

JESUS DELA ROSA AND LUCILA DELA ROSA, PETITIONERS, VS. SANTIAGO CARLOS AND TEOFILA PACHECO, RESPONDENTS.*G.R. No. 147549. October 23, 2003*

Ponente: CARPIO, J.

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This is a petition for review on certiorari[1] seeking to set aside the Decision[2] of the Court of Appeals in CA-G.R. SP No. 54055 dated 20 July 2000 and the Resolution dated 23 February 2001 denying the motion for reconsideration. The Court of Appeals reversed the Decision[3] of the Regional Trial Court, Branch 22, of Malolos, Bulacan ("RTC") and dismissed the complaint of Jesus Dela Rosa and Lucila Dela Rosa for forcible entry against Santiago Carlos and Teofila Pacheco.

The Antecedents

This case stemmed from a complaint[4] for forcible entry filed by Jesus Dela Rosa and Lucila Dela Rosa ("Spouses Dela Rosa") against Santiago Carlos ("Santiago") and Teofila Pacheco ("Teofila") with the Municipal Trial Court[5] of Paombong, Bulacan ("MTC").

In their complaint filed on 25 February 1998, the Spouses Dela Rosa alleged that they are the owners of a house and lot ("Property") with an area of 352 square meters located at No. 25 San Roque, Paombong, Bulacan. The Spouses Dela Rosa claimed that Leonardo Carlos ("Leonardo") transferred to them the ownership of the Property under the Absolute Deed of Sale ("Deed of Sale") executed on 1 September 1966. The Spouses Dela Rosa registered on 6 October 1966 the Deed of Sale under Act No. 3344 with the Register of Deeds of Bulacan. The Spouses Dela Rosa asserted that they renovated the house, furnished and occupied the same from 1966 to the present. Since the Spouses Dela Rosa work and their children study in Manila, they reside in the Property only during weekends and holidays. However, they padlock the house on the Property while they are away and instruct relatives who live nearby to watch over the Property.

The Spouses Dela Rosa further asserted that they have been paying the taxes for the land since 1966 to 1997, and for the house from 1966 to 1993. In addition, the Spouses Dela Rosa had a perimeter fence built to separate the Property from the municipal road and to protect it from trespassers.

The Spouses Dela Rosa also asserted that in October 1997, they discovered that, through stealth and without their knowledge and consent, Santiago had built a house of strong materials on a vacant lot of the Property. Santiago did not secure the necessary building permit from the Municipal Engineer's Office. Teofila had also been transferring furniture to the house and sleeping there. On 20 November 1997, the Spouses Dela Rosa, through their counsel, demanded that Santiago and Teofila demolish the house, remove their furniture and vacate the premises within ten days from receipt of the letter. However, Santiago and Teofila did not heed the Spouses Dela Rosa's demand.

In their answer, Santiago and Teofila alleged that they are the surviving heirs of the Spouses Leonardo and Benita Carlos ("Spouses Carlos"). As heirs of the Spouses Carlos, they, along with Lucila Dela Rosa, are co-owners of the Property. They contended that the Spouses Dela Rosa obtained the Deed of Sale through fraud and undue influence and that their mother did not consent to the sale of the Property which they claimed as conjugal. They maintained that the Spouses Dela Rosa were never in possession of the Property because the latter only went there to visit their parents, and not as owners. Insisting that they have been occupying the Property since birth, Santiago claimed that he constructed the house on the Property in the concept of a co-owner.

After submission of the parties' position papers, the MTC rendered a Decision dated 30 July 1998, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered declaring the Plaintiffs to be entitled to physical possession of Lot 147-Part particularly described in Tax Declaration No. 97-0297-00342 (Exhibit F) situated at San Roque, Paombong, Bulacan and this Court orders:

- The Defendants, their heirs, assigns or any other persons claiming any right or interest over the subject parcel of land under or in their names to vacate the same and surrender peaceful possession thereof in favor of the Plaintiffs;
- The Defendants to pay the Plaintiffs damages limited to the fair rental value for the use and occupation of the premises in the amount of Two Thousand and Five Hundred Pesos (P2,500.00) a month from the date of the discovery of the construction of the improvement (October 1997) until they finally vacate and restore full possession thereof to the Plaintiffs;
- The award of Twenty Thousand Pesos (P20,000.00) in favor of the Plaintiffs as and by way of attorney's fees and costs;
- The Defendants' counter-claim is hereby dismissed for lack of merit.

SO ORDERED.[6]

Aggrieved, Santiago and Teofila appealed[7] to the RTC which rendered a Decision[8] dated 31 May 1999 affirming in toto the decision of the MTC.

Dissatisfied with the decision of the RTC, Santiago and Teofila filed a petition for review[9] with the Court of Appeals. The Court of Appeals rendered a Decision dated 20 July 2000, the dispositive portion of which reads:

WHEREFORE, the appealed decision is REVERSED and SET ASIDE and another rendered DISMISSING respondents' complaint for forcible entry against petitioners.

SO ORDERED.[10]

Hence, this petition for review.

The Ruling of the Trial Courts

The MTC, in ruling in favor of the Spouses Dela Rosa, held in part:

The evidence at hand disclose [sic] that the Plaintiffs took possession of the subject premises upon the execution of the sale on September 1, 1966 and have been in occupancy thereof since then up to the present. Under the law, possession is transferred to the vendee by virtue of the notarized deed of conveyance. Under Article 1498 of the Civil Code of the Philippines, "when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred." (Ong Ching Po, et al. vs. Court of Appeals, 239 SCRA 341)

In the same vein, Article 531 of the statute is explicit, thus: "Possession is acquired by the material possession of a thing or the exercise of a right, or by the fact that it is subject to the action of our will or by the proper acts or legal formalities established for acquiring such right." Aside from the legal formalities as mentioned, Plaintiffs' prior material occupation or possession is supported by photographs depicting their residence (Exhibit Q) and their furnishings (Exhibits O and O-1) thereon. Possession in the eyes of the law does not mean that a man has to have his feet on every square meter of ground before it can be said that he is in possession. It is sufficient that petitioner (in this case, the Plaintiffs) was able to subject the property to the action of his will (Somodio vs. Court of Appeals, 235 SCRA 307).

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Finding that the MTC's factual findings are clear and supported by more than mere preponderance of evidence,[12] the RTC affirmed in toto the decision of the MTC. Consequently, Santiago and Teofila filed a petition for review with the Court of Appeals.

The Ruling of the Court of Appeals

The Court of Appeals held that the execution of the deed of sale did not transfer physical possession of the Property despite Article 1498 of the Civil Code, which contemplates of constructive, not physical possession. The appellate court also found that there was an obstacle to the delivery of possession because the Spouses Carlos, Santiago and Teofila were residing and continued to reside in the Property.

Noting that the Spouses Dela Rosa's position paper did not attach the affidavits of witnesses required under Section 10 of Rule 70, the appellate court ruled that the Spouses Dela Rosa failed to prove prior possession of the Property. The appellate court pointed out that instead of proving prior possession, the Spouses Dela Rosa admitted the contrary. In their opposition to the motion to dismiss,[13] the Spouses Dela Rosa stated that they do not actually reside in the Property but in Manila and visit the Property only during weekends and vacations. The Court of Appeals held that this admission confirms Santiago and Teofila's claim that they have always been in physical possession of the Property since birth.

The Court of Appeals also held that the Spouses Dela Rosa did not verify their complaint in violation of Section 4 of Rule 70. Neither did they attach a certification against forum shopping in violation of Section 5 of Rule 7. Moreover, the appellate court ruled that the sale, without the consent of Benita Carlos, is void. Since the sale is void, no title passed to the Spouses Dela Rosa.

Lastly, the Court of Appeals ruled that assuming the sale is valid, the sale would apply only to Leonardo's share in the Property. Benita retained her one-half share in the Property that her children Santiago, Teofila, Lucila and Francisco acquired by succession on her death. Thus, Lucila Dela Rosa may not dispossess her co-owners Santiago and Teofila of the Property.

The Issues

The Spouses Dela Rosa assail the decision of the Court of Appeals on the following grounds:

- THE COURT OF APPEALS GRAVELY ERRED IN CONSIDERING AS ONE OF THE GROUNDS FOR REVERSING THE DECISION OF THE REGIONAL TRIAL COURT AND OF THE MUNICIPAL TRIAL COURT THE ERRONEOUS ASSUMPTION THAT THE COMPLAINT APPENDED TO THE PETITION FOR REVIEW FILED BY RESPONDENTS LACKED VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING.
- THE COURT OF APPEALS GRAVELY ERRED IN ALLOWING A COLLATERAL ATTACK ON THE

VALIDITY OF THE DEED OF ABSOLUTE SALE IN AN EJECTMENT PROCEEDING AND RULING THAT THE SAME IS VOID FOR LACK OF MARITAL CONSENT OF BENITA CARLOS.

- THE COURT OF APPEALS GRAVELY ERRED IN DECLARING THAT PETITIONERS FAILED TO PROVE PRIOR PHYSICAL POSSESSION OVER THE PROPERTY DESPITE THE OVERWHELMING EVIDENCE TO THE CONTRARY.

- THE COURT OF APPEALS GRAVELY ERRED IN APPLYING THE RULES OF CO-OWNERSHIP OVER THE PROPERTY.[14]

The Court's Ruling

We grant the petition.

Before resolving the main issue, we shall first dispose of the procedural issues in the instant case.

There is no longer any issue on the lack of verification and certification against forum shopping of the complaint for forcible entry. The Court of Appeals itself stated in its assailed Resolution that it was a mere "omission"[15] by Santiago and Teofila in their petition for review. Santiago and Teofila failed to append to their petition for review with the Court of Appeals the last page of the complaint containing the verification and certification of non-forum shopping.[16] For the failure of Santiago and Teofila to attach to their petition the page of the complaint containing the verification and certification of non-forum shopping, the appellate court should have faulted Santiago and Teofila and not the Spouses Dela Rosa.

Another procedural question was the alleged non-submission of affidavits of witnesses that the Spouses Dela Rosa should have attached to their position paper. Section 10 of Rule 70 provides:

SEC. 10. Submission of affidavits and position papers. - Within ten (10) days from receipt of the order mentioned in the next preceding section, the parties shall submit the affidavits of their witnesses and other evidence on the factual issues defined in the order, together with their position papers setting forth the law and the facts relied upon by them.

Section 10 should be read in relation to Section 14 of the same Rule, which states:

SEC. 14. Affidavits. - The affidavits required to be submitted under this Rule shall state only facts of direct personal knowledge of the affiants which are admissible in evidence, and shall show their competence to testify to the matters stated therein.

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The Spouses Dela Rosa jointly verified their position paper by stating that all the allegations in the position paper are true and correct of their "own personal knowledge." [17] The verification itself is an affidavit. [18] Section 4 of Rule 7 states that a "pleading is verified by an affidavit." Thus, the verified position paper constitutes the affidavit of witnesses required under Rule 70. Certainly, the Spouses Dela Rosa qualify as witnesses to their own complaint. While there are no affidavits of other witnesses that support the complaint, the Spouses Dela Rosa attached to their position paper documentary evidence that bolster their claim of prior possession.

Santiago and Teofila never raised as an issue the alleged non-attachment to the complaint of affidavits of witnesses, either in the MTC or in the RTC. In their petition for review before the Court of Appeals, Santiago and Teofila did not also raise this issue. The MTC and RTC apparently understood correctly that the verified complaint of the Spouses Dela Rosa constitutes the affidavit of witnesses required under Rule 70. We rule that the Court of Appeals erred in holding that the Spouses Dela Rosa failed to attach to their complaint the affidavits required in Sections 10 and 14 of Rule 70.

In a forcible entry case, the principal issue for resolution is mere physical or material possession (possession de facto) and not juridical possession (possession de jure) nor ownership of the property involved.[19] In the present case, both parties claim prior possession of the Property. The Spouses Dela Rosa claim that they have been in possession of the Property since 1966 upon the execution of the deed of sale by Leonardo in their favor. On the other hand, Santiago and Teofila claim that they have been continuously occupying the Property since birth and the Spouses Dela Rosa were never in possession of the Property.

While admitting that Santiago and Teofila used to reside in the Property since birth, the Spouses Dela Rosa contend that Santiago and Teofila moved out when they married in 1961 and 1959, respectively. According to the Spouses Dela Rosa, Santiago and his family live in Manila (at 3500-F Magsaysay Blvd., Sta. Mesa, Manila)[20] while Teofila occupies the lot adjacent to the Property bearing, however, the same address.[21] Santiago and Teofila did not dispute these allegations by the Spouses Dela Rosa.

On the other hand, Santiago and Teofila admit that the Spouses Dela Rosa visit the Property. Visiting the Property on weekends and holidays is evidence of actual or physical possession. Even if the Spouses Dela Rosa were already residing in Manila, they could continue possessing the Property in Bulacan. The fact of their residence in Manila, by itself, does not result in loss of possession of the Property in Bulacan. The law does not require one in possession of a house to reside in the house to maintain his possession.

In *Somodion v. Court of Appeals*,[22] which the Spouses Dela Rosa cited, the petitioner there began construction of a structure on his lot. His employment, however, took him to Kidapawan, North Cotabato, and he left the unfinished structure to the care of his uncle. He would visit the property every three months or on weekends when he had time. The Court ruled that possession in the eyes of the law does not mean that a man has to have his feet on every square meter of the ground before he is deemed in possession.[23] There is no cogent reason to deviate from this doctrine.

Santiago and Teofila likewise do not deny that the Spouses Dela Rosa renovated the house, furnished the same and constructed a perimeter fence around the Property. Santiago and Teofila contend that these acts did not include the right to possess physically the Property.[24] These acts of dominion are clear indications that the Spouses Dela Rosa were in possession of the Property. Santiago and Teofila failed to explain convincingly how the Spouses Dela Rosa were able to renovate, furnish the house and construct a perimeter fence around the Property without physically possessing the Property. It is quite improbable to perform these acts without the Spouses Dela Rosa physically possessing the Property.

Santiago and Teofila likewise challenged the validity of the sale between their father Leonardo and the Spouses Dela Rosa. The sale transpired on 1 September 1966, before Leonardo's death. The Spouses Dela Rosa registered on 6 October 1966 the Deed of Sale under Act No. 3344 with the Registry of Deeds of Paombong, Bulacan. If Santiago and Teofila truly believed that the Deed of Sale is void, they should have filed an action to annul the same, but they did not. Santiago and Teofila questioned the validity of the Deed of Sale only when the Spouses Dela Rosa filed the forcible entry case.

However, Santiago and Teofila cannot properly challenge the validity of the Deed of Sale in the ejectment case because ejectment cases proceed independently of any claim of ownership.[25] Santiago and Teofila claim that the Deed of Sale was executed without the consent of Benita, Leonardo's spouse. They also claim that the Deed of Sale was executed through fraud and undue influence. However, these issues cannot properly be addressed in the present action. These issues can only be resolved in a separate action specifically for the annulment of the Deed of Sale. Resolution of these issues, in turn, will determine whether the surviving heirs of the Spouses Carlos are co-owners of the Property who are likewise entitled to its possession. Co-ownership is only a necessary

consequence of the heirs' successional rights to the Property, if any.

WHEREFORE, we GRANT the petition. The Decision dated 20 July 2000 and Resolution dated 23 February 2001 of the Court of Appeals in CA-G.R. SP No. 54055 are SET ASIDE. The Decision dated 31 May 1999 of the Regional Trial Court, Branch 22, of Malolos, Bulacan in Civil Case No. 878-M-98, affirming the Decision dated 30 July 1998 of the Municipal Trial Court of Paombong, Bulacan in Civil Case No. 98-720, is REINSTATED. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Azcuna, JJ., concur.
Ynares-Santiago, J., on official leave.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Ramon A. Barcelona and Marina Buzon concurring.

[3] Penned by Judge Candido R. Belmonte.

[4] Docketed as Civil Case No. 98-720.

[5] Presided by Judge Efren B. Tienzo.

[6] Rollo, pp. 149-153.

[7] Docketed as Civil Case No. 878-M-98.

[8] Rollo, pp. 154-158.

[9] Under Rule 42 of the 1997 Rules of Civil Procedure.

[10] Rollo, pp. 43-49.

[11] CA Rollo, pp. 100-104.

[12] Ibid., p. 108.

[13] Ibid., pp. 63-68.

[14] Rollo, pp. 21-22.

[15] Ibid., p. 52.

[16] Ibid., pp. 51-52.

[17] Verification of Plaintiffs' Position Paper, Rollo, p. 139.

[18] In *Nasser v. Court of Appeals*, G.R. No. 32945, 3 December 1990, 191 SCRA 783, the Court held: "Finally, it is settled that a verified statement incorporated in the complaint without a separate affidavit is sufficient and valid to obtain the attachment (*Tolentino v. Carla, et al.*, 66 Phil. 140-143). Thus, under the same ruling, the verified complaint in the case at bar entitled "Application for a Writ of Preliminary Attachment" which specifically stated that to avoid redundancy and repetition, the affidavit of the plaintiffs as required under Section 3, Rule 57 of the Revised Rules of Court is dispensed with, as the matters to be treated and contained therein are already incorporated and made part of the complaint, duly verified by them, has undoubtedly substantially

complied with the requirements of the Rules and the court to which the application for the attachment was filed has jurisdiction to issue the writ prayed for (*Central Capiz v. Salas*, 43 Phil., 30 [1922])." See also *Mago v. Court of Appeals*, 363 Phil. 225 (1999).

[19] *Cagayan de Oro City Landless Residents Asso., Inc. (COCLAI) v. Court of Appeals*, 324 Phil. 466 (1996).

[20] CA Rollo, p. 86.

[21] *Ibid.*, pp. 86-87.

[22] G.R. No. 82680, 15 August 1994, 235 SCRA 307.

[23] See also *Roales v. Director of Lands*, 51 Phil. 302 (1927).

[24] Rollo, p. 192.

[25] *Spouses Diu v. Ibajan*, 379 Phil. 482 (2000).

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