

FRISCO F. DOMALSIN, PETITIONER, VS. SPOUSES JUANITO VALENCIANO AND AMALIA VALENCIANO, RESPONDENTS.

G.R. NO. 158687. January 25, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a petition for review which seeks to set aside the decision[2] of the Court of Appeals in CA-G.R. SP No. 69415 dated 20 August 2002 which reversed and set aside the decision[3] of Branch 63 of the Regional Trial Court (RTC) of La Trinidad, Benguet, in Civil Case No. 01-CV-1582(150) dated 23 January 2002, which affirmed the decision[4] of the Municipal Circuit Trial Court (MCTC) of Tuba-Sablan, Tuba, Benguet, in Civil Case No. 150 dated 20 November 2000, declaring petitioner Frisco F. Domalsin the actual possessor of the lot in dispute and ordering, inter alia, respondent spouses Juanito and Amalia Valenciano to vacate and deliver the physical possession thereof to the former, and its Resolution[5] dated 20 May 2003 denying petitioner's motion for reconsideration.

The respective allegations of the parties as contained in the complaint and answer are substantially summarized by the Court of Appeals as follows:

The property subject of this action for forcible entry is a parcel of land located at sitio Riverside, Camp 3, Tuba, Benguet. Respondent Frisco B. Domalsin claims to be the lawful owner and possessor of said parcel of land since 1979 up to the present. He declared it for taxation purposes in 1983 as (per) Tax Declaration No. 9540 issued on September 12, 1983 by the Municipal Assessor of Tuba Benguet. He allegedly introduced improvements consisting of levelling, excavation, riprapping of the earth and a private road to the river, fruitbearing trees and other agricultural plants of economic value. He was in continuous, adverse possession and in the concept of an owner for the past nineteen (19) years.

On August 1, 1998, petitioners Spouses Juanito Valenciano and Amalia Valenciano (Sps. Valenciano, for brevity) allegedly entered the premises to construct a building made of cement and strong materials, without the authority and consent of respondent, by means of force and strategy, and without a building permit from the Department of Public Works and Highways (DPWH, for brevity). Respondent protested and demanded that petitioners Sps. Valenciano halt construction of said building, but the latter refused to do so. Hence, he filed the instant case.

Petitioners Sps. Valenciano, on the other hand, claimed that the ongoing construction was with the consent and conformity of the DPWH and in fact the improvements found in the property were introduced by the residents thereof, including its first residents, William and Gloria Banuca, and not by respondent. The premises on which petitioners Sps. Valenciano are constructing their house were leveled after the earthquake in 1990 by the Banuca spouses. Petitioners Sps. Valenciano are just starting the construction because the permission was only given now by Gloria Banuca.[6]

On 18 August 1998, petitioner filed before the MCTC of Tuba, Benguet, a complaint for Forcible Entry with Prayer for Preliminary Mandatory Injunction with Application for Issuance of a Temporary Restraining Order

plus Damages.[7]The complaint was amended on 27 August 1998.[8] Per Order dated 19 August 1998, a Temporary Restraining Order (TRO) was issued ordering respondents to desist and cease and refrain from continuing the construction of a house on the land in question.[9]

On 27 August 1998, respondent spouses Juanito and Amalia Valenciano filed their Answer with Opposition to the Prayer for Issuance of Writ of Preliminary Injunction.[10] On 07 September 1998, they filed an Answer to the Amended Complaint[11] to which petitioner filed a Reply.[12]

On 15 September 1998, the MCTC issued another TRO.[13]

The pre-trial order dated 6 November 1998 contained, among other things, petitioner's admission that he was temporarily not operating any business in the area, and respondents' admission regarding the issuance of Tax Declarations on the property in dispute in petitioner's name.[14]

Trial ensued. Petitioner presented Mariano Suyam and Tonsing Binay-an, two of his former truck drivers from 1981 to 1985 in his business of hauling sand, gravel and other aggregates at Riverside, Camp 3, Tuba, Benguet.

Mariano Suyam testified that sometime in 1981, petitioner caused the construction of a private road leading to the Bued River from Kennon Road. He added that petitioner constructed two houses, the first was located along the road-right-of-way of Kennon Road where respondents are now constructing their house, while the second was located below the private road around 40 to 60 meters down from Kennon Road. He explained that the first house was used for sleeping quarters and resting center for laborers, while petitioner used the second one as his quarters. He said William Banuca was hired as foreman in 1983 and that the latter and his family stayed in the second house.

Tonsing Binay-an corroborated the testimony of Suyam as regards the two houses constructed by petitioner and added that petitioner was the manager of Salamander Enterprises and had a concession permit from the Bureau of Mines to haul gravel and sand.

Petitioner testified that he is a lawyer-businessman formerly engaged in trucking business, hauling sand and gravel, and operated under the name Salamander Enterprises.[15] He narrated that while he was passing Kennon Road, he discovered that a portion of the Bued River, Camp 3, Tuba Benguet, can be a potential source of supplies for his business. Though the area was steep and deep, he scouted a place where he can construct a road from Kennon Road to the Bued River. In the course of cleaning the area, his workers noticed that the place had been tilled. A certain Castillo Binay-an appeared informing him that he was the occupant of the site of the proposed private road. After agreeing on the consideration, the former executed a Deed of Waiver and Quitclaim[16] over the land in his favor.

Thereafter, the Office of the Highway District Engineer of Baguio, Ministry of Public Highways (now Department of Public Works and Highways [DPWH]) issued a permit in favor of petitioner to extract construction materials at Camp 3, Tuba, Benguet,[17] which was followed by the issuance on 1 October 1981 of Commercial Permit No. 147 by the Office of the Mines Regional Officer, Mineral Region No. 1, Bureau of Mines and Geo-Sciences (Bureau of Mines).[18] The Commercial Permit, which was renewable every year, was last renewed in 1987.[19]

Based on the Deed of Waiver and Quitclaim executed by Castillo Binay-an, petitioner was able to apply for, and was issued, a tax declaration over the land covering one hectare. Tax Declaration No. 9540[20] dated 12 September 1983 was issued to petitioner describing the land bounded on the North by Bued River, on the South by Kennon Road, on the East by Kennon Road, and on the West by a Creek. With the revision of the fair market value and assessed value of lands, Tax Declaration No. 94-004-00327 dated 12 November 1994 was issued to

him.[21] From 1983 up to 1998, petitioner has been regularly paying real property taxes over the land.

Petitioner disclosed that in 1983, William Banuca applied for, and was accepted, as foreman.[22] Due to the nature of his job, Banuca was permitted to stay in the second house beside the private road.[23] Banuca now lives permanently in said house after petitioner gave it to him. Petitioner revealed that the houses his former laborers constructed were awarded to them as a kind gesture to them. As to the land he occupied along the Kennon Road where the first house was erected, he claims that same still belongs to him. This house, which his laborers and drivers used as a resting area, was cannibalized and leveled, and the land over which it once stood was taken possession by respondents who are now building their house thereon.

Gloria Banuca testified for respondents. She disclosed that it was she who invited respondents to come and reside at Riverside, Camp 3, Tuba, Benguet. She said she knew petitioner to be engaged in the sand and gravel business in Tuba, Benguet, from 1981 to 1985, and that the latter stopped in 1985 and never returned to haul sand and gravel at the Bued River. She claimed she never saw petitioner introduce any improvements on the land he claimed he bought from Castillo Binay-an, and that it was she and the other residents who introduced the existing improvements.

She narrated that in 1983, she planted fruit-bearing trees in the area where respondents were constructing their house which is located along the Kennon Road's road-right-of-way, fronting petitioner's property. After the earthquake of 1990, the private road constructed by petitioner became impassable and it was she who hired the equipment used to clear the same. She even leveled the area where respondents were building their home. Based on the ocular inspection, she said this area is within the 15-meter radius from the center of the road. This area, she claims, was sold to her by the Spouses Jularbal. However, the agreement between them shows that what was sold to her were the improvements near her house which was 40 meters down from Kennon Road and the improvements along Kennon Road.[24]

Agustin Domingo next testified for respondents. He testified that in 1986, upon the invitation of Gloria Banuca, he transferred his residence to sitio Riverside because of its proximity to his place of work. He stayed there for good and even buried his father near his house. He said that in 1990, the private road constructed by petitioner was covered by boulders, soil and rocks, and it was Mrs. Banuca who initiated the clearing of the road. Finally, he declared that since 1986, he never saw petitioner introduce any improvement in the area.

Respondent Juanito Valenciano revealed that he is the cousin of Gloria Banuca. He narrated that in 1984, he went to Riverside to see the latter whose husband, William Banuca, was working as foreman of petitioner. At that time, the lot under litigation was still a hill. It was Gloria Banuca who leveled the hill and told him to construct his house there. Finding the place to be an ideal place to build his house, he paid the Banucas P10,000.00 for the improvements.

He explained that before he started building his house, he sought the permission of the Benguet District Engineer, DPWH, which the latter granted. In August 1998, he received a notice[25] to stop and desist from continuing the construction of a permanent one-storey house made of hollow blocks and cement since the condition was only to utilize light materials. Thereafter, a letter dated 22 January 1999 was sent to him informing him that the temporary permit issued to him for the improvement/utilization of a portion of the national road along Kennon Road had been revoked for non-submission of the waiver as required by the Office of the District Engineer and his non-compliance with the condition that no permanent structures are to be constructed within the road-right-of-way. He, however, denied receiving said letter.

Juan de Vera, a retired DPWH foreman, testified last for the respondents. He claimed he witnessed the execution of the document[26] regarding the sale by Adriano Jularbal to Gloria Banuca of improvements found near the

house of the latter in the amount of P1,000.00.

The MCTC found that what is being contested is the possession of a portion of the road-right-of way of Kennon Road which is located in front of a parcel of land that petitioner bought by way of Deed of Waiver and Quitclaim from Castillo Binay-an. It held that petitioner had prior material possession over the subject land. It ruled that the destruction of his house built thereon by the earthquake in 1990, and later cannibalized without being reconstructed was not tantamount to abandonment of the site by the petitioner because it was destroyed by a fortuitous event which was beyond his control. It explained that his possession over the land must be recognized by respondents who came later after the earthquake. It brushed aside respondents' allegation that the land in dispute was abandoned by the latter after he stopped operating his sand and gravel business in 1985 and never returned anymore, and when the house erected on it was destroyed during the 1990 earthquake, it was no longer reconstructed and was subsequently leveled or demolished by Gloria Banuca. However, it pronounced that respondents' action to occupy the land was done in good faith considering that their occupation of the land was with the assurance of the seller (Gloria Banuca) and that they were armed with the permit issued by the DPWH for him to construct his house thereon.

On 20 November 2000, the MCTC came out with its decision, the decretal portion of which reads:

WHEREFORE PREMISES CONSIDERED, decision is hereby rendered in favor of plaintiff, FRISCO DOMALSIN, and against defendants, JUANITO VALENCIANO and AMALIA VALENCIANO, with the following:

- Order to declare the injunction permanent.
- Order the plaintiff as the actual possessor of the lot in question.
- Order the defendant(s) to vacate and deliver the physical possession voluntarily of the disputed land to plaintiff within 60 days from receipt of this decision.
- Order defendant(s) to remove his structure within from receipt of this decision.
- Order the defendant(s) to (sic) plaintiff the amount of P10,000.00, as litigation expenses.
- Order defendant(s) to pay the cost of suit[27]

Respondents appealed the decision to the RTC.[28] In affirming the decision in toto the RTC ratiocinated:

It may be well to consider that even after plaintiff's business ceased operation, he religiously paid the taxes due thereon.

Appellant's theory that the plaintiff-appellee abandoned the property does not sit well and finds no support in the record. Notice that since 1985 up to mid-1990, the Banucas never laid claim over the property taking into consideration that they were already residents of the place. This only goes to show that they acknowledged and respected the prior possession of the plaintiff-appellee. Besides, what right has Gloria to cause the leveling of the property destroying the natural contour thereof, to presume that plaintiff-appellee abandoned it and to invite and allow other persons to settle thereat? Absolutely none. Knowing fully well that the plaintiff-appellee has prior possession of the property, Gloria's actions are unjustified, to say the least. Her consummated act of leveling the property without the knowledge of the plaintiff-appellee is viewed as a test to determine whether or not the latter is still interested in the property. From then on until 1998 (but before the construction), the Banucas still recognize the plaintiff's possession. But as Gloria claims to have heard no word from the plaintiff, she unilaterally declared that the place is now abandoned as she "invited and allowed" the defendants to live and construct their house thereat.

Contrary to the assertion of the appellants, there was no abandonment simply because plaintiff-appellee

continuously paid the corresponding taxes due thereon and that he promptly objected to the construction of the defendants-appellants' house. These are clear manifestations of his intention not to abandon the property. Sad to say though that here is a former employer. By passing off such property to be hers is so unkind, unfair and against social order. It is very clear that the Banucas knew of the prior possession of the plaintiff way back then so that they themselves never personally build construction over the property. If they honestly believe that they now "own" the land, why will they still have to invite other people who are not their relatives to settle thereat? Why the preference of strangers over relatives? The Court does not believe that they did not receive any compensation for having "allowed" strangers, the defendants included, to settle on the land.

From all the foregoing, Gloria is clearly in bad faith. And her being in bad faith must be corrected and if warranted, must be meted appropriate penalty. If the Banucas are in bad faith, then the appellants cannot have better rights either. The Banucas transferred nothing to them. Defendants-appellants cannot even be considered as builders in good faith. It must be noted that they were prohibited by the plaintiff from going further but they ignored it. They shall lose what was built (Art. 449, Civil Code). Again, if the Banucas believe that they have an action or a right to deprive the plaintiff's possession, why did they not invoke judicial interference as required under Art. 536 of the same code? Nonetheless, notwithstanding the fact of leveling without the knowledge of the plaintiff-appellee, the same did not affect his possession (Art. 537, Civil Code).[29]

Via a petition for review, respondents appealed to the Court of Appeals. The Court of Appeals made a sudden turn-around and reversed the decision under review. Its decision dated 20 August 2002 reads in part:

[T]here is a need to clarify a few things. What is undisputed are the identity and nature of the property subject of the action for forcible entry. The subject of the action concerns a portion of the road-right-of-way along Kennon Road just above the private road constructed by respondent. The problem, however, is that petitioners Sps. Valenciano started constructing a house on the same spot where a house belonging to respondent once stood. Both parties are now asserting that they are entitled to the possession of said lot. But the decision of the lower court seems to imply that respondent's right to possess the subject property stems from his acquisition of the one-hectare property below it. That is not the case.

We must emphasize that the subject of the deed of quitclaim and waiver of rights of Castillo Binay-an was not the road-right-of-way but the sloping terrain below it. This was the property acquired by the respondent to have access to the sand and gravel on the Bued River. It did not include the road-right-of-way. As regards Gloria Banucas's claims, the evidence show that her agreement with Jularbal involved only the improvements near her residence down the private road and not the road-right-of-way. Since the subject property is a road-right-of-way, it forms part of the public dominion. It is not susceptible to private acquisition or ownership. Prolonged occupation thereof, improvements introduced thereat or payment of the realty taxes thereon will never ripen into ownership of said parcel of land. Thus, what We have are two parties, neither of which can be owners, only possessors of the subject property. Beyond these two, only the government has a better right to the subject property which right it may exercise at any time. This bears emphasizing because if either party has possessory rights to the subject property, it is not predicated on ownership but only on their actual possession of the subject property.

x x x x

There is no doubt that respondent had prior physical possession of the subject property. He entered and acquired possession of the subject property when he built his house thereon. The house was destroyed during the 1990 earthquake and respondent did not rebuild it. The mound on which it stood was later leveled by Gloria Banuca and in 1998 petitioners Sps. Valenciano began construction thereat. Petitioners Sps. Valenciano claim there was abandonment, but the lower court ruled that respondent did not abandon the subject property as he continued to pay the realty taxes thereon and objected to petitioners Sps. Valenciano's construction. We believe, and so hold, that at this point in time, it is immaterial whether or not there was abandonment by respondent. The fact remains that Gloria Banuca took possession of the subject property soon after the

earthquake. She leveled the mound and the ruins of respondent's house, yet respondent remained silent. Respondent objected only after petitioners Sps. Valenciano started construction of the house on the subject property. Respondent cannot now interpose an action for forcible entry against petitioners Sps. Valenciano, which he should have filed against Gloria Banuca, petitioners Sps. Valenciano's predecessor-in-interest. But more than a year had passed and his right to do so lapsed. Thus, respondent's prior possession is material only as against Gloria Banuca and only within a period of one year from the time she wrested possession of the property from respondent.

We view with distaste Gloria Banuca's ingratitude toward her husband's former employer. Her actions smack of the proverbial hand being offered in aid but the person to whom it is offered would rather have the whole arm instead. This is an instance where it is the employees who commit injustice against their employer. Nonetheless, petitioners Sps. Valenciano should not suffer because of Gloria Banuca's ingratitude for the former came across the property in good faith.

But respondent is also reminded that he only has himself to blame. His failure to assert his right for an unreasonable and unexplained length of time allowed Gloria Banuca to wrest possession from him. Especially in this case where they do not and cannot own the subject property, actual possession becomes particularly important.[30]

The case was disposed as follows:

WHEREFORE, in view of the foregoing, the petition is GRANTED and the decision of the Municipal Circuit Trial Court of Tuba-Sablan dated November 20, 2000 as affirmed by the Regional Trial Court on January 23, 2002 is hereby REVERSED and SET ASIDE.[31]

The Motion for Reconsideration filed by petitioner was denied in a resolution[32] dated 20 May 2003.

Petitioner is now before us seeking redress. He assigns the following as the errors committed by the Court of Appeals:

I.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PRIVATE RESPONDENT (NOW PETITIONER) FRISCO DOMALSIN ABANDONED THE PROPERTY SUBJECT OF THE LITIGATION.

II.

THE HONORABLE COURT OF APPEALS ERRED IN REVERSING AND SETTING ASIDE THE DECISION OF THE REGIONAL TRIAL COURT OF LA TRINIDAD, BENGUET, BRANCH 63 WHICH AFFIRMED THE DECISION OF THE MUNICIPAL CIRCUIT TRIAL COURT OF TUBA-SABLAN.

At the outset, it must be made clear that the property subject of this case is a portion of the road-right-of-way of Kennon Road which is located in front of a parcel of land that petitioner bought by way of Deed of Waiver and Quitclaim from Castillo Binay-an.[33] The admission[34] of petitioner in his Amended Complaint that respondents started constructing a building within the Kennon Road road-right-of-way belies his claim that the lot in question is his.

In light of this exposition, it is clear that neither the petitioner nor the respondents can own nor possess the subject property the same being part of the public dominion. Property of public dominion is defined by Article 420 of the Civil Code as follows:

ART. 420. The following things are property of public dominion:

(1) Those intended for public use such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and other of similar character.

(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

Properties of public dominion are owned by the general public.[35] Public use is "use that is not confined to privileged individuals, but is open to the indefinite public." [36] As the land in controversy is a portion of Kennon Road which is for the use of the people, there can be no dispute that same is part of public dominion. This being the case, the parties cannot appropriate the land for themselves. Thus, they cannot claim any right of possession over it. This is clear from Article 530 of the Civil Code which provides:

ART. 530. Only things and rights which are susceptible of being appropriated may be the object of possession.

Notwithstanding the foregoing, it is proper to discuss the position of the Court of Appeals for comprehensive understanding of the facts and the law involved.

Petitioner maintains that the Court of Appeals erred when it ruled that he abandoned the land being disputed contrary to the rulings of the MCTC and RTC. The MCTC found there was no abandonment of the land because the house erected thereon was destroyed by a fortuitous event (earthquake), while the RTC ruled there was no abandonment because petitioner paid taxes due on the land and that he promptly objected to the construction of respondents' house which are clear manifestations of his intention not to abandon the property.

A reading of the decision of the Court of Appeals shows that it did not reverse the two lower courts on the issue of abandonment. It merely declared that such issue is not material in the resolution of the case at bar. It faulted petitioner for not asserting his right for a long time allowing Gloria Banuca to wrest the possession of the land in question from petitioner by leveling the house he built thereon and pronounced that actual possession becomes important in a case where parties do not and cannot own the land in question.

From the foregoing it appears that the Court of Appeals did not give weight or importance to the fact that petitioner had prior physical possession over the subject land. It anchored its decision on the fact that the parties do not and cannot own the land and that respondents now have actual possession over it.

Ejectment proceedings are summary proceedings intended to provide an expeditious means of protecting actual possession or right to possession of property. Title is not involved. The sole issue to be resolved is the question as to who is entitled to the physical or material possession of the premises or possession de facto.[37]

The Court of Appeals erred when it preferred the present and actual possession of respondents vis-à-vis the prior possession of petitioner on the ground that the parties do not and cannot own the lot in question. 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.[38]

The fact that the parties do not and cannot own the property under litigation does not mean that the issue to be resolved is no longer priority of possession. The determining factor for one to be entitled to possession will be prior physical possession and not actual physical possession. Since title is never in issue in a forcible entry case, the Court of Appeals should have based its decision on who had prior physical possession. The main thing to be proven in an action for forcible entry is prior possession and that same was lost through force, intimidation, threat,

strategy and stealth, so that it behooves the court to restore possession regardless of title or ownership.[39]

Inasmuch as prior physical possession must be respected, the Court of Appeals should have ruled squarely on the issue of abandonment because it gave precedence to the actual present possession of respondents. If, indeed, there was abandonment of the land under consideration by petitioner, only then should respondents be given the possession of the same since abandonment is one way by which a possessor may lose his possession.[40]

Abandonment of a thing is the voluntary renunciation of all rights which a person may have in a thing, with the intent to lose such thing.[41] A thing is considered abandoned and possession thereof lost if the spes recuperandi (the hope of recovery) is gone and the animus revertendi (the intention of returning) is finally given up.[42]

In the case before us, we find that petitioner never abandoned the subject land. His opposition to the construction of respondents' house upon learning of the same and the subsequent filing of the instant case are clear indicia of non-abandonment; otherwise, he could have just allowed the latter to continue with the construction. Moreover, the fact that the house petitioner built was destroyed by the earthquake in 1990, was never rebuilt nor repaired and that same was leveled to the ground by Gloria Banuca do not signify abandonment. Although his house was damaged by the earthquake, Gloria Banuca, the person who supposedly demolished said house, had no right to do the same. Her act of removing the house and depriving petitioner of possession of the land was an act of forcible entry. The entry of respondents in 1998 was likewise an act of forcible entry.

The next question is: Was the action filed the correct one and was it timely filed?

Well-settled is the rule that what determines the nature of the action as well as the court which has jurisdiction over the case are the allegations in the complaint.[43] In actions for forcible entry, the law tells us that two allegations are mandatory for the municipal court to acquire jurisdiction: First, the plaintiff must allege prior physical possession of the property. Second, he must also allege that he was deprived of his possession by any of the means provided for in Section 1, Rule 70 of the Rules of Court.[44] To effect the ejectment of an occupant or deforciant on the land, the complaint should embody such a statement of facts as to bring the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. The complaint must show enough on its face to give the court jurisdiction without resort to parol evidence.[45]

A look at the Amended Complaint filed by petitioner clearly shows a case for forcible entry. Petitioner alleged therein that he has been in possession of the subject land for the last nineteen years and that respondents, in the first week of August 1998, without his permission and consent, entered the land by means of force, strategy and stealth and started the construction of a building thereon; and upon being informed thereof, he requested them to stop their construction but respondents refused to vacate the land forcing him to file the instant case to recover possession thereof.

The Court of Appeals pronounced that petitioner cannot interpose an action for forcible entry against respondents and that the same should have been filed against Gloria Banuca. It added that the right to file against the latter had already lapsed because more than a year had passed by from the time she wrestled possession of the property from the petitioner.

We find such pronouncement to be flawed. An action of forcible entry and detainer may be maintained only against one in possession at the commencement of the action, and not against one who does not in fact hold the land.[46] Under Section 1,[47] Rule 70 of the Rules of Court, the action may be filed against persons unlawfully withholding or depriving possession or any person claiming under them. Considering that respondents are the ones in present actual possession and are depriving petitioner of the possession of the land in question, it is proper that they be the ones to be named defendants in the case. The fact that Gloria Banuca was supposedly the one who

first committed forcible entry when she allegedly demolished the house of petitioner does not make her the proper party to be sued because she is no longer in possession or control of the land in controversy.

As regards the timeliness of the filing of the case for forcible entry, we find that same was filed within the one-year prescriptive period. We have ruled that where forcible entry was made clandestinely, the one-year prescriptive period should be counted from the time the person deprived of possession demanded that the deforciant desist from such dispossession when the former learned thereof.^[48] As alleged by petitioner in the Amended Complaint, he was deprived of his possession over the land by force, strategy and stealth. Considering that one of the means employed was stealth because the intrusion was done by respondents without his knowledge and consent, the one-year period should be counted from the time he made the demand to respondents to vacate the land upon learning of such dispossession. The record shows that upon being informed that respondents were constructing a building in the subject land sometime in the first week of August 1998, petitioner immediately protested and advised the former to stop; but to no avail. The one-year period within which to file the forcible entry case had not yet expired when the ejectment suit was filed on 18 August 1998 with the MCTC.

Despite the foregoing findings, this Court finds that the MCTC and the RTC, as well as the Court of Appeals, to be in error when they respectively declared that petitioner and respondents to be entitled to the possession of the land in dispute. The parties should not be permitted to take possession of the land, much more, claim ownership thereof as said lot is part of the public dominion.

WHEREFORE, the foregoing considered, the instant petition is hereby **PARTIALLY GRANTED**. Nonetheless, there being a finding that the subject property is a part of the public dominion, of which neither party is entitled to own nor possess, the decisions of the Court of Appeals dated 20 August 2002, the Regional Trial Court of La Trinidad, Benguet, dated 23 January 2002, and the Municipal Circuit Trial Court of Tuba-Sablan, Tuba, Benguet, dated 20 November 2000 are **SET ASIDE**. Respondents Juanito and Amalia Valenciano are ordered to remove their structure on the subject land within sixty (60) days from receipt of this decision, and to vacate and deliver the physical possession thereof to the Office of the District Engineer, Benguet Engineering District, Department of Public Works and Highways.

SO ORDERED.

Panganiban, CJ., Ynares-Santiago, and Austria-Martinez, JJ., concur.

Callejo, Sr., J., no part.

[1] No part.

[2] CA rollo, pp. 109-122; Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Romeo J. Callejo, Sr. (now Associate Justice of the Supreme Court) and Danilo B. Pine, concurring.

[3] Records, pp. 263-267.

[4] Id. at 190-210.

[5] CA rollo, p. 152.

[6] Id. at 110.

[7] Records, pp. 10-15.

[8] Id. at 1-7.

[9] Id. at 19-20.

- [10] Id. at 22-27.
- [11] Id. at 28-33.
- [12] Id. at 34.
- [13] Id. at 41-42.
- [14] Id. at 56-58.
- [15] Exh. F, records, p. 89.
- [16] Exh. Q, id. at 105.
- [17] Exh. G, id. at 90.
- [18] Exh. I, id. at 92.
- [19] Exhs. I-2 and J, id. at 95-97.
- [20] Exh. A, id. at 81.
- [21] Exh. A-1, id. at 82.
- [22] Exh. M, id. at 100.
- [23] Exh. N, id. at 101.
- [24] Id. at 200.
- [25] Exh. E, id. at 87.
- [26] Exh. 7, id. at 152.
- [27] Id. at 210.
- [28] Id. at 220.
- [29] Id. at 265-267.
- [30] CA rollo, pp. 119-121.
- [31] Id. at 121.
- [32] Id. at 152.
- [33] MCTC decision, records, pp. 179-180; CA decision, CA rollo, p. 119; Exhs. D, E and Y, records, pp. 87-88, 187.
- [34] Paragraph 6, Amended Complaint, records, p. 2.
- [35] *Philippine Ports Authority v. City of Iloilo*, 453 Phil. 927 (2003).
- [36] *Villarico v. Sarmiento*, G.R. No. 136438, 11 November 2004, 442 SCRA 110, 115; citing *U.S. v. Tan Piaco*, 40 Phil. 853, 856 (1920).
- [37] *David v. Cordova*, G.R. No. 152992, 28 July 2005, 464 SCRA 384.
- [38] *Pajuyo v. Court of Appeals*, G.R. No. 146364, 03 June 2004, 430 SCRA 492.

[39] Republic v. Sebastian, G.R. No. L-35621, 30 July 1976, 72 SCRA 222.

[40] Civil Code, see Art. 555.

[41] Tolentino, Civil Code of the Philippines (1992 Ed.), Vol. 2, p. 304.

[42] U.S. v. Rey, 8 Phil. 500 (1907).

[43] Del Castillo v. Aguinaldo, G.R. No. 57127, 05 August 1992, 212 SCRA 169.

[44] Tirona v. Alejo, 419 Phil. 288, 299 (2001).

[45] Sarmiento v. Court of Appeals, 320 Phil. 146, 153 (1995).

[46] Co Tiac v. Natividad, 80 Phil. 127, 131 (1948).

[47] SECTION 1. Who may institute proceedings, and when. – Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representative or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

[48] Elane v. Court of Appeals, G.R. No. 80638, 26 April 1989, 172 SCRA 822.

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