

JOVEN DE GRANO, REPRESENTED BY VENUS P. DE GRANO, ERNESTO H. MALABANAN, AND SIMPLICIA D. MALABANAN, PETITIONER, VS. GREGORIO LACABA, RESPONDENT.

G.R. No. 158877. June 16, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Assailed in this petition for review on certiorari is the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 67852 dated October 16, 2002 and Resolution dated June 18, 2003. This decision reversed the uniform decisions of the municipal and regional trial courts dismissing a forcible entry case filed by respondent Gregorio Lacaba. The antecedents of the petition are as follows:

Respondent Gregorio Lacaba[2] claims that he is the owner of two adjacent parcels of land, located in Barangay Niugan, Laurel, Batangas and identified as Cadastral Lot Nos. 6916 and 6917 in Survey No. REI-041011-001184. Lot No. 6916 has an area of 5,743 square meters, while Lot No. 6917 has an area of 804 square meters. Each parcel of land is covered by a separate tax declaration in the name of respondent.

On May 30, 2000, respondent filed a complaint for forcible entry with prayer for a temporary restraining order and/or preliminary injunction against petitioner Joven de Grano. According to respondent, he has been in physical possession of the two parcels of land for more than 30 years and has been paying real property taxes thereon. In 1978, respondent purportedly designated as caretakers the spouses Ely and Anita Mojica (spouses Mojica), who occupied the property until the present, and allowed three other spouses, including the spouses Silvestre and Amor Matilla (spouses Matilla), to build their respective houses on the property and conduct fruit vending and carinderia business.[3]

Respondent alleged that, sometime during the second week of May 2000, petitioner, by means of force, intimidation, strategy and threats, and with the help of his men, destroyed the perimeter fence built by respondent. The fence was made of concrete posts and barbed wire. Respondent averred that petitioner effectively disrupted respondent's peaceful possession and occupation of the property by clearing the land of plants, bushes and trees and demolishing the house owned by the spouses Matilla. The continuous intrusion of petitioner caused serious fear and anxiety to the occupants of the properties.[4]

Respondent attached to the complaint Tax Declaration Nos. 016-00618 and 016-00619 and a copy of Official Receipt No. 5342125 dated May 30, 2000 of the payment of real property tax from 1998 until 2000.[5] In addition, respondent later submitted a Certification issued by Barangay Captain Marcelo Balba stating that respondent was the declared owner of Lot Nos. 6916 and 6917 based on Relocation Survey Plan No. REI-041011-001184, and a Certification dated June 6, 1997 issued by the Municipal Assessor of Laurel, Batangas stating that their records showed that respondent was the true and lawful owner of the properties covered by Tax Declaration Nos. 016-00618 and 016-00619, and that real property tax had been paid from previous years until 1997. Respondent's counsels also executed a Joint Affidavit[6] stating that they prepared affidavits for the

caretakers and neighbors to sign, but the latter refused to sign for fear of their lives.

In his Answer, petitioner averred that the real owners and possessors of the property were the family of Ernesto Malaban, as evidenced by Transfer Certificate of Title (TCT) No. T-31929 of the Register of Deeds of Tanauan, Batangas. He pointed out that Relocation Survey Plan No. REI-041011-001184 had already been cancelled by the Bureau of Lands on October 8, 1999; and that, on April 13, 2000, the Bureau of Lands approved a Consolidation and Subdivision Plan, which determined the metes and bounds of the properties of the Malabans. Petitioner alleged that the Office of the Building Official approved the application of the Malabans for the construction of a fence on a portion of their property; and petitioner, acting in accordance with the instructions of the Malabans, caused the clearing of the property.[7] Petitioner submitted in evidence a copy of TCT No. T-31929;[8] Relocation Survey Plan No. REI-041011-001184 with a "cancelled" marking;[9] Order of cancellation of Relocation Survey Plan No. REI-041011-001184;[10] Consolidation and Subdivision Plan No. Pcs-04-015296;[11] Sinumpaang Salaysay[12] of Nepomuceno Noveno, also a caretaker of the Malaban family; and uniformly worded affidavits[13] of the occupants of the property, stating that they were not connected with respondent, and that they were occupying the property upon the permission of Ernesto Malaban.

On August 11, 2000, the Municipal Circuit Trial Court (MCTC) dismissed the complaint for lack of cause of action.[14] The court a quo found that respondent's claim, that he was in actual possession of the property through the possession of his caretakers and the other spouses he allowed to occupy the property, was belied by his own statement and that of Mr. Nepomuceno Noveno, a resident of the barangay where the property is located, who testified for petitioner.[15]

On November 13, 2000, the Regional Trial Court (RTC) affirmed the MCTC Decision.[16] Respondent's counsel received a copy of the decision on November 21, 2000. On December 14, 2000, respondent filed a motion for reconsideration.

In an Order dated March 28, 2001, the RTC denied the motion for reconsideration, thus:

Finding no cogent reason to modify the decision of the Court dated November 13, 2000, defendant's Motion for Reconsideration is hereby DENIED for lack of merit.[17]

Respondent's counsel received a copy of the Resolution on April 18, 2001.

On October 23, 2001, upon manifestation of petitioner that it was not he who filed the motion for reconsideration, the RTC modified the dispositive portion of its March 28, 2001 Order, changing "defendant" to "plaintiff." [18] Respondent received a copy of this resolution on November 12, 2001.

Alleging that the October 23, 2001 RTC Resolution was the resolution denying his motion for reconsideration, respondent filed a motion for extension of time to file a petition for review with the CA on November 27, 2001. The CA granted the motion subject to its timeliness. Finally on December 12, 2001, respondent filed a Petition for Review with the CA.

On January 8, 2002, petitioner filed a Manifestation with Motion to Dismiss Instant Petition and to Cite Petitioner (herein respondent) and Petitioner's Counsel for Contempt.[19] Petitioner alleged therein that respondent deliberately concealed the fact that the petition was filed out of time by not attaching the March 28, 2001 RTC Order which denied respondent's motion for reconsideration.

On October 16, 2002, the CA rendered a Decision with the following dispositive portion:

WHEREFORE, the decision dated November 13, 2000, as well as the Order dated October 23, 2001 denying the motion for reconsideration of said decision, is hereby REVERSED and SET ASIDE. The respondent and

all persons acting under his authority and/or in his behalf is hereby ordered to vacate the subject premises and to cease and desist from occupying the subject parcel of land, as well as from exercising any and all acts of possession and dominion over the same.

SO ORDERED.[20]

The CA dismissed the issue of the timeliness of the filing of respondent's motion for reconsideration before the RTC on the ground that such issue was raised for the first time before the appellate court. It, likewise, ignored the issue of the belated filing of the petition for review with the CA, ratiocinating that petitioner was barred by estoppel from questioning the timeliness of the petition, and that dismissing the case would not serve the ends of justice.[21]

On the merits, the CA concluded that respondent had been in prior, actual, open, peaceful, uninterrupted and adverse possession of the subject properties for more than 40 years based on the fact that he was paying taxes thereon. The CA did not give credence to the written manifestations of petitioner's witnesses whose statements were drafted in identical form. Instead, the CA gave weight to the statement of respondent's counsels that they failed to secure affidavits from the caretakers and the neighbors because the latter feared for their lives.[22]

Petitioner filed a motion for reconsideration. Thereafter, he filed a Manifestation with Request for Judicial Notice of the verification survey conducted by the DENR on February 15, 2002, which shows that the subject property was part of the parcel of land registered in the name of the Malabanan family.

On June 18, 2003, the CA issued a Resolution denying petitioner's Motion for Reconsideration. In the same Resolution, the CA noted that Verification Plan No. VS-04-000534 was approved long after it had already rendered its decision.[23]

Disgruntled, petitioner filed this petition for review, raising the following issues:

- WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN TAKING COGNIZANCE AND/OR GIVING DUE COURSE TO THE PETITION FOR REVIEW FILED BEFORE IT BY RESPONDENT LACABA.
- WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT HEREIN RESPONDENT LACABA IS ENTITLED TO THE RELIEF BEING SOUGHT IN THE COMPLAINT FILED BEFORE THE MCTC.
- WHETHER OR NOT THE COURT OF APPEALS PATENTLY ERRED IN NOT FINDING THAT HEREIN PETITIONER DE GRANO IS NOT THE REAL PARTY IN INTEREST.[24]

The petition is meritorious.

The CA erred in taking cognizance of the petition for review that was filed way beyond the reglementary period. Rules of procedure may be relaxed in the interest of substantial justice and in order to give a litigant the fullest opportunity to establish the merits of his complaint. However, concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain its failure to comply with the rules[25] and prove the existence of exceptionally meritorious circumstances warranting such liberality.[26]

Respondent proffered no explanation for the delay as, in fact, he did not acknowledge that he filed his petition for review with the CA beyond the prescriptive period. In his motion for extension of time to file the petition for review with the CA, respondent alleged that it was the October 28, 2001 RTC Order that denied his motion for reconsideration. As a stratagem or out of plain ignorance, he counted the reglementary period from the date of his receipt of the said order. But, as the CA was well aware, the reglementary period should have been counted from

the receipt of the March 28, 2001 Order.

Respondent might have been confused with the rule that, when a judgment is amended, the date of the amendment should be considered the date of the decision in the computation of the period for perfecting the appeal. For all intents and purposes, the lower court rendered a new judgment from which the time to appeal must be reckoned.[27] However, this rule presupposes that the amendment consists of a material alteration of such substance and proportion that would, in effect, give rise to an entirely new judgment.[28] But when the amendment merely consists of the correction of a clerical error, no new judgment arises. In such case, the period for filing the appeal should still be counted from the receipt of the original judgment.

In this case, there was no material alteration of the judgment. The amendment merely consisted of changing the word "defendant" with "plaintiff" in the dispositive portion, and it is obvious that it was "plaintiff" (herein respondent) who filed the motion for reconsideration. Hence, the prescriptive period for filing the petition for review with the CA should be counted from the date respondent received a copy of the first judgment denying his motion for reconsideration, which was on April 18, 2001. Respondent had until May 3, 2001 to file a petition for review, but he filed a motion for extension to file the petition only on November 27, 2001, or almost seven months later. In one case, the Court declared that a delay of almost seven months is far from reasonable.[29]

Despite respondent's failure to acknowledge his error, the CA, finding the petition to be meritorious, chose to excuse the belated filing of the petition to serve the ends of justice. This Court, however, finds otherwise, and holds that the MCTC, as affirmed by the RTC, was correct in dismissing the complaint.

For a forcible entry suit to prosper, the complainant must allege and prove that he was in prior physical possession of the property and that he was deprived of such possession by means of force, intimidation, threat, strategy, or stealth.[30] 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 in the property until a person with a better right lawfully ejects him.[31]

A party having the burden of proof must establish his case by a preponderance of evidence. In doing so, he must rely on the strength of his own evidence, not on the weakness of the defendant's.[32] To prove prior possession, respondent presented his tax declarations, tax receipt and a certification from the municipal assessor attesting that he has paid real property tax from previous years. He, likewise, testified that he appointed the spouses Mojica as his caretakers, and allowed three other spouses to build their houses on the property. Respondent's counsels also explained that they were not able to secure the affidavits of the occupants of the property and the neighbors because they feared for their lives.

Respondent's evidence fails to make out a prima facie case of forcible entry as it does not satisfactorily establish that respondent has been in physical possession of the subject property prior to petitioner's occupation thereof.

For one, we cannot tack respondent's possession of the property on his alleged tenants' actual possession absent any proof that said tenants acknowledge that respondent is the owner and that they have occupied the property as respondent's tenants. For all we know, these tenants could have been in adverse possession of the property. We cannot simply rely on respondent's self-serving testimony that he designated the spouses Mojica as his caretakers and allowed the other families to occupy the property.

Tax declarations and realty tax payments are not conclusive proof of possession.[33] They are merely good indicia of possession in the concept of owner based on the presumption that no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession.[34] It bears emphasizing that the word "possession," as used in forcible entry and unlawful detainer cases, means nothing more than physical

possession, not legal possession in the sense contemplated in civil law.[35] When the law speaks of possession, the reference is to prior physical possession or possession de facto, as contra-distinguished from possession de jure.[36] Only prior physical possession, not title, is the issue.[37] Issues as to the right of possession or ownership are not involved in the action; evidence thereon is not admissible, except only for the purpose of determining the issue of possession.[38]

More importantly, no substantial injustice would be caused the respondent if we uphold the finality of the RTC judgment, considering that he still has another remedy to recover his alleged right to possess the property. Since respondent anchors his right to possess the property on his alleged ownership of the same, he may file the appropriate action to recover such ownership.

With the foregoing disquisition, we find no necessity to discuss the issue of whether petitioner is the real party in interest.

WHEREFORE, premises considered, the petition is GRANTED. The Court of Appeals' Decision dated October 16, 2002 and Resolution dated June 18, 2003 are REVERSED and SET ASIDE.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Peralta, JJ., concur.

[1] Penned by Associate Justice B. A. Adefuin-de la Cruz with Associate Justices Rebecca de Guia-Salvador and Edgardo F. Sundiam, concurring; rollo, pp. 52-60.

[2] Respondent's counsel informed this Court that his client, Gregorio Lacaba, passed away sometime in August 2005 but his heirs have not furnished him with a copy of the Death Certificate; id. at 412.

[3] Id. at 103-104.

[4] Id. at 104-105.

[5] Id. at 111-113.

[6] Id. at 152-155.

[7] Id. at 115-116.

[8] CA rollo, p. 234.

[9] Id. at 235-240.

[10] Id. at 241.

[11] Id. at 242-246.

[12] Id. at 256-257.

[13] Id. at 258-292.

[14] Rollo, p. 234.

[15] Id. at 163.

[16] Id. at 86.

[17] CA rollo, p.153

[18] Id. at 174.

[19] Id. at 128-136.

[20] Rollo, p. 60.

[21] Id. at 59-60.

[22] Id. at 56-57.

[23] Id. at 61.

[24] Id. at 374.

[25] Land Bank of the Philippines v. Heirs of Fernando Alsua, G.R. No. 167361, April 2, 2007, 520 SCRA 132, 138.

[26] Eda v. Court of Appeals, G.R. No. 155251, December 8, 2004, 445 SCRA 521, 528.

[27] Rosales v. Court of Appeals, 405 Phil. 638, 649-650 (2001).

[28] See Magdalena Estate, Inc. v. Caluag, 120 Phil. 338 (1964).

[29] Caspe v. Court of Appeals, G.R. No. 142535, June 15, 2006, 490 SCRA 588, 591.

[30] Gonzaga v. Court of Appeals, G.R. No. 130841, February 26, 2008, 546 SCRA 532, 540.

[31] Domalsin V. Valenciano, G.R. No. 158687, January 25, 2006, 480 SCRA 114, 131-132.

[32] Buduhan v. Pakurao, G.R. No. 168237, February 22, 2006, 483 SCRA 116, 122.

[33] Estrella v. Robles, Jr., G.R. No. 171029, November 22, 2007, 538 SCRA 60, 74.

[34] Ganila v. Court of Appeals, G.R. No. 150755, June 28, 2005, 461 SCRA 435.

[35] Tirona v. Alejo, 419 Phil. 285, 298 (2001).

[36] Gonzaga v. Court of Appeals, supra note 30.

[37] Heirs of Pedro Laurora v. Sterling Technopark III, G.R. No. 146815, April 9, 2003, 401 SCRA 181, 184.

[38] Habagat Grill v. DMC-Urban Property Developer, Inc., G.R. No. 155110, March 31, 2005, 454 SCRA 653, 670.

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