

ALFREDO YASAY DEL ROSARIO, PETITIONER, VS. SPS. JOSE E. MANUEL AND CONCORDIA MANUEL, REPRESENTED BY ATTORNEY-IN-FACT, PATRICIA ARIOLA, RESPONDENTS.

G.R. No. 153652. January 16, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

This is a petition for review on certiorari assailing the Court of Appeals Decision dated May 22, 2002 in CA-G.R. SP No. 67902, entitled “Alfredo Yasay del Rosario, petitioner vs. Sps. Jose and Concordia Manuel, represented by Attorney-in-fact, Patricia Ariola, MTC, Fourth Judicial Region, San Mateo, Rizal, and RTC, Fourth Judicial Region, Branch 77, San Mateo, Rizal.”

On August 12, 1999, spouses Jose and Concordia Manuel, respondents, filed with the Municipal Trial Court (MTC), San Mateo, Rizal a complaint[1] for unlawful detainer against Alfredo Yasay del Rosario, petitioner, docketed as Civil Case No. 1360. They alleged that they are the true and lawful owners of a 251 square meter lot located at Sta. Ana, San Mateo, Rizal. Because of their compassion, they allowed petitioner, whose house was destroyed by a strong typhoon, to occupy their lot. They agreed that he could build thereon a temporary shelter of light materials. But without their consent, what he constructed was a house of concrete materials.

In 1992, respondents asked petitioner to vacate the lot. This was followed by repeated verbal demands but to no avail, prompting them to bring the matter to the barangay. But the parties failed to reach an amicable settlement. On June 25, 1999, the barangay chairman issued a Certification to File Action.

In his answer to the complaint, petitioner claimed that sometime in 1968, respondents allowed him to build his house on the lot, provided he would guard the premises to prevent landgrabbers and squatters from occupying the area. In 1995, when respondents visited this country, they agreed verbally to sell the portion on which his house was constructed. A year later, he made an offer to buy the 60 square meter portion occupied by him and to spend for its survey. But what respondents wanted to sell was the whole area containing 251 square meters. He then informed them that he would first consult his children and they said they will wait. Instead, they filed the instant complaint.

On September 22, 2000, the trial court rendered a Decision in favor of respondents, thus:

“WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs-spouses Jose and Concordia Manuel represented by their attorney-in-fact Patricia Ariola and against defendant Alfredo Yasay del Rosario, ordering him and/or all persons claiming rights under him to vacate the subject property covered by TCT No. N-11399, and surrender possession thereof to the plaintiffs, to pay P500.00 per month as reasonable compensation for the use of said property from the date of filing of this Complaint on August 12, 1999 until the same is vacated and possession thereof surrendered to the plaintiffs and to pay the cost.”[2]

On appeal, the Regional Trial Court (RTC) of San Mateo, Rizal rendered a Decision dated May 10, 2001

affirming in toto the Decision of the trial court.

On November 29, 2001, herein petitioner filed with the Court of Appeals a petition for review, docketed as CA G.R. SP No. 67902.

On May 22, 2002, Court of Appeals issued a Resolution dismissing the petition for having been filed out of time, to wit:

“Considering the filing of the second motion for reconsideration is prohibited x x x hence, does not toll the running of the reglementary period to appeal; considering further that, the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional and failure to do so renders the questioned decision final and executory, depriving the appellate court or body of jurisdiction to alter the final judgment much less to entertain the appeal; considering finally that, in the instant case, petitioner who had fifteen (15) days from receipt of the Order dated 26 July 2001, denying his first motion for reconsideration within which to file a petition for review filed the present petition only on 29 November 2001, this Court resolves to DISMISS the instant petition for review, for having been filed out of time.”[3]

Considering that the petition with the Court of Appeals was not seasonably filed, the instant petition should be dismissed outright.

Assuming arguendo that the petition before us is sufficient in form and substance, the same would still be dismissed for lack of merit. The petition raises the following issues: (1) whether or not the MTC has jurisdiction over the ejectment case; and (2) whether or not petitioner is a builder in good faith, hence, entitled to reimbursement under Article 448 of the Civil Code.

Petitioner claimed that the trial court has no jurisdiction over the case considering that there is no allegation in the complaint that respondents have prior physical possession of the lot and that they were ousted therefrom by force, threat, strategy or stealth.

Prior physical possession is not always a condition sine qua non in an ejectment case. We must distinguish the two kinds of ejectment, namely, forcible entry and unlawful detainer. In forcible entry, the plaintiff is deprived of physical possession of his land or building by means of force, intimidation, threat, strategy or stealth. In this light, he must allege and prove prior physical possession. In illegal detainer, the defendant unlawfully withholds possession after the expiration or termination of his right thereto under any contract, express or implied.[4] What respondents filed is a complaint for unlawful detainer. Prior physical possession is not required. Hence, respondents need not allege the same in their complaint.

As found by the trial court, petitioner’s possession of the land was by mere tolerance of the respondents. We have held in a number of cases that one whose stay is merely tolerated becomes a deforciant occupant the moment he is required to leave.[5] He is bound by his implied promise, in the absence of a contract, that he will vacate upon demand.[6]

Anent the second issue, petitioner is not a builder in good faith. Considering that he occupies the land by mere tolerance, he is aware that his occupation of the same may be terminated by respondents any time.

WHEREFORE, the petition is hereby DENIED. The assailed Decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Vitug, (Chairman), Corona, and Carpio-Morales, JJ., concur.

[1] The complaint was filed by respondents' Attorney-in-fact, Patricia Ariola, as evidenced by a Special Power of Attorney dated July 5, 1999, in view of the fact that they have been residing in Guam at the time of its filing.

[2] Rollo at 25.

[3] Id. at 48.

[4] Spouses Rafael Benetiz and Avelina Benetiz vs. Court of Appeals, Spouses Renato Macapagal and Elizabeth Macapagal, G.R. No. 104828, January 16, 1997, 266 SCRA 248; Rodil Enterprises, Inc. vs. Court of Appeals, G.R. No. 129609, November 29, 2001, 371 SCRA 79.

[5] Go vs. Court of Appeals, G.R. No. 142276, August 14, 2001, 362 SCRA 755.

[6] Pengson vs. Ocampo, G.R. No. 131968, June 29, 2001, 360 SCRA 420.

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