondent before the RTC, docketed as Civil Case No. 5439.[15]

He alleged that: since February 15, 1981, he has been in possession of the Kabatkalan fishpond and respondent took possession thereof sometime in April 1983 by force and intimidation, threat, strategy and stealth; he suffered actual damages of: (a) P106,000.00 representing the value of stocked milkfish fingerlings and crabs, harvest value thereof and future estimated earnings, (b) P77,535.00 representing the unpaid loan with Orani Rural Bank, Inc., (c) P40,000.00 from mangrove and fruit-bearing trees in the Kabatkalan fishpond destroyed by respondent; respondent wrongfully detained his personal properties valued at P65,000.00; respondent has no right to perform acts of ownership because the deed of sale upon which he based his ownership is void ab initio since there has been no settlement, distribution or partition of the estate of the late de Lara spouses and some of the signatories thereto had no authority to sell; respondent acted contrary to Articles 19, 20 and 21 of the Civil Code.

On August 26, 1986, respondent filed his Answer admitting that he performed acts of ownership over the Kabatkalan fishpond as he already bought the same, except petitioner's share thereon. He alleged that: majority of the co-heirs initially offered to sell their shares over the fishpond to petitioner but the latter declined; his possession of the fishpond, including petitioner's share, is for the preservation and improvement of the fishpond and with the latter's knowledge and acquiescence.

Following trial on the merits, the RTC rendered a Decision dated December 20, 1989 against the petitioner, in this wise:

WHEREFORE, judgment is hereby rendered in favor of defendant Serafin Q. Roman, and accordingly, the present complaint is ordered DISMISSED and plaintiff Oscar L. Rivera is ordered to pay defendant the amount of P10,000.00 as attorney's fees. Costs against plaintiff.

SO ORDERED.[16]

The RTC held that petitioner failed to establish that respondent took possession of the Kabatkalan fishpond by force, intimidation, threat, strategy and stealth sometime in January and in May 1983 since: (a) by then petitioner had no more right of possession over the fishpond, except as to his 1/24th share arising from his lease contract, because the lease agreement expired on December 31, 1981; (b) the co-owners of the Kabatkalan fishpond already executed the Memorandum of Agreement and later, or on March 3, 1983,[17] the Deeds of Absolute Sale in favor of respondent, hence respondent had the right to enter possession, which is apparently the reason why petitioner's co-heirs never complained of respondent's possession and why petitioner himself did not file an ejectment suit; (c) petitioner's testimony is vague and confused and entirely inadequate to support his thesis.

On the issue of legal redemption, the RTC held that: petitioner has no right to redeem from respondent as a co-heir the shares of his co-heirs under Article 1088[18] because such right was lost on October 22, 1985 when the co-heirs executed an Extrajudicial Partition with Absolute Sale; while petitioner had the right to redeem from respondent for non-compliance with the notice requirement under Article 1623,[19] he had already lost such right since petitioner is no longer a co-owner of the Kabatkalan fishpond because his share therein had already been bought at the auction sale by respondent, and petitioner failed to redeem it; having thus lost his personality as co-owner, and respondent being now the owner of the entire fishpond, petitioner can no longer exercise a co-owner's right to redeem.

As to petitioner's claim for damages, the RTC held that: the same has not been clearly proved as petitioner admitted in court that he was able to harvest everything in the fishpond which he was supposed to harvest, and that he had no idea as to the quantity of the fish and crabs he left; there is also no convincing evidence that the alleged personal properties worth P60,000.00 were left, and if they were, that they were really worth that much, much less that respondent appropriated them or disposed of them; petitioner admitted in court that he had no personal knowledge that respondent cut and sold the bakawan and fruit-bearing trees in the fishpond worth P40,000.00, besides, as established by respondent's evidence, and as admitted by petitioner, there was a strong typhoon ("Dading") accompanied by a tidal wave in Orani, Bataan, that occurred in 1983 which destroyed and uprooted trees; it would be against respondent's own interest, as part owner and operator of the fishpond, to cause the destruction of those trees because they were protecting the fishpond; petitioner claims to have suffered damage on account of respondent's filing of a case for qualified theft against him, but it has not been proven that the filing of that case was in bad faith or with willfulness to cause petitioner injury or was contrary to law; respondent was then already the owner of the fishpond except as to petitioner's 1/24th share; petitioner would want respondent to pay him the amount he borrowed from the bank but it has been established that when respondent took possession of the fishpond, he (respondent) was already the owner thereof to the extent of 1/24th and petitioner's lease contract had already terminated.

The RTC, however, found that respondent is entitled to attorney's fees in the amount of P10,000.00, having been compelled to hire the services of counsel to protect his interests.

Dissatisfied, petitioner appealed to the CA which, on March 23, 1998, sustained the judgment of the RTC.[20]

The CA held that: when respondent took possession of the subject property in March 1983, petitioner's possession

thereof was already illegal and unlawful since his contract of lease expired on December 31, 1981; the allegation that force, intimidation, threat, strategy and stealth were employed by respondent when he took possession of the property is negated by the fact that respondent's possession was by virtue of acquisition through purchase of the subject property from the co-heirs/co-owners except petitioner's 1/24th share; the right of petitioner to redeem from respondent as a co-heir the shares of his co-heirs was lost when said co-heirs executed a deed of extrajudicial partition with absolute sale dated October 22, 1985; petitioner is not entitled to damages as he admitted in court that he was able to harvest everything which he was supposed to harvest in the fishpond and the loan proceeds were not used in the fishpond since it was secured after the expiration of the lease.

Petitioner filed a motion for reconsideration[21] but it was denied in the CA Resolution dated February 29, 2000.[22]

Hence, the present petition for review on certiorari anchored on a sole ground, to wit:

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT OF BATAAN, BRANCH 1, BALANGA, BATAAN.[23]

While admitting that the contract of lease between him and the co-heirs expired on December 31, 1981, petitioner argues that the lease was impliedly renewed in accordance with Articles 1670 and 1682 of the Civil Code which state:

Art. 1670. If at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687. The other terms of the original contract shall be revived.

Art. 1682. The lease of a piece of rural land, when its duration has not been fixed, is understood to have been made for all the time necessary for the gathering of the fruits which the whole estate leased may yield in one year, or which it may yield once, although two or more years may have elapse for the purpose.

He contends that he continued to possess the fishpond and the co-heirs accepted their share of the harvest even after the expiration of the lease. He received no notice nor was he informed of the execution of the Memorandum of Agreement or any extrajudicial settlement or partition. He submits that without such notification and with the lease impliedly renewed, respondent's entry and possession of the fishpond is unlawful and illegal.

Furthermore, petitioner alleges that his share is not 1/24th or 6,972 square meters but 1/18th or 7,747.2 square meters and the partition agreed in the Extrajudicial Partition with Absolute Sale of October 22, 1985 is not reflective of the hereditary shares of the heirs.

Lastly, petitioner claims that he had preponderantly adduced evidence to claim damages from the respondent for: (a) the milkfish fingerlings and crabs he was not able to harvest; (b) the nonpayment of the loans he obtained from Orani Rural Bank, Inc. which he used for the construction of immovable improvements in the fishpond; (c) the bad faith of respondent in requiring the co-heirs to execute the Extrajudicial Partition with Absolute Sale when he was fully aware that in March 1983 when no partition had yet been undertaken; (d) the malicious filing of a criminal case of qualified theft against the petitioner for harvesting some milkfish and crabs sometime in September 1983.

No comment was filed by the respondent, despite repeated notices[24] by the Court to file the same. Thus, in the Resolution[25] dated August 30, 2004, the Court imposed upon respondent a fine of P2,000.00 and considered the filing of the comment to have been waived.

It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and

does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court. While jurisprudence has recognized several exceptions in which factual issues may be resolved by this Court, namely: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings 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 petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, could justify a different conclusion,[26] none of these exceptions has been shown to apply in the present case.

The petition is bereft of merit.

Petitioner's argument that the contract of lease was impliedly renewed deserves scant consideration. It is worth noting that this argument has not been pleaded before the RTC. Basic is the rule that parties may not bring on appeal issues that were not raised on trial as this would contravene the basic rules of fair play and justice.

Besides, petitioner admitted in court that he did not pay rentals for the use and occupation of the fishpond after the expiration of the lease on December 31, 1981.[27] Clearly, petitioner cannot claim there is a valid and binding renewal of the lease when he admits not complying with the terms of the contract on payment of the rentals for continued possession thereof. Petitioner's obligation to pay rentals did not cease with the termination of the original agreement. When he failed to remit the required amounts after December 31, 1991, his continued possession of the fishpond was by mere tolerance of the co-heirs.

Moreover, it has clearly been shown that respondent did not take possession of the fishpond by force, intimidation, threat, strategy or stealth in 1983. He has two binding Deeds of Absolute Sale dated March 3 and 7, 1983 executed by the co-heirs with respect to their respective shares. More to the point, petitioner admitted in court that he remained in possession until April 1987,[28] even when respondent entered possession in January 1983.[29] He also admitted that respondent's possession of the fishpond did not prevent him from harvesting the contents thereof in March and April 1983.[30]

As to the question of whether petitioner is entitled to 1/24th or 1/18th, the Court finds that the same is no longer material. It has been rendered moot and academic by petitioner's failure to redeem his share when it was sold to respondent at the public auction on November 10, 1986 to satisfy his judgment debt against the Orani Rural Bank, Inc.[31] It is worthy to note that the levy and the auction sale did not specify a designated portion of petitioner's share in the Kabatkalan fishpond be it 6,972 square meters or 7,747.2 square meters but "all shares, rights, interests and participation" of petitioner as co-owner of the Kabatkalan fishpond.[32]

Lastly, petitioner's claim for damages is untenable. He admitted in court that he was able to harvest the contents of the fishpond in March and April 1983.[33] On damages for nonpayment of the loan the proceeds of which petitioner claims was used for improvement of the fishpond, the same cannot be recovered from respondent since petitioner incurred the loan after the lease expired. He likewise failed to prove the specific improvements made on the fishpond or that he notified his co-owners on the necessity thereof. Allegation is not synonymous to proof. A party has the burden of proof to establish his claim by convincing evidence.[34]

Concerning damages for alleged bad faith of respondent in requiring the execution of the Extrajudicial Partition with Absolute Sale, suffice it to say that allegations of bad faith, malice, and other related words without ultimate facts to support the same are mere conclusions of law.[35] From the records of the case, the Court finds no ultimate facts to buttress this conclusion of bad faith. As to damages for the alleged malicious filing of a criminal case of qualified theft, it is needless to stress that the mere act of submitting a case to the authorities for prosecution cannot make one liable for damages, for the law could not have meant to impose a penalty on the right to litigate.[36]

All the foregoing considered, the Court is convinced that the Court of Appeals committed no reversible error in its challenged Decision and Resolution.

WHEREFORE, the instant petition is DENIED and the assailed Decision and Resolution of the Court of Appeals are AFFIRMED.

SO ORDERED.

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

[*] Died before the filing of this petition and his sister, Loreta Rivera, substituted for him.

[**] Appears as "Q" in other parts of the records.

[1] Penned by Justice Corona Ibay-Somera (retired) and concurred in by Justices Oswaldo D. Agcaoili (retired) and Rodrigo V. Cosico.

[2] Records, p. 251.

[3] Spelled as "Estellita" in other parts of the records.

[4] Spelled as "George" in other parts of the records.

[5] TSN, July 6, 1989, Testimony of Serafin Q. Roman, p. 27.

[6] Records, p. 392.

[7] TSN, July 6, 1989, Testimony of Serafin Q. Roman, p. 28.

[8] Records, p. 400.

[9] Id., p. 7.

[10] Id., p. 31.

[11] Id., p. 404.

[12] Id., p. 394.

[13] Id., p. 396.

[14] Id., p. 398.

[15] Id., p. 1.

[16] CA Rollo, p. 74.

[17] Actually, the other Deed of Absolute Sale, executed by Jorge Rivera, was dated March 7, 1983.

[18] Art. 1088. Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so within the period of one month from the time they were notified in writing of the sale by the vendor.

[19] Art. 1623. The right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor, as the case may be. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners. xxx

[20] Rollo, p. 78.

[21] Id., p. 99.

[22] Id., p. 104.

[23] Id., p. 17.

[24] Rollo, pp. 107, 108, 111, 113 and 116.

[25] Id., p. 122.

[26] The Insular Life Assurance Company, Ltd. vs. Court of Appeals, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 86; Aguirre vs. Court of Appeals, G.R. No. 122249, January 29, 2004, 421 SCRA 310, 319; C & S Fishfarm Corporation vs. Court of Appeals, G.R. No. 122720, December 16, 2002, 394 SCRA 82, 88.

[27] TSN, March 1, 1988, Testimony of Oscar Rivera, p. 39.

[28] TSN, October 8, 1987, Testimony of Oscar Rivera, p. 3.

[29] TSN, March 1, 1988, Testimony of Oscar Rivera, pp. 11-13.

[30] Ibid.

[31] Records, pp. 398-399.

[32] Ibid.

[33] TSN, October 7, 1987, Testimony of Oscar Rivera, pp. 11-13.

[34] Section 1, Rule 131, Revised Rules on Evidence.

[35] Martires vs. Cokieng, G.R. No. 150192, February 17, 2005, 451 SCRA 696, 706; Drilon vs. Court of Appeals, G.R. No. 106922, April 20, 2001, 357 SCRA 12, 24.

[36] Solidbank Corp. vs. Mindanao Ferroalloy Corp., et al., G.R. No. 153535, July 28, 2005; Saber vs. Court of Appeals, G.R. No. 132981, August 31, 2004, 437 SCRA 259, 290; ABS-CBN Broadcasting Corporation vs. Court of Appeals, G.R. No. 128690, January 21, 1999, 301 SCRA 572, 604.

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