

SPS. PEDRO ONG AND VERONICA ONG, PETITIONERS, VS. SOCORRO PAREL AND HON. COURT OF APPEALS, RESPONDENTS.

G.R. No. 143173. March 28, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

The instant petition for review on certiorari seeks the annulment of the decision of the respondent Court of Appeals[1] dated December 14, 1999 affirming the decision of the Regional Trial Court which reversed and set aside the judgment of the Metropolitan Trial Court of Manila, Branch 15, for forcible entry, as well as the resolution dated May 4, 2000 denying petitioners' motion for reconsideration.[2]

Spouses Pedro and Veronica Ong are the registered owners of Lot No.18, Block 2 of the subdivision plan II of Rizal Park subdivision, situated in Sta Cruz, Manila covered by TCT No. 218597, having purchased the property from the spouses Emilio Magbag and Norma B. Pascual in 1994. Adjacent to Lot No. 18 is Lot No.17 consisting of about 109 sq. meters covered by TCT No. 125063 registered under the name of Visitacion Beltran, grandmother of respondent Socorro Parel.

On May 25, 1995, the Ong spouses filed an action for forcible entry against defendant Parel before the Metropolitan Trial Court of Manila, Branch 15, docketed as Civil Case No. 148332, alleging among other things that defendant Parel through strategy and stealth constructed an overhang and hollow block wall along the common boundary of the parties' adjoining lot, i.e., beyond Lot No. 17 owned by Parel and inside Lot No.18 owned by plaintiffs spouses Ong, thereby illegally depriving plaintiffs of possession of the said portion of their lot; that plaintiffs discovered respondent's illegal possession of their lot on August 23, 1994 when they had the boundaries of their lot resurveyed; that plaintiffs made various demands from the defendants to remove the constructions they introduced in the said lot of the plaintiffs and vacate the same, the last of which demands having been made on December 19, 1994.

Defendant Parel denied the material allegations of the complaint and alleged that the overhang and hollow block wall had already been in existence since 1956 and that these structures are within the boundary of lot 17 owned by him.

The parties moved for an ocular inspection of the subject lot which was granted by the trial court. The trial court designated the Branch Clerk of Court as Commissioner while defendant Parel employed the services of Geodetic Engr. Mariano V. Flotildes who made the relocation survey on November 28, 1995 in the presence of both parties. Thereafter, the Commissioner reported that defendant's wall protrudes 1½ meters into plaintiffs' property and a window sill overhangs by about ½ meter deep into plaintiffs premises and the eaves of the main residential building extends into the plaintiffs premises. The Geodetic Engineer's Report, confirmed that the house of the defendant encroached plaintiffs' property by an area of 2.7 sq. m., and the adobe and hollow block wall by an area of 1.59 sq. m., respectively, resulting to a total encroachment of 4.29 sq. m., more or less into the plaintiffs' property.

On April 12, 1996, the Metropolitan Trial Court rendered judgment in favor of the plaintiffs spouses Ong; the dispositive portion reads:[3]

"WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against the defendants ordering: (a) the defendants and all persons claiming rights under her to remove the overhang constructions measuring 2.70 sq. m. and the adobe block wall measuring 1.59 sq.m. respectively on lot 18 of the plaintiffs and to peacefully surrender its possession to the plaintiffs; (b) ordering the defendants to pay the plaintiffs the sum of Ten Thousand Pesos (P10,000.00) as and by way of attorney's fees; plus the costs of suit.

SO ORDERED."

Respondent Parel filed an appeal with the Regional Trial Court, docketed as Civil Case No. 96-78666. On October 3, 1996, the regional trial court[4] dismissed the case for failure of the Ong spouses to prove prior physical possession of the subject lot, the dispositive portion reads:[5]

"WHEREFORE, premises considered, the decision appealed from is hereby REVERSED and SET ASIDE. This case is hereby DISMISSED, without prejudice to the filing of the appropriate actions, without costs.

SO ORDERED."

Spouses Ong moved for a reconsideration which was also denied in a resolution dated August 1, 1997.[6]

Aggrieved by the above decision, petitioners spouses Ong elevated the matter to the Court of Appeals by way of a petition for review. The respondent Court of Appeals in a decision dated December 14, 1999 denied the petition. The appellate court adopted the lower court's findings that the alleged encroachments were made by the late Visitacion Beltran at a time when she still owned both lots or when she had all the right and the power to introduce the improvements; thus the introduction of the said construction could not be equated with strategy and stealth giving rise to forcible entry. It added that what is involved in a forcible entry case is merely the issue of material possession or possession de facto which the petitioner miserably proved in their favor. It further pointed out that it was admitted by the petitioners in their petition that this case involves a boundary dispute and not lot 18 in its entirety, and the encroachment was discovered only upon a relocation survey of the property; such controversy could not be threshed out in an ejectment suit in view of the summary nature of the action, and the MTC, accordingly, is without jurisdiction to entertain the same. Petitioners moved for a reconsideration which was also denied in a resolution dated May 4, 2000. Hence, this petition.

Petitioners assign the following issues for consideration:[7]

- WHETHER OR NOT GAINING ENTRY WITHOUT THE KNOWLEDGE OR CONSENT OF THE OWNER OR REMAINING RESIDENT OF ANOTHER WITHOUT PERMISSION IS DISPOSSESSION BY STEALTH;
- WHETHER OR NOT ENTRY SECURED BY STRATEGY OR STEALTH BECOMES UNLAWFUL AND DE FACTO POSSESSION COMMENCES ONLY UPON DEMAND;
- WHETHER OR NOT THERE IS A DISTINCTION BETWEEN FORCIBLE ENTRY BY MEANS OF STEALTH AND FORCIBLE ENTRY BY MEANS OF FORCE, INTIMIDATION OR THREAT;
- WHETHER OR NOT PETITIONER CAN INVOKE SUPREME COURT RULINGS IN UNLAWFUL DETAINER CASES;
- WHETHER OR NOT THE PRIVATE RESPONDENT IS THE AUTHORIZED PARTY IN THE CASE OF CO-OWNERSHIP AS OBTAINED IN THIS CASE;
- WHETHER OR NOT THE CHARACTER OF THE POSSESSION ACQUIRED IN BAD FAITH WAS

INHERITED BY THE PRIVATE RESPONDENT AND DID NOT CHANGE;

- WHETHER OR NOT THE DECISION OF THE RESPONDENT COURT OF APPEALS IS BASED ON SPECULATION SURMISE OR CONJECTURE OR MISAPPREHENSION OF FACTS.

Petitioners essentially allege that the act of entering and trespassing upon a parcel of land, or of constructing improvements upon a parcel of land without the knowledge or permission of the person who owns or administers it is an act of dispossession and usurpation of real property by means of strategy or stealth; that private respondent is a usurper or encroacher who constructed a portion of her house and adobe and hollow block wall on the land of the petitioners with no bona fide claim and without the consent of the owner.

The petition has no merit.

Section 1, Rule 70 of the Rules of Court requires that in actions for forcible entry the plaintiff is allegedly deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth and that the action is filed any time within one year from the time of such unlawful deprivation of possession. This requirement implies that in such cases, the possession of the land by the defendant is unlawful from the beginning as he acquires possession thereof by unlawful means. The plaintiff must allege and prove that he was in prior physical possession of the property in litigation until he was deprived thereof by the defendant. The one year period within which to bring an action for forcible entry is generally counted from the date of actual entry on the land,[8] except that when entry was made through stealth, the one year period is counted from the time the plaintiff learned thereof.[9] If the alleged dispossession did not occur by any of the means stated in section 1, Rule 70, the proper recourse is to file a plenary action to recover possession with the regional trial court.[10]

In their complaint, petitioners Ong spouses aver that through stealth and strategy respondent constructed the controversial overhang and hollow block wall along the common boundary of the parties' adjoining lots which encroached on petitioners' Lot No. 18. Stealth is defined as any secret, sly, or clandestine act to avoid discovery and to gain entrance into or remain within residence of another without permission.[11] However, petitioners failed to establish that respondents encroached upon their property through stealth as it was not shown when and how the alleged entry was made on the portion of their lot.

On the other hand, respondent's claim that the said structures were already existing on the lot at the time petitioners brought the same from the Magbag spouses in 1994, was sustained by the lower court since petitioners admitted in their petition that they discovered such encroachment only after a relocation survey on their lot on August 23, 1994. We find no reason to disturb the respondent court's factual conclusion that the alleged encroachments were made by the late Visitacion Beltran at a time when she still owned both lots nos. 17 and 18 or when she had all the right and power to do so. Private respondent in her affidavit submitted before the court had affirmed that her grandmother, Visitacion Beltran, was the registered owner of the parcel of land covered by TCT No. 125163 (Lot No. 17) with improvements which include the window sill overhang and the old adobe wall which were constructed as early as 1956 and these improvements are adjacent to the private alley from Elias Street which has to be opened and maintained as long as there exists building thereon; that the maintenance of such alley was made as an encumbrance in petitioners' title (TCT No. 218597) when they bought the adjacent Lot no. 18. Petitioners failed to present evidence to the contrary.

It becomes clear that this is not a proper case for forcible entry wherein one party unlawfully deprives another of possession of the property subject of the litigation; it is a boundary dispute wherein the adobe wall, overhang and window grill on the respondents' side of the property encroach a total of 4.29 meters, more or less, upon the petitioners' side of the property. We affirm with approval of the observations of the Regional Trial Court, in this wise:

"Let it be emphasized that the matter subject of the present action is that portion only of Lot No. 18 allegedly encroached by the defendant-appellant and not Lot 18 in its entirety.

While there was a finding of encroachment on Lot No. 18 as per the Commissioner's Report and Engineer's Report dated December 27, 1995 and December 29, 1995, respectively, plaintiff-appellees failed to recount the circumstances as to how and when defendant-appellant allegedly forcibly entered Lot No. 18. Neither was there any evidence ever proffered by them to prove that defendant-appellant made or at least ordered the introduction of the said improvements or construction. According to them, the Magbag spouses gave them the right to administer, occupy and to have physical possession in the concept of an owner, Lot No. 18 on June 17, 1994 until the title to the said lot was transferred to their names on October 28, 1994 and they have just discovered the encroachment on Lot No. 18 only on August 23, 1994 when they had the boundaries of Lots Nos. 17 and 18 resurveyed. Defendant-appellant, on the other hand, averred that the questioned improvements and constructions encroaching on Lot No. 18 were already there since 1956, and this averment was not controverted by the plaintiff-appellees at all. Thus, the truth is that, when defendant-appellant acquired Lot No. 18, the adobe wall, overhang and window grill were already there encroaching on Lot No. 18 as it was the late Salvacion (sic)[12] Beltran who built the same. In fact, even up to the present, defendant-appellant is still in possession of the herein questioned premises which means that plaintiff-appellees were never in possession of the same. The latter, therefore, cannot be said to be in prior physical possession. The demand made on the defendant-appellant is here of no moment as it is a well-entrenched jurisprudence that demand to vacate is not necessary in forcible entry cases (*Menez vs. Militante*, 41 Phil. 44).

Consequently, for failure of the plaintiff-appellees to circumstantiate prior physical possession on the herein subject premises and the fact of entry on the same by the defendant-appellant by force, intimidation, violence or stealth, the present action for forcible entry must exigently fail. Moreover, this Court notes that at the time the improvements were made, the late Salvacion (sic) Beltran was still the registered owner of both Lots Nos. 17 and 18. Thus while it may be true that defendant-appellant is now the administrator of Lot No. 17, defendant-appellant cannot be made to answer for the encroachments on Lot No. 18 for the same were done by the late Salvacion (sic) Beltran who had all the right and power to introduce the improvements as she was then the registered owner of both Lots Nos. 17 and 18 at the time the same were made. While plaintiff-appellees can recover possession of the herein questioned premises, they cannot do so in the guise of an action for forcible entry. For where the complaint fails to specifically aver facts constitutive of forcible entry or unlawful detainer, as where it does not state how entry was effected or how and when dispossession started, the action should either be ACCION PUBLICIANA or ACCION REINVINDICATORIA for which the lower court has no jurisdiction (See *Sarona, et al. vs. Villegas, et al.*, March 27, 1968, *Banayos vs. Susana Realty, Inc.* L-30336, June 30, 1976)."

In view of the failure of the petitioners to allege, much less prove, with specificity that the respondents unlawfully entered their portion of the lot either by force, intimidation, threat, strategy, or stealth this action for forcible entry must necessarily fall. We declared in the case of *Sarmiento vs. Court of Appeals*:^[13]

"The jurisdictional facts must appear on the face of the complaint. When the complaint fails to aver facts constitutive of forcible entry or unlawful detainer, as where it does not state how entry was effected or how and when dispossession started, as in the case at bar, the remedy should either be an accion publiciana or an accion reivindicatoria in the proper regional trial court.

If private respondent is indeed the owner of the premises subject of this suit and she was unlawfully deprived of the real right of possession or the ownership thereof, she should present her claim before the regional trial court in an accion publiciana or an accion reivindicatoria, and not before the municipal trial court in a summary proceeding of unlawful detainer or forcible entry. For even if one is the owner of the property, the possession thereof cannot be wrested from another who had been in the physical or material possession of the same for more than one year by resorting to a summary action for ejectment. This is especially true where his possession thereof was not obtained through the means or held under the circumstances contemplated by the

rules on summary ejectment.

We have held that in giving recognition to the action for forcible entry and unlawful detainer, the purpose of the law is to protect the person who in fact has actual possession, and in case of a controverted proprietary right, the law requires the parties to preserve the status quo until one or the other sees fit to invoke the decision of a court of competent jurisdiction upon the question of ownership."

Petitioners contention that although they denominated their complaint as one for forcible entry based on the ground of stealth, the allegations in the body of the complaint sufficiently established a cause of action for unlawful detainer, does not persuade us. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. In the instant case, the complaint does not allege that the possession of respondent ever changed from illegal to legal anytime from their alleged illegal entry before plaintiffs made the demand to vacate. There was no averment in the complaint which recites as a fact any overt act on the part of the petitioners which showed that they permitted or tolerated respondent to occupy a portion of their property.

After a finding that the petitioners failed to make a case for ejectment, we find it unnecessary to dwell on the other assignments of error.

WHEREFORE, the petition is DENIED and the assailed decision of respondent Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Rollo, pp. 21-30; CA-G.R. S.P. No. 45034; Penned by Justice Corona Ibay-Somera concurred in by Justices Oswaldo D. Agcaoili and Andres B. Reyes, Jr.

[2] Rollo, p. 31.

[3] CA Rollo, p. 22.

[4] Penned by Judge Hermogenes R. Liwag.

[5] CA Rollo, pp. 21-26.

[6] CA Rollo, pp 27-30.

[7] Rollo, p. 223.

[8] Section 1 Rule 70, Rules of Court.

[9] Elane vs. Court of Appeals, G.R. No. 80638, April 26, 1989; Regalado, Remedial Law Compendium, vol. 1, Seventh Edition.

[10] Sarmiento vs. Court of Appeals, G.R No. 116192, November 15, 1995; Moran, Rules of Court, vol. III, 1997 ed., pp. 385-386.

[11] Sumulong vs. CA, 232 SCRA 372.

[12] Should be "Visitacion".

[13] Sarmiento vs. CA, 250 SCRA 110 citing Sumulong vs. CA, 232 SCRA 372 citing 3 MANUEL V. MORAN,

COMMENTS ON THE RULES OF COURT 312 (1980 ed.).

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