

**MARIO L. COPUYOC, PETITIONER, VS. ERLINDA DE SOLA, RESPONDENT.***G.R. NO. 151322. October 11, 2006*

Ponente: AUSTRIA-MARTINEZ, J.

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The parties in this case are vying for the rightful possession of a property located in Xavierville, Loyola Heights, Quezon City.

Mario L. Copuyoc[\*] (petitioner) and his spouse are holders of a Contract to Sell dated September 6, 1995, between them as buyers and the Bank of Commerce (formerly The Overseas Bank of Manila) as seller, while Erlinda de Sola (respondent) has Transfer Certificate of Title (TCT) No. 87569 in her name.

On December 18, 1996, respondent filed with the Metropolitan Trial Court (MeTC) of Quezon City, Branch 35, a complaint for Forcible Entry with Injunction and Urgent Prayer for Temporary Restraining Order. The complaint contained the allegations that: respondent is the owner of a parcel of land known as Lot 25, Block 6 of the Xavierville Estate Subdivision located at No. 6 Guerrero St., Xavierville I, Loyola Heights, Quezon City, by virtue of TCT No. 87569; respondent has been in actual possession of the property since June 7, 1993, when the same was sold to her by Christine C. Quesada, as evidenced by an Absolute Deed of Sale of Real Estate; petitioner commenced construction of a house on the property without respondent's consent and despite demands, petitioner refused to stop the construction and vacate the premises.[1] The property was described in respondent's TCT No. 87569, as follows:

A parcel of land (Lot 25, Blk. 6, of the cons. subd. plan (LRC) Pcs-6818, being a portion of Lots 1-8, Blk. 1; Lots 1-23, Blk. 2, Lots 1-14, Blk. 3; Lots 1-16, Blk. 5; Lots 1-22, Blk. 6, Lots 1-20, 22, Blk. 7; Lots 1-3, Blk. 8; Lots 1-18, Blk. 9, Lots 1-13, Blk. 10, Lots 1-16, Blk. 11; Lots 1-13, Blk. 12, Lots 58-81, Blk. 13; Lots 6, 8, 38, 40, 42, 44, 46, 58, Blk. 14; Lots 1-20, Blk. 15; Lots 1, 2, 5, 11, [Blk. 16,] Blk. 16; Lots 16-24, 26, Blk. 23, Lots 3-6-12, Blk. 24; Lots 1-9, 11-13, Blk. 25; Lots 2-4, 6, Blk. 26, Lots 2, 4, 6, 9-11, 13, 15, 17, 18, 21-22, Blk. 27; Lots 4-5, Blk. 28; Lots 1-4, 10, 12, Blk. 31; Park Lots 1, 2, 3, 5, 6-A, 6-B, 4, 11, Street Lots 4-8 and 10, 21, 23, 24-A, all of Psd-35337; Lots 12 & 21; St. Lots 1, 2, 3 and Park Lot 1, all of Psd-53686, Lots 23-A & 23-B, Blk. 23; Lots 11-A, 11-B, Blk. 31, St. Lots 22-A, 22-B, 23-A, 23-B, all of Psd-35337, Amd. LRC Rec. No. 7672), situated in the Dist. of Tandang Sora, Quezon City, Is. of Luzon. Bounded on the West, pts. 1-2 by Lot 23, Blk. 6; on the North, pts. 2-4 by Road Lot 8; on the East, pts. 4-5 by Lot 27, Blk. 6; and on the South, pts. 5-1 by Lot 26, Blk. 6, all of the cons.-sub. plan. x x x; containing an area of FOUR HUNDRED SEVENTY SQ. METERS AND FIFTY (470.50) SQ. DECIMETERS, more or less. x x x [2] (Emphasis supplied)

On January 15, 1997, the MeTC conducted a hearing on respondent's application for the issuance of a temporary restraining order, and finding merit on the application, issued a temporary restraining order on the same day.

Petitioner filed his Answer with Counterclaim and Opposition to the Petition for the Issuance of a Writ of Preliminary Injunction, denying respondent's allegations and asserting that: he is the lawful possessor of the property, by virtue of a Contract to Sell executed on September 6, 1995 in his favor by the Bank of Commerce;

respondent's title is forged and the property described therein is located in Tandang Sora, not Xavierville; the Bank of Commerce is a holder of duly reconstituted title [TCT No. RT-114371 (265907)]<sup>[\*\*]</sup> covering the subject property, including other properties in Phase I of the Xavierville Subdivision, and had possessed the same for 43 years; a syndicate was able to procure forged titles after the office of the Register of Deeds was burned during the fire that gutted the Quezon City Hall.<sup>[3]</sup> The property was described in the Contract to Sell, as follows:

A parcel of land (Lot 25, Block 6, of the consolidation-subdivision plan (LRC) Pcs-6818 (Sheet 2), being a portion of the consolidation of Lots 1-18, Block 1; 1-13, Block 2; 1-14, Block 3; 1-16, Block 5; 1-22, Block 6; 1-23, Block 7; 1-9, Block 8; 1-21, Block 9; 1-3, Block 10, 1-16, Block 11; 1-13, Block 12; Park Lots 1, 2, and 3 and Street Lots 4-8 and 10-16, all described on plan Psd-35337, LRC (GLRC) Record No. 7672), situated in Quezon City, Island of Luzon. Bounded on the N., points 2 to 4, by Road Lot 5; on the E., points 4 to 5, by Lot 27; on the S., points 5 to 1 by Lot 26; and on the W., points 1 to 2 by Lot 23, all of Block 6, all of the consolidation subdivision plan. x x x; containing an area of FOUR HUNDRED SEVENTY AND FIFTY SQUARE METERS (470.5) SQUARE METERS more or less.<sup>[4]</sup>

Thereafter, the MeTC held a hearing on the propriety of the issuance of a temporary restraining order after the 20-day period. When the parties' respective counsels agreed to maintain the status quo, the MeTC ordered the submission of their Positions Papers and other supporting evidence or documents, after which the case shall be deemed submitted for decision.

On September 22, 1997, the MeTC rendered its Decision dismissing the complaint. The dispositive portion of the Decision provides:

WHEREFORE, in view of the foregoing, plaintiff's action for Forcible Entry against defendant Mario Capuyoc is hereby ordered DISMISSED. No pronouncement as to cost.

Defendant's counterclaim is also DISMISSED. Since plaintiff De Sola is only trying to protect her interest.

SO ORDERED.<sup>[5]</sup>

Respondent appealed to the Regional Trial Court (RTC) of Quezon City, Branch 225, which, in its Decision dated October 19, 1998, reversed the dismissal of the complaint, and ordered petitioner to vacate the premises. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the lower court's decision DISMISSING plaintiff-appellant's forcible entry suit is REVERSED. Accordingly, this Court hereby orders that defendant-appellee Mario Capuyoc and all persons claiming rights under him to vacate the premises known as Lot 25, Block 6 of the Xavierville Estate Subdivision located at No. 6 Guerrero St., Xavierville I, Loyola Heights, Quezon City. No cost.

SO ORDERED.<sup>[6]</sup>

This time, petitioner filed a Petition for Review with the Court of Appeals (CA), docketed as CA-G.R. SP No. 52132. The CA,<sup>[7]</sup> in its Decision dated April 30, 2001, denied the petition, "without prejudice to the outcome of Civil Case No. Q-97-30333 entitled 'Bank of Commerce v. Erlinda de Sola' and to the filing of an appropriate plenary action to settle the issue of ownership of the disputed property."<sup>[8]</sup>

Hence, the present petition for review based on the following grounds:

The Court of Appeals decided questions of substance in a way not in accord with law or with applicable decisions of the Honorable Court, particularly:

(i)

In holding that Respondent had priority of possession over the property subject of this case;

(ii)

In taking cognizance of the tax declarations which were presented for the first time on appeal and ruling that these tax declarations prove Respondent's prior possession of the property subject of this case.

(iii)

In not finding as conclusive, the report of the chief of the surveys division of the department of environment and natural resources that the properties as described in the parties' respective titles are not located in one and the same place.[9]

The MeTC found that the property over which the Bank of Commerce holds title to is not the property mentioned in respondent's title; hence, there was no forcible entry to speak of.[10]

The RTC, however, disagreed with the finding of the MeTC, ruling that petitioner's evidence proved that the property in litigation is one and the same, and that respondent was in prior possession of the property. According to the RTC, the testimonies of petitioner's witnesses were conflicting. On one hand, the testimony of Geodetic Engineer Ernesto Erive showed that petitioner's property is located in Xavierville, while respondent's is in Tandang Sora. On the other hand, the Chief of the Reconstitution Division of the Land Registration Authority, Benjamin Bustos, testified that the lot described in the title of the Bank of Commerce is identical with the lot described in respondent's title. This was allegedly corroborated in the Order of Reconstitution issued by Bustos, stating that "[T]he lot described in TCT No. 265907 is identical to the lot described in TCT No. 265984 issued in the name of spouses Miguel Uy and Carmela Lim and was ordered reconstituted under administrative Order No. Q-366 on September 23, 1992." [11] The RTC also ruled that the filing of the action for Quieting of Title by the Bank of Commerce on February 1, 1997, docketed as Civil Case No. Q-97-30333, amounts to an implied admission that the two titles cover the same property. Given these, the RTC concluded that petitioner's and respondent's titles refer to the same property.[12]

The RTC also ruled that respondent was in prior possession of the property inasmuch as the Deed of Sale between respondent and Quesada, which was executed on June 7, 1993, amounts to possession in legal contemplation.[13]

The CA upheld the RTC's findings and conclusion. The CA ruled that respondent has a better right to the property since the sale between her and Quesada was on June 7, 1993, while the Contract to Sell between petitioner and the Bank of Commerce was dated September 6, 1995. While the testimony of Engineer Erive may have cast a doubt or cloud on respondent's title, still, until there is a judicial declaration as regards its nullity, then respondent's title remains valid.[14]

The CA also found that respondent had prior possession of the property, which began in 1993, and petitioner encroached on such possession. While respondent did not stay on the property, her regular visits are the same as being in possession thereof. The CA acknowledged that the tax declarations in the name of respondent are indications that strengthened her claim of possession.[15] With regard to the testimony of Engineer Erive on the identity of the property, the CA held that this can be properly threshed out in Civil Case No. Q-97-30333 presently pending with the RTC of Quezon City.[16]

Petitioner takes exception to the foregoing findings of the RTC and the CA. Petitioner argues that despite the execution of the Deed of Sale, respondent was never in actual and physical possession of the property prior to the filing of the forcible entry case, unlike petitioner who was able to build improvements thereon. Petitioner also argues that his predecessor-in-interest, the Bank of Commerce, has also been in prior possession of the property, as shown by the fence it built around the area even before it was sold to petitioner. The Bank of Commerce's lack of title over the property can be explained by the fact that it was pending reconstitution and the title was in fact

already reconstituted during the pendency of the case.

Petitioner also objects to the admission by the RTC of respondent's tax declarations since it was presented only for the first time during the appellate proceedings. Even then, petitioner maintains that the tax declarations do not establish respondent's actual physical possession.

Finally, petitioner asserts that the evidence presented clearly indicates that property described in respondent's title is not the same property bought by petitioner.[17]

At the outset, it should be stated that as a general rule, the Court will not entertain petitions for review under Rule 45 of the Rules of Court, which raise questions of fact, as its power of judicial review is confined only to errors of law. Considering, however, that the CA and the RTC came up with contradictory findings with that of the MeTC, the Court is now constrained to analyze and weigh all over again the evidence presented in the proceedings below, as it is clearly an exception to the general rule.[18]

An action for forcible entry is a quieting process that is summary in nature. It is designed to recover physical possession through speedy proceedings that are restrictive in nature, scope and time limits. In forcible entry, the plaintiff is deprived of physical possession by means of force, intimidation, threat, strategy or stealth. The presence of any of these elements in the present case implies that the possession of the disputed land by the defendant has been unlawful from the beginning; that is, he acquired possession by illegal means.[19]

The principal issue to be resolved in forcible entry cases is mere physical or material possession (possession de facto) and not juridical possession (possession de jure) nor ownership of the property involved.[20] Title is not involved. Thus, in *David v. Cordova*,[21] the Court explained:

The only question that the courts must resolve in ejectment proceedings is -who is entitled to the physical possession of the premises, that is, to the possession de facto and not to the possession de jure. It does not even matter if a party's title to the property is questionable, or when both parties intruded into public land and their applications to own the land have yet to be approved by the proper government agency. 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. Neither is the unlawful withholding of property allowed. Courts will always uphold respect for prior possession.

Thus, a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him. To repeat, the only issue that the court has to settle in an ejectment suit is the right to physical possession.[22] (Emphasis supplied)

It is also well settled that in civil cases, the burden of proof is on the plaintiff to establish his case by a preponderance of evidence. If the plaintiff claims a right granted or created by law, the same must be proven by competent evidence. The plaintiff must rely on the strength of his own evidence and not on the weakness of that of his opponent.[23] In the present case, it devolved upon respondent to show by preponderance of evidence that she was illegally deprived of possession of the property subject of the forcible entry case for her to obtain judgment in her favor.[24]

Coming now to the issue of who, as between petitioner and respondent, has priority in possession of the property, the Court notes, at this juncture, a basic error in the decisions of the MeTC, RTC, and the CA, which should be rectified. All three courts entertained the impression that petitioner's possession is based on his claim of ownership of the property. This is not so. It should be pointed out that petitioner's right to possess the property is not derived from any claim of ostensible ownership over the same but on the provision in the Contract to Sell

allowing him to take possession of the property pending reconstitution of the title and full payment of the purchase price. Ownership remained in the name of the Bank of Commerce, and petitioner is yet to become the owner of the property at the time the ejectment proceedings were had. This is simply because in a contract to sell, ownership is, by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price.[25] In fact, The Bank of Commerce can even avail of the remedy of ejectment against petitioner in case the latter defaults payment since the former retains ownership of the property.[26] While this particular issue was neither raised nor brought up, the Court, nevertheless, deems it necessary to bring it up, in the interest of substantial justice and to avoid further litigation on the matter.[27]

It has been ruled that a plaintiff in an ejectment case cannot succeed where it appears that, as between himself and the defendant, the latter had a possession antedating his own. To ascertain this, it is proper to look at the situation as it existed before the first act of spoliation occurred.[28]

As borne by the records, petitioner claims actual and physical possession of the property, while respondent claims possession through an ostensible ownership over the property. With regard to petitioner, his claim of right to possession is derived from the Contract to Sell between him and his wife as buyers, and the Bank of Commerce as seller. Based on said contract, petitioner was allowed to take possession of the property. In turn, the Bank of Commerce (then the Overseas Bank of Manila) bought the property from the Xavierville Estate, Inc. in a Deed of Sale of Real Estate dated September 8, 1967, and from which TCT No. 265907 issued on December 5, 1979 was based.

On the other hand, respondent's claim of possession over the property is based on an Absolute Deed of Sale of Real Estate dated June 7, 1993 between respondent and Christine Quesada, and by virtue of which, TCT No. 87569 was issued in her name on June 8, 1993. TCT No. 87569 was traced back to Ana Maria Pilarta Figueras, who was the previous holder of TCT No. 76045 issued on January 6, 1993, and from whom Quesada bought the property. Meanwhile, TCT No. 80618 in the name of Quesada was issued on February 18, 1993.

Given the surrounding circumstances of this case, the Court finds that petitioner is in prior possession of the property, and is entitled to remain therein.

First, while it may be true that the Absolute Deed of Sale of Real Estate between respondent and Christine Quesada was executed on June 7, 1993, prior to the Contract to Sell between petitioner and the Bank of Commerce on September 6, 1995, it should be emphasized that the execution of a deed of sale is merely a prima facie presumption of delivery of possession of a piece of real property, which is destroyed when the delivery is not effected because of a legal impediment. Said constructive or symbolic delivery, being merely presumptive, may be negated by the failure of the vendee to take actual possession of the land sold,[29] as in respondent's case. Records show that respondent never occupied the property from the time it was allegedly sold to her on June 7, 1993 or at any time thereafter.

Respondent, however, maintains that her "regular" visits to the property constitute possession. In *Dela Rosa v. Carlos*,[30] the Court held that visiting the property on weekends and holidays is evidence of actual or physical possession. In respondent's case, however, her "regular" visits to the property are not unequivocal proof of her actual or physical possession. In a span of three years, i.e., from the time she bought the property up to the time that the complaint in this case was filed, respondent visited the property only five times.[31] Neither did she construct any improvements or fencing on the property.[32] In fact, she does not even know the road number on which the property is situated given that she visited the place only five times.[33] Her infrequent visits do not constitute possession, specially considering that these were not coupled with any actual exercise of dominion over the property.

In contrast, petitioner was able to establish his actual physical possession over the property, having started construction thereon soon after the property was turned over to him by virtue of the Contract to Sell on September 6, 1995.

The fact that petitioner does not have a tax declaration over the property was taken against him. This is erroneous. As pointed out earlier, petitioner is yet to become the owner of the property. Obviously, he cannot declare the property as his own for tax purposes since it is still owned by the Bank of Commerce. Moreover, the RTC should not have permitted respondent's belated submission in evidence of the tax declarations. In the first place, possession is the only issue in a case for forcible entry. Also, there is no justification for the delay in presenting said evidence.[34]

More importantly, there exists a serious doubt as to the identity of the property, which respondent claims as owned and possessed by her. An area delimited by boundaries properly identifies a parcel of land.[35] In this case, the respective titles of the Bank of Commerce and respondent bear the following boundaries:

Technical  
Description

TCT No. 87569 in the name of  
Erlinda R. de Sola

TCT No. RT-114371 (265907)  
in the name of the Bank of  
Commerce

Bounded on the North by

pts. 2-4 by Road Lot 8

points 2 to 4, by Road Lot 5

Bounded on the East by

pts. 4-5 by Lot 27, Blk. 6

points 4 to 5, by Lot 27

Bounded on the South by

pts. 5-1 by Lot 26, Blk. 6

points 5 to 1 by Lot 26

Bounded on the West by

pts. 1-2 by lot 23, Blk. 6

points 1 to 2 by Lot 23

situated in

district of Tandang Sora, Quezon City, Island of Luzon

Quezon City, Island of Luzon

Road 8 bounds the property described in respondent's title on the north, while Road 5 bounds petitioner's property on the north. As testified to by Geodetic Engineer Ernesto Erive of the Bureau of Lands, who plotted the actual

boundaries as described in the respective titles of respondent and the Bank of Commerce, Lot 25, Block 6, Road 8 is located 200 meters away.[36] The sketch plan exhibits this. Engineer Erive also testified that after projecting the properties on these two titles, it appears that the Bank of Commerce property is located in Loyola Heights along the western side of Katipunan Street, while respondent's property is located in Tandang Sora on the northwestern side of Commonwealth Avenue.[37]

The RTC gave greater weight to the testimony of Mr. Benjamin Bustos that the property described in these two titles is identical. The Court, however, is inclined to believe otherwise. It should be stressed that the title is the conclusive proof of a property's metes and bounds.[38] The marked discrepancy between the two titles clearly casts serious doubt as to the identity of the property being claimed by respondent. Given respondent's failure to establish her claim, including the identity of the property, her case perforce must likewise fail.

WHEREFORE, the petition is GRANTED. The Court of Appeals' Decision dated April 30, 2001 is REVERSED and SET ASIDE together with the Regional Trial Court's Decision dated October 19, 1998. The Decision dated September 22, 1997 rendered by the Metropolitan Trial Court of Quezon City, Branch 35, is REINSTATED. This is without prejudice to the outcome of Civil Case No. Q-97-30333, entitled "Bank of Commerce v. Erlinda de Sola."

No costs.

**SO ORDERED.**

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[\*] Also referred to as Capuyoc in other parts of the records.

[1]Records, pp. 1-2.

[2]Id. at 803, back of 803, and 804.

[\*\*] The Order of reconstitution was issued on September 24, 1996 by the Land Registration Authority, one year after the execution of the Contract to Sell between petitioner and The Overseas Bank of Manila.

[3] Records, pp. 27-35.

[4]Id. at 770-771.

[5]Id. at 411.

[6]Id. at 978.

[7] Associate Justice Godardo A. Jacinto (retired), ponente, with Associate Justices Bernardo P. Abesamis (retired) and Eliezer R. de los Santos, concurring.

[8] Rollo, p. 42.

[9] Id. at 15.

[10]Records, p. 411.

[11]RTC Decision, id. at 976-977.

[12] Id. at 977.

[13] Id.

[14] CA Decision, rollo, p. 38.

[15] Id. at 40.

[16] Id. at 41.

[17] Id. at 16-26.

[18] *Ceremonia v. Court of Appeals*, 373 Phil. 511, 516 (1999); *Air Philippines Corporation v. International Business Aviation Services Phils., Inc.*, G.R. No. 151963, September 9, 2004, 438 SCRA 51, 76.

[19] *Montañez v. Mendoza*, 441 Phil. 47, 55-56 (2002).

[20] *Dela Rosa v. Carlos*, G.R. No. 147549, October 23, 2003, 414 SCRA 226, 234.

[21] G.R. No. 152992, July 28, 2005, 464 SCRA 384.

[22] Id. at 402-403.

[23] *Umpoc v. Mercado*, G.R. No. 158166, January 21, 2005, 449 SCRA 220, 238.

[24] *Montañez v. Mendoza*, *supra* note 19, at 56.

[25] *Chua v. Court of Appeals*, 449 Phil. 25, 41-42 (2003).

[26] *Keppel Bank Philippines, Inc. v. Adao*, G.R. No. 158227, October 19, 2005, 473 SCRA 372, 380.

[27] *Boston Bank of the Philippines v. Manalo*, G.R. No. 158149, February 9, 2006, 482 SCRA 108, 128; *Fortich v. Corona*, 352 Phil. 461, 481 (1998); *China Banking Corporation v. Court of Appeals*, 337 Phil. 223, 237 (1997); *Valderrama v. National Labor Relations Commission*, 326 Phil. 477, 483-484 (1996).

[28] *Spouses Gaza v. Lim*, 443 Phil. 337, 349 (2003).

[29] *Ten Forty Realty and Development Corp. v. Cruz*, 457 Phil. 603, 615 (2003).

[30] *Supra* note 20.

[31] TSN, January 22, 1997, p. 569.

[32] TSN, January 28, 1997, p. 583-584.

[33] Id. at 583.

[34] *Cansino v. Court of Appeals*, 456 Phil. 686, 693 (2003).

[35] *Heirs of Juan Oclarit v. Court of Appeals*, G.R. No. 96644, June 17, 1994, 233 SCRA 239, 248.

[36] TSN, January 28, 1997, p. 613.

[37] Id. at 614-615.

[38] *Carvajal v. Court of Appeals*, 345 Phil. 582, 593-594 (1997).

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