AUGUST 21, 2000

HONOFRE FUENTES, PETITIONER, VS. FELOMINO CAGUIMBAL, RESPONDENT.

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AUSTRIA-MARTINEZ, J.:

Honofre Fuentes (petitioner) is the owner of the property being claimed in this case. Said property is located in Calatagan, Batangas, covered by Transfer Certificate of Title No. T-51758. On January 18, 2000, petitioner filed an action for unlawful detainer against Felomino Caguimbal (respondent) with the Municipal Trial Court (MTC) of Batangas, alleging that in 1991, he allowed respondent to occupy the property rent-free, subject to the condition that the latter will vacate the property when petitioner returns from abroad. However, upon his return, respondent refused to vacate the property, forcing petitioner to file the case.

Respondent denied petitioner's allegations, claiming that his father started occupying the property in 1928 as agricultural tenant until his disability in 1976, after which he (respondent) took over.

In a Decision dated August 21, 2000, the MTC ruled in favor of petitioner. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff Honofre Fuentes and against the defendant Felomino Caguimbal ordering the latter and all persons claiming rights under him to vacate and surrender possession of the land covered by TCT No. T-51758 located at Barangay Sambungan, Calatagan, Batangas with an area of 12,382 square meters registered in the name of plaintiff, Honofre Fuentes.
>
> Calatagan, Batangas, August 21, 2000.[1]

On appeal, the Regional Trial Court of Balayan, Batangas, Branch 11, in a Decision dated March 13, 2001, reversed and set aside the MTC Decision, and dismissed the case. The dispositive portion of the Decision reads:

> WHEREFORE, under the foregoing, the decision of the Municipal Trial Court of Calatagan, Batangas is hereby reversed and set aside, thereby dismissing this case. Ordering Plaintiff-Appellee to pay Twenty Thousand Pesos (P20,000.00) as attorney's fee.
>
> SO ORDERED.[2]

Petitioner then filed a petition for review with the Court of Appeals (CA), docketed as CA-G.R. SP No. 63990. On September 3, 2001, the CA rendered its Decision[3] denying due course to the petition. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the present petition for review is hereby DENIED DUE COURSE and accordingly DISMISSED, for lack of merit. The Decision dated March 13, 2001 which was rendered by Branch XI of the Regional Trial Court of Balayan, Batangas in Civil Case No. 3782, dismissing the complaint for unlawful detainer in Civil Case No. 188, entitled "Honofre Fuentes v. Felomino Caguimbal," is hereby AFFIRMED and REITERATED.
>
> No pronouncement as to costs.
>
> SO ORDERED.[4]

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His motion for reconsideration having been denied,[5] petitioner is now before us on a petition for review under Rule 45 of the Rules of Court, raising the following issues:

First Question of law:

> Whether or not there is an agricultural tenancy relation between the appellant Honofre Fuentes and the respondent Felomino Caguimbal which materialy [sic] affects the cause of action of the plaintiff-appellant;
>
> Second Question of law:
> Whether or not the Regional Trial Court of Balayan, Batangas acted without or in excess of jurisdiction or with grave abuse of discretion tantamount to lack of jurisdiction when it failed to dismiss the defendant (respondent's) appeal despite the fact that the respondent failed to file his memorandum on appeal within the fifteen (15) days [sic] period provided for by law and in admitting and granting the respondent's motion to admit appeal memorandum and appeal memorandum which is not even verified, without any affidavit of merit, not even set for hearing and in immediately submitting the case for decision without even giving the plaintiff (Petitioner-Appellant) an opportunity to file appellee's memorandum on appeal;
>
> Third Question of law:
> Whether or not the appellate court have [sic] jurisdiction to award attorney's fee even if the same have [sic] not been assigned as an error in the respondent memorandum on appeal and no evidence was presented to show that the filing of this case was made in bad faith.
>
> Fourth Question of law:
> Whether or not the plaintiff-appellant as an owner of the lot in question have [sic] the right to eject the defendant-appellee on the premises in question;[6]

The MTC found that petitioner had a cause of action for ejectment against respondent on the sole ground that the property allegedly being cultivated by respondent as a tenant is not the property subject of the present controversy.

On appeal, the Regional Trial Court (RTC) reversed the MTC and dismissed the petition, finding that the property claimed by petitioner and the property allegedly being cultivated by respondent are one and the same; and that there exists an agricultural tenancy relationship between the parties.

While it is beyond question that under Republic Act (R.A.) No. 6657, it is the Department of Agrarian Reform Adjudication Board (DARAB) that has authority to hear and decide cases when the issue of tenancy is legitimately involved, the MTC does not lose jurisdiction over an ejectment case by the simple expedient of a party raising as a defense therein.[7] However, it is the duty of the MTC to receive evidence to determine the then allegation of tenancy; and if after hearing, tenancy had in fact been shown to be the real issue, the court should dismiss the case for lack of jurisdiction.[8]

There is no dispute that all the pleadings and the evidence necessary to prove the respective claims of the parties were submitted to the MTC.

The main issue raised in the present petition is whether the CA erred in affirming the RTC that respondent is an agricultural tenant of petitioner.

However, before proceeding to resolve said issue, it is necessary that we first clear the air on the matter involving the identity of the subject property. Contrary to the findings of the MTC, the RTC found that the property referred to by the MTC as being cultivated by respondent and his predecessor is actually the same property subject of this case, viz.:

> x x x Culled from the records, there was an agrarian case before, between the father of defendant-appellant,

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> Andres Caguimbal and the father of the plaintiff-appellee, Epifanio Caguimbal (sic), docketed as DAR Case No. 1438, Quezon City. Furthermore, a later or subsequent case was filed by plaintiff-appellee against the father of the defendant-appellant for Recovery of Possession at the former CFI, Br. VII, Balayan, Batangas, docketed as Civil Case No. 1083. (Annex "1", Position Paper of Defendant-Appellant). Said case was filed on March 24, 1977. It was, however, dismissed for non-suit on July 20, 1984. (Annex "2", Position Paper of Defendant-Appellant). In the said case, the title pleaded in the complaint was TCT No. T-34791 and not TCT No. T-31760 acquired by plaintiff-appellee way back in 1975. (Exhibit "A", Plaintiff-Appellee). The present title of plaintiff-appellee pleaded in the case is TCT No. T-51758, Exhibit "5", derived from TCT No. T-31760. Defendant-Appellant claims that plaintiff-appellee pleaded the wrong TCT number reason why he allowed the case to be dismissed for non-suit. The Court is inclined to believe such claim of defendant-appellant because the land covered by TCT No. T-34971 (subject of Civil Case No. 1083, for Recovery of Possession) was later sold by plaintiff-appellee in 1982 to a certain Florida Butiong, resident of Calatagan, Batangas. TCT No. T-34971 was cancelled by TCT No. 42785 in the name of said Florida Butiong. (Annex "D", Position Paper of Defendant-Appellant). Yet from 1982 to the present, Florida Butiong never claimed ownership of the land subject of the case, neither did she demand share from the palay harvest of Defendant-Appellant. Thus, for the last 18 years, Florida Butiong never asserted ownership over the subject land simply because her land is different from and apart from the subject land. Error in the pleading was quite probable in the light of averment of Andres Caguimbal in the Answer in Civil Case No. 1083 that Honofre Fuentes had several applications at the DAR covering different parcels of land with a total area of eight (8) hectares.[9]

The CA found no cogent reason to disturb the RTC findings. Even as petitioner argues in his present petition that both the RTC and the CA failed to respect the finding of the MTC, petitioner failed to demonstrate any error committed by the RTC and the CA except to quote the pertinent portion of the MTC decision. Consequently, the Court finds no compelling reason to disturb the findings of the RTC and the CA on this matter.

As regards the RTC's non-dismissal of respondent's appeal due to his failure to file his memorandum appeal on time, the Court will not interfere with the RTC's exercise of its discretion.

True, Rule 40, Section 7(b) provides that "it shall be the duty of the appellant to submit a memorandum" and failure to do so "shall be a ground for dismissal of the appeal"; and that said provision uses the word "shall", which expresses a mandatory or compulsory duty to submit a memorandum. Nevertheless, it has also been held that the word "shall" does not always denote an imperative duty. It may also be consistent with an exercise of discretion. In this jurisdiction, the tendency has been to interpret "shall" as the context or a reasonable construction of the statute in which it is used demands or requires.[10] Inasmuch as the RTC already absolved respondent of his tardy filing of the memorandum appeal, then the Court will not substitute its judgment with that of the RTC's.

It cannot be said that petitioner was deprived of due process when he was not able to file his own memorandum, for as borne by the records, petitioner was able to ventilate his side anent the correctness of the RTC Decision from the CA up to this Court. The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to seek a reconsideration of the action or ruling complained of. Due process is satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or an opportunity to move for a reconsideration of the action or ruling complained of.[11]

Back to the main issue. Petitioner argues that there is no agricultural tenancy between him and respondent, as respondent failed to prove its existence. On the other hand, respondent insists that there is a tenancy relationship between them.

Both the CA and the RTC found that there exists an agricultural tenancy relationship between the parties. Quoting

the RTC, the CA ruled -

> At this juncture, the crucial reason why We are convinced that the complaint in Civil Case No. 188 was correctly dismissed is the rationale made by the RTC anent the findings, which We are now upholding, on the incidental issue of agricultural tenancy, which materially affects the cause of action of the plaintiff:
> As to the issue of agricultural tenancy, based on the record of DAR Case No. 1438, the father of Defendant-Appellant, Andres Caguimbal, had been possessing and planting the land with palay even before 1976. According to the father, he had been possessing and cultivating the land since 1928 when the land was part of Hacienda Calatagan; that Defendant-Appellant had been helping his father since he was a young boy under (sic) his father became physically incapacitated to continue farming in 1976. Defendant-Appellant took over the possession and cultivation of land from his incapacitated father. He continued the tenancy relationship of his father with Plaintiff-Appellee, however, the latter refused to recognize him as tenant and refused to receive his share from palay. These facts were not disputed by Plaintiff-Appellee and his witnesses either in the pleadings or their affidavits. On the other hand, Defendant-Appellant and his witnesses are united to state that Defendant-Appellant had been cultivating the land since 1976, not since 1991 when he substituted his incapacitated father; that, prior to Defendant-Appellant and his deceased father had no other land that they cultivate (sic) except the land subject of the case. These lend credence to the claim of the Defendant-Appellant that he is the agricultural tenant of Plaintiff-Appellee through succession from his deceased father, Andres Caguimbal.[12] (Emphasis supplied)

The Court finds merit in the petition.

Section 3 of R.A. No. 1199 or The Agricultural Tenancy Act of the Philippines defines agricultural tenancy as "the physical possession by a person of land devoted to agriculture belonging to, or legally possessed by another, for the purpose of production through the labor of the former and of the members of his immediate farm household, in consideration of which the former agrees to share the harvest with the latter, or to pay a price certain, either in produce or in money, or in both."

In Vda. de Victoria v. Court of Appeals,[13] the Court enumerated the essential requisites of tenancy, to wit:

> (1) The parties are the landowner and the tenant or agricultural lessee;
>
> (2) The subject of the relationship is agricultural land;
>
> (3) There is mutual consent to the tenancy between the parties;
>
> (4) The purpose of the relationship is agricultural production;
>
> (5) There is personal cultivation by the tenant or agricultural lessee; and
>
> (6) There is a sharing of harvests between the parties.[14]

and emphasized that to deprive the MTC of jurisdiction, they must all be shown to be present.[15]

Tenancy relationship cannot be presumed. Claims that one is a tenant do not automatically give rise to security of tenure. The elements of tenancy must first be proved in order to entitle the claimant to security of tenure. There must be evidence to prove the allegation that an agricultural tenant tilled the land in question.[16]

As we earlier noted, petitioner does not dispute that all the pleadings and the evidence necessary to prove the respective claims of the parties have been submitted to the MTC. We find that there is a dearth of evidence in the present case that will sufficiently establish respondent's claim that he or his predecessor was installed by petitioner or his predecessor as a tenant of the property in dispute. The fact that respondent or his father before him, personally cultivated the property does not, by itself, prove that they were tenants of petitioner or his predecessor-in-interest. Except for the self-serving affidavits/statements of his witnesses, no other proof was

presented by respondent proving that he and his deceased father were actual tenants of petitioner.

Notably, in the separate Sinumpaang Salaysay of Leoncio Caguimbal and Samuel Deverla, they attested that the property was first tilled by respondent's father, Andres Caguimbal, together with petitioner's father, Epifanio Fuentes, until respondent took over in 1976; that petitioner refused to acknowledge respondent as tenant and to accept any share in the palay; that there is no other property being cultivated by respondent except the one in dispute.[17]

The foregoing merely established the fact that respondent succeeded his father in tilling the property in question, and that petitioner refused to receive his share in the palay. It does not indicate any working tenancy relationship between the parties. As ruled in Heirs of Jugalbot v. Court of Appeals,[18] to establish a tenancy relationship, independent evidence, aside from self-serving statements, is needed to prove personal cultivation, sharing of harvests, or consent of the landowner. The Court also stated in Heirs of Jugalbot that:

> In Berenguer, Jr. v. Court of Appeals, we ruled that the respondents' self-serving statements regarding their tenancy relations could not establish the claimed relationship. The fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy. Substantial evidence does not only entail the presence of a mere scintilla of evidence in order that the fact of sharing can be established; there must be concrete evidence on record adequate enough to prove the element of sharing. We further observed in Berenguer, Jr.:
> With respect to the assertion made by respondent Mamerto Venasquez that he is not only a tenant of a portion of the petitioner's landholding but also an overseer of the entire property subject of this controversy, there is no evidence on record except his own claim in support thereof. The witnesses who were presented in court in an effort to bolster Mamerto's claim merely testified that they saw him working on the petitioner's landholding. More importantly, his own witnesses even categorically stated that they did not know the relationship of Mamerto and the petitioner in relation to the said landholding. x x x The fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy. Other factors must be taken into consideration like compensation in the form of lease rentals or a share in the produce of the landholding involved. (Underscoring supplied)
>
> x x x x
>
> In the absence of any substantial evidence from which it can be satisfactorily inferred that a sharing arrangement is present between the contending parties, we, as a court of last resort, are duty-bound to correct inferences made by the courts below which are manifestly mistaken or absurd. x x x
>
> Without the essential elements of consent and sharing, no tenancy relationship can exist between the petitioner and the private respondents.[19]

In concluding that there is a tenancy relationship between the parties, the RTC, as affirmed by the CA, held:

> As to the issue of agricultural tenancy, based on the record of DAR Case No. 1438, the father of Defendant-Appellant, Andres Caguimbal, had been possessing and planting the land with palay even before 1976. According to the father, he had been possessing and cultivating the land since 1928 when the land was part of Hacienda Calatagan; that Defendant-Appellant had been helping his father since he was a young boy under [sic] his father became physically incapacitated to continue farming in 1976. Defendant-Appellant took over the possession and cultivation of land from his incapacitated father. He continued the tenancy relationship of his father with Plaintiff-Appellee, however, the latter refused to recognize him as tenant and refused to receive his share from palay. These facts were not disputed by Plaintiff-Appellee and his witnesses, either in the pleadings or their affidavits. On the other hand, Defendant-Appellant and his witnesses are untied to state that Defendant-Appellant had been cultivating the land since 1976, not since 1991 when he substituted his incapacitated father; that, prior to 1976, his father was cultivating the land as early as 1928; that,

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> Defendant-Appellant and his deceased father had no other land that they cultivate except the land subject of the case. These land credence to the claim of Defendant-Appellant that he is the agricultural tenant of Plaintiff-Appellee through succession from his deceased father, Andres Caguimbal.[20] (Emphasis supplied).

What was established by the evidence in the present case was that respondent and his predecessor had been planting on the property since 1928. What is wanting, however, is proof showing the sharing of harvests or that petitioner, as landowner of the subject property ever gave his consent to establish or maintain a tenancy relationship.

Except for the sweeping conclusion made by the RTC that respondent continued the tenancy relationship of his father with petitioner, there is no mention of evidence in the decision of the RTC that would sustain its finding that respondent or his predecessor-in-interest is an agricultural tenant of the property in question. It was not shown how respondent or his father was instituted as an agricultural tenant thereof; neither was the existence of a sharing agreement between respondent and petitioner shown. The fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy.[21] In fact, the RTC even noted that there was a standing feud between petitioner and respondent's father over the property. This negates the proposition that there was a consensual institution of respondent or his father as an agricultural tenant of the property.

There being no agricultural tenancy relationship in this case, the MTC correctly took jurisdiction over the ejectment case filed by petitioner; and finding that the MTC Decision is in accordance with the law and the facts of the case, the same should be reinstated. The CA erred in affirming the RTC Decision. Consequently, respondent must vacate the subject property.

Finally, petitioner laments the award of attorney's fees by the RTC which was affirmed by the CA despite the fact that it was not assigned as an error by respondent in his Memorandum on Appeal.[22] The fundamental rule of procedure is that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal. On appeal, only errors specifically assigned and properly argued in the brief will be considered, with the exception of those affecting jurisdiction over the subject matter as well as plain and clerical errors.[23] Inasmuch as attorney's fees were never sought or raised by respondent, its award was therefore uncalled for.

WHEREFORE, the petition is GRANTED. The Decision dated September 3, 2001 of the Court of Appeals in CA-G.R. SP No. 63990 is REVERSED and SET ASIDE. The Decision dated August 21, 2000 rendered by the Municipal Trial Court of Batangas is REINSTATED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

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[*] Pursuant to Section 4(a), Rule 45 of the Rules of Court, the name of the Court of Appeals is deleted from the title.

[1] Rollo, pp. 194-195.

[2] CA rollo, p. 49.

[3] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Conrado M. Vasquez, Jr. and Eliezer R. De Los Santos, concurring; id. at 244-250.

[4] Id. at 250.

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[5] Id. at 269.

[6] Rollo, p. 33.

[7] Hilado v. Chavez, G.R. No. 134742, September 22, 2004, 438 SCRA 623, 641.

[8] Id. at 641-642.

[9] CA rollo, pp. 45-47.

[10] Spouses Montecer v. Court of Appeals, 368 Phil. 121, 129 (1999).

[11] Berboso v. Court of Appeals, G.R. No. 141593-94, July 12, 2006, 494 SCRA 583, 608.

[12] CA rollo, pp. 248-249.

[13] G.R. No. 147550, January 26, 2005, 449 SCRA 319.

[14] Id. at 335.

[15] Id.

[16] Heirs of Jugalbot v. Court of Appeals, G.R. No. 170346, March 12, 2007; Valencia v. Court of Appeals, 449 Phil. 711, 736 (2003).

[17] Rollo, p. 148, 149.

[18] Supra note 16.

[19] Id. at 8-9.

[20] RTC Decision, CA rollo, pp. 48-49.

[21] VHJ Construction and Development Corporation v. Court of Appeals, G.R. No. 128534, August 13, 2004, 436 SCRA 392, 399.

[22] Rollo, p. 203.

[23] Development Bank of the Philippines v. West Negros College, Inc., G.R. No. 152359, May 21, 2004, 429 SCRA 50, 60.

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