MERCEDES MORALIDAD, PETITIONER, VS. SPS. DIOSDADO PERNES AND ARLENE PERNES, RESPONDENTS.

G.R. NO. 152809. August 03, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

Under consideration is this petition for review on certiorari under Rule 45 of the Rules of Court to nullify and set aside the following issuances of the Court of Appeals (CA) in CA-G.R. SP No. 61610, to wit:

> - Decision dated September 27, 2001,[1] affirming an earlier decision of the Regional Trial Court (RTC) of Davao City which reversed that of the Municipal Trial Court in Cities (MTCC), Davao City, Branch 1, in an action for unlawful detainer thereat commenced by the petitioner against the herein respondents; and
>
> - Resolution dated February 28, 2002,[2] denying petitioner's motion for reconsideration.

At the heart of this controversy is a parcel of land located in Davao City and registered in the name of petitioner Mercedes Moralidad under Transfer Certificate of Title (TCT) No. T-123125 of the Registry of Deeds of Davao City.

In her younger days, petitioner taught in Davao City, Quezon City and Manila. While teaching in Manila, she had the good fortune of furthering her studies at the University of Pennsylvania, U.S.A. While schooling, she was offered to teach at the Philadelphia Catholic Archdiocese, which she did for seven (7) years. Thereafter, she worked at the Mental Health Department of said University for the next seventeen (17) years.

During those years, she would come home to the Philippines to spend her two-month summer vacation in her hometown in Davao City. Being single, she would usually stay in Mandug, Davao City, in the house of her niece, respondent Arlene Pernes, a daughter of her younger sister, Rosario.

Back in the U.S.A. sometime in 1986, she received news from Arlene that Mandug at the outskirts of Davao City was infested by NPA rebels and many women and children were victims of crossfire between government troops and the insurgents. Shocked and saddened about this development, she immediately sent money to Araceli, Arlene's older sister, with instructions to look for a lot in Davao City where Arlene and her family could transfer and settle down. This was why she bought the parcel of land covered by TCT No. T-123125.

Petitioner acquired the lot property initially for the purpose of letting Arlene move from Mandug to Davao City proper but later she wanted the property to be also available to any of her kins wishing to live and settle in Davao City. Petitioner made known this intention in a document she executed on July 21, 1986.[3] The document reads:

> I, MERCEDES VIÑA MORALIDAD, of legal age, single, having been born on the 29th day of January, 1923, now actually residing at 8021 Lindbergh Boulevard, Philadelphia, Pennsylvania, U.S.A., wishes to convey my honest intention regarding my properties situated at Palm Village Subdivision, Bajada, Davao City, 9501, ... and hereby declare:

- That it is my desire that Mr. and Mrs. Diosdado M. Pernes may build their house therein and stay as long as they like;

- That anybody of my kins who wishes to stay on the aforementioned real property should maintain an atmosphere of cooperation, live in harmony and must avoid bickering with one another;

- That anyone of my kins may enjoy the privilege to stay therein and may avail the use thereof. Provided, however, that the same is not inimical to the purpose thereof;

- That anyone of my kins who cannot conform with the wishes of the undersigned may exercise the freedom to look for his own;

- That any proceeds or income derived from the aforementioned properties shall be allotted to my nearest kins who have less in life in greater percentage and lesser percentage to those who are better of in standing.

xxx xxx xxx

Following her retirement in 1993, petitioner came back to the Philippines to stay with the respondents' on the house they build on the subject property. In the course of time, their relations turned sour because members of the Pernes family were impervious to her suggestions and attempts to change certain practices concerning matters of health and sanitation within their compound. For instance, Arlene's eldest son, Myco Pernes, then a fourth year veterinary medicine student, would answer petitioner back with clenched fist and at one time hurled profanities when she corrected him. Later, Arlene herself followed suit. Petitioner brought the matter to the local barangay lupon where she lodged a complaint for slander, harassment, threat and defamation against the Pernes Family. Deciding for petitioner, the lupon apparently ordered the Pernes family to vacate petitioner's property but not after they are reimbursed for the value of the house they built thereon. Unfortunately, the parties could not agree on the amount, thus prolonging the impasse between them.

Other ugly incidents interspersed with violent confrontations meanwhile transpired, with the petitioner narrating that, at one occasion in July 1998, she sustained cuts and wounds when Arlene pulled her hair, hit her on the face, neck and back, while her husband Diosdado held her, twisting her arms in the process.

Relations having deteriorated from worse to worst, petitioner, on July 29, 1998, lodged a formal complaint before the Regional Office of the Ombudsman for Mindanao, charging the respondent spouses, who were both government employees, with conduct unbecoming of public servants. This administrative case, however, did not prosper.

Then, on August 3, 1998, petitioner filed with the MTCC of Davao City an unlawful detainer suit against the respondent spouses. Petitioner alleged that she is the registered owner of the land on which the respondents built their house; that through her counsel, she sent the respondent spouses a letter demanding them to vacate the premises and to pay rentals therefor, which the respondents refused to heed.

In their defense, the respondents alleged having entered the property in question, building their house thereon and maintaining the same as their residence with petitioner's full knowledge and express consent. To prove their point, they invited attention to her written declaration of July 21, 1986, supra, wherein she expressly signified her desire for the spouses to build their house on her property and stay thereat for as long as they like.

The MTCC, resolving the ejectment suit in petitioner's favor, declared that the respondent spouses, although builders in good faith vis-à-vis the house they built on her property, cannot invoke their bona fides as a valid excuse for not complying with the demand to vacate. To the MTCC, respondents' continued possession of the premises turned unlawful upon their receipt of the demand to vacate, such possession being merely at petitioner's tolerance, and sans any rental. Accordingly, in its decision dated November 17, 1999,[4] the MTCC rendered

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judgment for the petitioner, as plaintiff therein, to wit:

> WHEREFORE, judgment is hereby rendered in favor of herein plaintiff and against the defendants, as follows:
>
> - Directing the defendants, their agents and other persons acting on their behalf to vacate the premises and to yield peaceful possession thereof to plaintiff;
>
> - Ordering defendants to pay P2,000.00 a month from the filing of this complaint until they vacate premises;
>
> - Sentencing defendants to pay the sum of P120,000.[5] as attorney's fees and to pay the cost of suit.
>
> Defendants counterclaim are hereby dismissed except with respect to the claim for reimbursement of necessary and useful expenses which should be litigated in an ordinary civil actions. (sic)

Dissatisfied, the respondent spouses appealed to the RTC of Davao City.

In the meantime, petitioner filed a Motion for Execution Pending Appeal. The motion was initially granted by the RTC in its Order of February 29, 2000, but the Order was later withdrawn and vacated by its subsequent Order dated May 9, 2000[6] on the ground that immediate execution of the appealed decision was not the prudent course of action to take, considering that the house the respondents constructed on the subject property might even be more valuable than the land site.

Eventually, in a decision[7] dated September 30, 2000, the RTC reversed that of the MTCC, holding that respondents' possession of the property in question was not, as ruled by the latter court, by mere tolerance of the petitioner but rather by her express consent. It further ruled that Article 1678 of the Civil Code on reimbursement of improvements introduced is inapplicable since said provision contemplates of a lessor-lessee arrangement, which was not the factual milieu obtaining in the case. Instead, the RTC ruled that what governed the parties' relationship are Articles 448 and 546 of the Civil Code, explaining thus:

> Since the defendants-appellees [respondents] are admittedly possessors of the property by permission from plaintiff [petitioner], and builders in good faith, they have the right to retain possession of the property subject of this case until they have been reimbursed the cost of the improvements they have introduced on the property.
>
> Indeed, this is a substantive right given to the defendants by law, and this right is superior to the procedural right to [sic] plaintiff to immediately ask for their removal by a writ of execution by virtue of a decision which as we have shown is erroneous, and therefore invalid. (Words in brackets supplied),

and accordingly dismissed petitioner's appeal, as follows:

> WHEREFORE, in view of the foregoing, the Decision appealed from is REVERSED and declared invalid. Consequently, the motion for execution pending appeal is likewise denied.
>
> Counter-claims of moral and exemplary damages claimed by defendants are likewise dismissed. However, attorney's fees in the amount of fifteen thousand pesos is hereby awarded in favor of defendants-appellants, and against plaintiffs.
>
> SO ORDERED.[8]

Therefrom, petitioner went to the CA in CA-G.R. SP No. 61610.

On September 27, 2001, the CA, while conceding the applicability of Articles 448 and 546 of the Civil Code to the case, ruled that it is still premature to apply the same considering that the issue of whether respondents' right to possess a portion of petitioner's land had already expired or was already terminated was not yet resolved. To the CA, the unlawful detainer suit presupposes the cessation of respondents' right to possess. The CA further ruled

that what governs the rights of the parties is the law on usufruct but petitioner failed to establish that respondents' right to possess had already ceased. On this premise, the CA concluded that the ejectment suit instituted by the petitioner was premature. The appellate court thus affirmed the appealed RTC decision, disposing:

> WHEREFORE, premises considered, the instant petition for review is hereby denied for lack of merit. Accordingly, the petitioner's complaint for Unlawful Detainer is DISMISSED.
>
> SO ORDERED.

With the CA's denial of her motion for reconsideration in its Resolution of February 28, 2002, petitioner is now before this Court raising the following issues:

- WHETHER OR NOT THE COURT OF APPEALS ERRED IN DISMISSING THE UNLAWFUL DETAINER CASE FOR BEING PREMATURE WHICH DECISION IS NOT IN ACCORDANCE WITH LAW AND JURISPRUDENCE.

- WHETHER OR NOT THE COURT OF APPEALS ERRED IN APPLYING ARTICLES 448 AND 546 AND THE PROVISIONS OF THE CODE ON USUFRUCT INSTEAD OF ARTICLE 1678 OF THE CIVIL CODE.

The Court rules for the petitioner.

The Court is inclined to agree with the CA that what was constituted between the parties herein is one of usufruct over a piece of land, with the petitioner being the owner of the property upon whom the naked title thereto remained and the respondents being two (2) among other unnamed usufructuaries who were simply referred to as petitioner's kin. The Court, however, cannot go along with the CA's holding that the action for unlawful detainer must be dismissed on ground of prematurity.

Usufruct is defined under Article 562 of the Civil Code in the following wise:

> ART. 562. Usufruct gives a right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law otherwise provides.

Usufruct, in essence, is nothing else but simply allowing one to enjoy another's property.[9] It is also defined as the right to enjoy the property of another temporarily, including both the jus utendi and the jus fruendi,[10] with the owner retaining the jus disponendi or the power to alienate the same.[11]

It is undisputed that petitioner, in a document dated July 21, 1986, supra, made known her intention to give respondents and her other kins the right to use and to enjoy the fruits of her property. There can also be no quibbling about the respondents being given the right "to build their own house" on the property and to stay thereat "as long as they like." Paragraph #5 of the same document earmarks "proceeds or income derived from the aforementioned properties" for the petitioner's "nearest kins who have less in life in greater percentage and lesser percentage to those who are better of (sic) in standing." The established facts undoubtedly gave respondents not only the right to use the property but also granted them, among the petitioner's other kins, the right to enjoy the fruits thereof. We have no quarrel, therefore, with the CA's ruling that usufruct was constituted between petitioner and respondents. It is thus pointless to discuss why there was no lease contract between the parties.

However, determinative of the outcome of the ejectment case is the resolution of the next issue, i.e., whether the existing usufruct may be deemed to have been extinguished or terminated. If the question is resolved in the affirmative, then the respondents' right to possession, proceeding as it did from their right of usufruct, likewise ceased. In that case, petitioner's action for ejectment in the unlawful detainer case could proceed and should prosper.

The CA disposed of this issue in this wise:

> xxx Section 1, Rule 70 of the 1997 Rules of Civil Procedure, as amended, provides xxx
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> xxx xxx xxx
>
> From the foregoing provision, it becomes apparent that for an action for unlawful detainer to prosper, the plaintiff [petitioner] needs to prove that defendants' [respondents'] right to possess already expired and terminated. Now, has respondents' right to possess the subject portion of petitioner's property expired or terminated? Let us therefore examine respondents' basis for occupying the same.
>
> It is undisputed that petitioner expressly authorized respondents o occupy portion of her property on which their house may be built. Thus – "it is my desire that Mr. and Mrs. Diosdado M. Pernes may build their house therein and stay as long as they like." From this statement, it seems that petitioner had given the respondents the usufructuary rights over the portion that may be occupied by the house that the latter would build, the duration of which being dependent on how long respondents would like to occupy the property. While petitioner had already demanded from the respondents the surrender of the premises, this Court is of the opinion that the usufructuary rights of respondents had not been terminated by the said demand considering the clear statement of petitioner that she is allowing respondents to occupy portion of her land as long as the latter want to. Considering that respondents still want to occupy the premises, petitioner clearly cannot eject respondents.[12]

We disagree with the CA's conclusion of law on the matter. The term or period of the usufruct originally specified provides only one of the bases for the right of a usufructuary to hold and retain possession of the thing given in usufruct. There are other modes or instances whereby the usufruct shall be considered terminated or extinguished. For sure, the Civil Code enumerates such other modes of extinguishment:

> ART. 603. Usufruct is extinguished:
>
> (1) By the death of the usufructuary, unless a contrary intention clearly appears;
>
> (2) By expiration of the period for which it was constituted, or by the fulfillment of any resolutory condition provided in the title creating the usufruct;
>
> (3) By merger of the usufruct and ownership in the same person;
>
> (4) By renunciation of the usufructuary;
>
> (5) By the total loss of the thing in usufruct;
>
> (6) By the termination of the right of the person constituting the usufruct;
>
> (7) By prescription. (Emphasis supplied.)

The document executed by the petitioner dated July 21, 1986 constitutes the title creating, and sets forth the conditions of, the usufruct. Paragraph #3 thereof states "[T]hat anyone of my kins may enjoy the privilege to stay therein and may avail the use thereof. Provided, however, that the same is not inimical to the purpose thereof" (Emphasis supplied). What may be inimical to the purpose constituting the usufruct may be gleaned from the preceding paragraph wherein petitioner made it abundantly clear "that anybody of my kins who wishes to stay on the aforementioned property should maintain an atmosphere of cooperation, live in harmony and must avoid bickering with one another." That the maintenance of a peaceful and harmonious relations between and among kin constitutes an indispensable condition for the continuance of the usufruct is clearly deduced from the succeeding Paragraph #4 where petitioner stated "[T]hat anyone of my kins who cannot conform with the wishes of the undersigned may exercise the freedom to look for his own." In fine, the occurrence of any of the following: the

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loss of the atmosphere of cooperation, the bickering or the cessation of harmonious relationship between/among kin constitutes a resolutory condition which, by express wish of the petitioner, extinguishes the usufruct.

From the pleadings submitted by the parties, it is indubitable that there were indeed facts and circumstances whereby the subject usufruct may be deemed terminated or extinguished by the occurrence of the resolutory conditions provided for in the title creating the usufruct, namely, the document adverted to which the petitioner executed on July 21, 1986.

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