EDITO PAGADORA, PETITIONER, VS. JULIETA S. ILAO, RESPONDENT.

G.R. No. 165769. December 12, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

Adventitious resort to technicality resulting in the dismissal of cases is disfavored because litigations must as much as possible be decided on the merits and not on technicalities.

This is a petition for review under Rule 45, assailing the twin Resolutions [1] of the Court of Appeals in CA-G.R. SP No. 83933, [2] dated June 8, 2004 [3] and October 20, 2004. [4] The former is a minute resolution that dismissed on technicality herein petitioner's appeal from the Judgment [5] rendered by Regional Trial Court of San Mateo, Rizal, Branch 75 in Civil Case No. 1581-01-SM. In turn, said judgment reversed the ruling of the Metropolitan Trial Court (MeTC) of Rodriguez, Rizal in Civil Case No. 1083, one for forcible entry filed by herein respondent Julieta Ilao against petitioner Edito Pagadora. The second assailed Resolution denied reconsideration.

In November 1997, respondent Julieta Ilao acquired, under a Contract to Sell, [6] a 5,148 sq m piece of land [7] in Burgos, Rodriguez, Rizal. The contract stipulated that the balance of the purchase price was payable upon proof by the vendee that the boundaries of the property had already been relocated and that the fence thereon had been constructed. [8] Hence, immediately after the sale, respondent as vendee had commissioned the survey of the property, but the work had been stalled because, on several occasions, the occupant of the adjoining lot, herein petitioner Edito Pagadora, had allegedly prevented the surveyor from completing the task. When at length the work was finished, respondent then sought to fence off the property yet again, the work stood to a halt because petitioner, as was the case during the survey, allegedly hindered respondent's workers from completing the work and even threatened them with bodily harm. [9] Hence, on March 24, 1998, respondent filed a Complaint [10] for forcible entry against petitioner before the MeTC, Rodriguez, Rizal.

It appears that the survey commissioned by respondent revealed that a portion of her property adjoining the land occupied by petitioner was lying within the perimeter fence of the latter, fenced in as it was by galvanized metal sheets. [11] This 482-square-meter portion turns out to be claimed by petitioner as part of the entire landholding which his wife had acquired supposedly as inheritance. In his Answer to the complaint, petitioner denied having forcibly entered the disputed property as alleged, and asserted that it has always been in his and his family's open and peaceful possession since 1986, it forming part of the landholding derived by his wife by succession from her parents Julian Guardiano and Sabina Jacobe. He pointed out that the complaint was infirm, lacking as it did an exact reference on when the alleged forcible entry took place, and also because it did not state that respondent had been in physical possession of the disputed property prior to him. Accordingly, he prayed for the dismissal of the case as the controversy did not fall under the MeTC's jurisdiction, the allegations in the complaint being insufficient to constitute forcible entry. [12]

At the pretrial, respondent moved that a court-appointed surveyor from the Land Registration Authority (LRA) conduct an actual ground verification survey of the two subject properties. [13] Petitioner opposed the move

based on his primal belief that the MeTC did not have jurisdiction over the controversy. [14] Resolving the motion, the court directed the conduct of a simultaneous survey of the subject properties, and declared that where the existing common boundary would coincide with the result of the survey then the same should be respected. [15] For this purpose, it subsequently ordered the LRA to provide one surveyor. [16] Of this order, petitioner sought reconsideration. [17] Meantime, Engineer Porfirio Encisa of the LRA was designated to perform the survey. [18]

Meantime, pretrial terminated without the parties arriving at a settlement, and upon stipulation of the fact that their properties were adjacent to each other, petitioner and respondent were directed to submit their position paper. [19] Defendant also attached a copy of the Original Certificate of Title (OCT) [20] of the land he occupied in the name of Sabina Jacobe as well as a certified true copy of the 1958 survey of the land. [21] Apparently, respondent did not file her position paper. Nonetheless, the case was then deemed submitted for decision.

On September 18, 2000, the MeTC rendered its Decision [22] dismissing the complaint for respondent's failure to establish her cause of action for forcible entry. The MeTC, finding that respondent had failed to discharge the burden of proving that petitioner had encroached on the subject property, disposed of the case as follows:

> WHEREFORE, x x x the Court below has no choice but to dismiss as it hereby dismisses, the instant complaint for failure of plaintiff to establish its (sic) cause of action and prevail with the evidence it (she) had against the defendant.
>
> No pronouncement as to cost.
>
> SO ORDERED. [23]

On appeal, the RTC noted that while the MeTC's decision was dated September 18, 2000, the report [24] of LRA Engineer Encisa, which formed part of the records transmitted to it, was stamped as received by the MeTC on October 2, 2000, although the report itself was dated October 5, 2000 and that the copy of said decision was served by mail on the parties on October 31, 2000. It pointed out that Engr. Encisa's report was likely to affect the proper resolution of the case. Hence, it ordered the remand of the case to the MeTC for the determination of the "existence, validity/admissibility and consideration of the said report." [25]

Forthwith, the MeTC heard the testimony of Engr. Encisa, who affirmed his authorship of the report as well as the fact that the same was based on the verification/relocation survey ordered by the MeTC with the agreement of both parties. The survey, he adds, was necessary to determine the actual boundaries of the properties involved and to ascertain whether petitioner indeed encroached on respondent's property. He also explained that the apparent antedating of the report was merely a typographical error. [26] None of the parties objected to the admission of the report; hence, the case was submitted for resolution. [27]

On May 12, 2003, the MeTC issued an Order declaring that it found no basis to abandon its earlier decision in the case.

The MeTC decision, however, was reversed by the RTC. In its January 12, 2004 Decision, [28] it held that:

> WHEREFORE, premises considered, judgment is hereby rendered by this Court reversing the Decision of the MeTC of Rodriguez, Rizal dated September 18, 2000 and ordering:
>
> - the defendant, Edito Pagadora, to immediately vacate the portion of land that forms part of the property of the plaintiff to the extent of 482 square meters and surrender possession of the same to the plaintiff;
>
> - to immediately remove the galvanized sheets on the portion of the property encroaching on the property of the plaintiff; and

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- to pay the amount of P30,000.00 as attorney's fees.

SO ORDERED. [29]

Petitioner sought reconsideration, [30] but the same was denied. [31] He then elevated the matter to the Court of Appeals which only made short shrift of the appeal for two reasons: first, the petition itself does not supposedly contain a written explanation on why a copy thereof was served on respondent Ilao by registered mail, instead of by the preferred mode of personal service in accordance with Section 11, Rule 13 of the Rules of Court and, second, the attached verification did not comply with Section 4, Rule 7, as amended by A.M. No. 00-2-10-SC. [32]

Petitioner sought reconsideration, but it was denied by a Resolution dated October 20, 2004 for lack of merit. [33]

Petitioner now assails the outright dismissal of his petition for review on a technicality, and advocates for a liberal interpretation of the rules of procedure to better serve the ends of justice. [34] He points out that, contrary to the appellate court's observation, his petition contained an adequate explanation why a copy thereof was served on respondent by registered mail instead of by personal service which appears in the last two pages [35] of his petition, except only that the pleading he served is erroneously described as a "Manifestation and Motion to Dismiss" instead of "Petition for Review" – an inadvertent error caused by the mere oversight of his counsel. [36] As to his defective verification, petitioner explains that the allegations in his petition for review are nevertheless based on authentic records comprising of all the relevant documents annexed to it, and that pertinent portions of these documents have likewise been reproduced in the petition itself. He explains that financial constraints had prevented him from having all the documents photocopied and certified by the lower court, and that besides, he had also anticipated the consequent elevation of the records to the appellate court. [37]

On the substantive aspect, petitioner believes the Court of Appeals to have erred in finding no merit in his appeal and in holding that the issues raised therein are too insubstantial to require consideration. Consistent is his stance that the MeTC lacked the jurisdiction over the controversy. He also harps on respondent's failure to establish her cause of action below and, particularly, to prove that she had prior physical possession of the disputed property prior to the act of the supposed dispossession, which likewise has not been established before the ejectment court. Again, he points out that on the contrary, it was he who has been in actual and continuous possession of the property since 1986, and denies having wrestled possession from respondent by force, intimidation, threat, strategy and stealth as alleged. [38] In this connection, he laments that respondent's Contract to Sell, allegedly an unregistered instrument, would vest title only on full payment of the purchase price and that the same hardly proves prior possession in respondent's favor because it was executed only in 1997 – or way further in time than when he himself had established possession of the disputed property. [39]

Petitioner likewise assails the report of Engr. Encisa of the LRA as it hardly constitutes evidence of forcible entry. He opines that the RTC erred in reversing the judgment of the MeTC only on the basis of the said report. He posits that the survey, against which he had registered his objections, was not the survey contemplated in the MeTC's February 8, 2003 Order, and alleges that it was conducted by Engr. Encisa without his participation. [40]

Respondent stands by the Court of Appeals' ruling. In her rather non-extensive Comment, she reiterates that no special reason exists to warrant a review of the RTC's decision in this case, and that the violations committed by petitioner of the rules on verification and of service of pleadings are by all means fatal to his cause. [41]

We shall first address the procedural facet of this case.

The Court finds that indeed the verification on page 24 of herein petitioner's petition for review filed with the Court of Appeals – in which he attested among others that the statements therein were "true and correct to the best

of [his] personal knowledge and honest belief" [42] – is defective and non-compliant with Section 4, [43] Rule 7 of the Rules of Court, which requires the affiant to attest the allegations in his petition to be true and correct of his personal knowledge or based on authentic records. Nevertheless, in his Motion for Reconsideration of the June 8, 2004 Resolution dismissing said petition, petitioner, in a bona fide attempt to rectify his initial mistake, has actually attached on page 6 [44] thereof another verification which in all respects complies with the requirements of the aforementioned rule.

It is settled that liberal construction of the rules may be invoked in situations where there may be some excusable formal deficiency or error in a pleading, provided that the same does not subvert the essence of the proceeding and it at least connotes a reasonable attempt at compliance with the rules. [45] Besides, fundamental is the precept that rules of procedure are meant not to thwart but to facilitate the attainment of justice; hence, their rigid application may, for deserving reasons, be subordinated by the need for an apt dispensation of substantial justice in the normal course. They ought to be relaxed when there is subsequent or even substantial compliance, [46] consistent with the policy of liberality espoused by Rule 1, Section 6. [47] Not being inflexible, the rule on verification allows for such liberality.

Verification is merely a formal, not jurisdictional, requirement, affecting merely the form of the pleading such that non-compliance therewith does not render the pleading fatally defective. It is simply intended to provide an assurance that the allegations are true and correct and not a product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court may in fact order the correction of the pleading if verification is lacking or it may act on the pleading although it may not have been verified, where it is made evident that strict compliance with the rules may be dispensed so that the ends of justice may be served. [48] The Court en banc, in Altres v. Empleo, [49] has issued guidelines based on previous jurisprudential pronouncements respecting non-compliance with the requirements on, or submission of a defective, verification as well as on certification against forum shopping, as follows:

> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
>
> 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
>
> 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct. [50]

In Santos v. Litton Mills, [51] where the petitioner therein had initially filed a petition before the Court of Appeals with a defective verification and certification, this Court noted that said defect has been corrected when after dismissal, said petitioner filed a motion for reconsideration and attached to it a verification and certification sufficient in form; because there was subsequent compliance in that case, the Court eagerly adopted liberality to secure the greater interest of justice and held that the Court of Appeals should have given due course to said petition in the first place.

In the present case, petitioner's subsequent compliance via his motion for reconsideration should also have inspired an attitude of liberality, yet another procedural lapse was found by the Court of Appeals which also accounted for the dismissal of the appeal: the supposed absence of a written explanation why petitioner had resorted to service of the pleading on respondent by registered mail instead of by personal service in violation of

the priority in the modes of service under Section 11, Rule 13.

We, however, are not inclined to adopt said finding because on the contrary, the petition submitted by petitioner did have an accompanying explanation justifying service by mail in lieu of personal service. On page 23 of his petition for review under the heading that reads “Explanation,” it is stated that a copy of the pleading has been “served on plaintiffs through counsel via registered mail and not personally due to the unavailability of messenger and distance constraints,” but the pleading so served is erroneously described as a “Manifestation and Motion to Dismiss” instead of “Petition for Review.” [52] In his Motion for Reconsideration of the June 8, 2004 Resolution, petitioner conceded having committed said mistake, but attributed the error to his counsel’s inadvertence and oversight. [53] And judging by the Registry Return Receipt [54] attached to the petition itself, the copy of the pleading thus served, which was mailed on May 31, 2004, was received by respondent’s counsel on June 3, 2004.

Section 11 [55] of Rule 13 requires service and filing of pleadings and other papers, whenever practicable, to be done personally; and if made through other modes, the party concerned must provide a written explanation as to why service or filing was done otherwise. Personal service is preferred because it is seen to expedite the action or resolution on a pleading, motion or other paper; and conversely, minimize, if not eliminate, delays likely to be incurred if service is done by mail, considering the inefficiency of the postal service. Likewise, it will do away with the practice of some lawyers who, wanting to appear clever, resort to less ethical practices to catch the opposing counsel off-guard or unduly procrastinate in claiming the parcel containing the pleading served. [56] Thus, personal service is the general rule, and resort to other modes of service is the exception, so that where personal service is practicable, in the light of the circumstances of time, place and person, personal service is mandatory. Only when personal service is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with. [57]

Based on this explanation will the court then determine whether personal service is indeed not practicable so that resort to other modes is made. At this stage, the judge exercises proper discretion but only upon the explanation given. In adjudging the plausibility of an explanation, the court shall consider not only the circumstances, the time and the place but also the importance of the subject matter of the case or the issues involved therein, and the prima facie merit of the pleading involved. [58] It is in this respect that the Court of Appeals’ reliance on Solar Team Entertainment, Inc. v. Ricafort [59] has failed. Indeed, no critique may be made against the mandatory nature of the rule, as stated in that case, requiring a written explanation where service of pleadings is done by other means than personal service, yet that case is inapplicable to the present controversy because there, the Court found that there was absolutely no written explanation attached to the pleading to justify the deviation from the rules on service. Such is not the case here.

Thus, the determination of the practicability of petitioner’s availing of service by registered mail in the case at bar, based on the proffered absence of an available messenger and on account of the alleged distance constraint, is concededly a matter that lies within the prerogative of the Court of Appeals. Yet the exercise of discretion in this regard is ought to be guided by the principle that substantial justice far outweighs rules of procedure.

A liberal application of procedural rules requires that: (1) there is justifiable cause or plausible explanation for non-compliance and (2) there is compelling reason to convince the court that the outright dismissal would seriously impair or defeat the administration of justice. [60] In the present case, it is difficult to immediately dismiss the plausibility of the written explanation offered by petitioner when in fact in all stages of the proceedings he has always utilized the post in serving copies of his pleadings on respondent for the very same reasons stated in his petition filed with the Court of Appeals subject of this case. More importantly, the merits of petitioner’s cause indeed deserve consideration especially since, as will be discussed, the controversy involved is far removed from the limited jurisdiction of the MeTC.

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The general purpose of forcible entry and detainer statutes is to assure that, regardless of the actual condition of the title to or the right of possession of the property, the party actually in peaceable and quiet possession shall not be turned out by strong hand, violence or terror. One who is guilty of a forcible entry or of detainer after a peaceable but unlawful entry, is therefore not only subject to indictment but is also required to restore possession to the party from whom the property was taken or detained. In affording this remedy of restitution, the object of the statutes is to prevent breaches of the peace and criminal disorder which would ensue from withdrawal of the remedy, and the reasonable hope such withdrawal would create that some advantage must accrue to those persons who, believing themselves entitled to the possession of property, resort to force to gain possession rather than to some appropriate judicial action to assert their claims. This is the philosophy at the foundation of actions of forcible entry and detainer, which are designed to compel the party out of possession to respect and resort to the law alone to obtain what he claims is his. [61]

Proceedings in forcible entry cases under Rule 70 are thus summary in nature, allowing as they do for an expeditious means of protecting actual possession or the right to possession of property. [62] Forcible entry into one's land is an open challenge to the right of the lawful possessor, the violation of which right authorizes the speedy redress in the inferior court. [63] The law is geared towards protecting the person who in fact has actual possession; and in case of a controverted proprietary right, the law requires the parties to preserve the status quo until one or the other sees fit to invoke the decision of a court of competent jurisdiction upon the question of ownership. [64]

The invariable rule is 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. In ejectment cases, the complaint should embody such statement of facts as to bring the party clearly within the class of cases for which Section 1 [65] of Rule 70 provides a summary remedy, and must show enough on its face to give the court jurisdiction without resort to parol evidence. [66] Hence, in forcible entry, the complaint must necessarily allege that one in physical possession of a land or building has been deprived of that possession by another through force, intimidation, threat, strategy or stealth. It is not essential, however, that the complaint should expressly employ the language of the law, but it would suffice that facts are set up showing that dispossession took place under said conditions. [67] In other words, the plaintiff must allege that he, prior to the defendant's act of dispossession by force, intimidation, threat, strategy or stealth, had been in prior physical possession of the property. This requirement is jurisdictional, and as long as the allegations demonstrate a cause of action for forcible entry, the court acquires jurisdiction over the subject matter. [68]

We find that at the inception of this case at the MeTC, it was already apparent that respondent had failed to establish her cause of action. The complaint materially reads:

> 3. That immediately after her purchase, plaintiff commissioned the services of one Engr. Richard G. Montano to conduct a survey of the aforementioned property. However, xxx during the survey (on) December 29, 1997, Engr. Montano was prevented by defendant EDITO PAGADORA from completing the survey, particularly on the portion of the property xxx contiguous to his property and even threatened Engr. Montano with bodily harm by pointing his gun xxx;
>
> 4. That through the assistance of the [police], a survey of the property was finally made on January 21, 1998;
>
> 5. That on February 16, 1998, xxx plaintiff applied for a Fencing Permit for which plaintiff was granted Permit No. 98-02-004 xxx;
>
> 6. However, when the fencing of the property was being made on March 2, 1998, plaintiff and her workers were again prevented from installing the fence on the property bounded by points 11, 12, 1, 2, and 3, as marked on the attached Relocation Plan, xxx with the defendant Edito Pagadora threatening the workers of the

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> plaintiff with bodily harm and at the same time brandishing his gun, and claiming that the portion of the said property belongs to him;
>
> 7. That thru force, intimidation, strategy, threat and stealth, and against the will and without the consent of the herein plaintiff, defendant Edito Pagadora took possession of that portion of property measuring about 450 square meters, more or less, xxx by erecting a fence made of galvanized sheets xxx;
>
> 8. That defendant EDITO PAGADORA further claims, in order to intimidate the plaintiff, that he is a member of the Philippine National Police with the rank of Lieutenant Colonel xxx and that he always displays his gun every time the plaintiff and her workers made efforts to fence her property.
>
> 9. That due to the defendant's refusal and failure to vacate the premises and to turn over possession of the same to the plaintiff, plaintiff was constrained to hire the services of the undersigned counsel in the amount of P100,000.00 to protect her rights and interests plus P5,000.00 for every appearance in court. [69]

Judging by the terms of the complaint, We find that respondent has failed to make out a preliminary case for forcible entry. There is no ostensible averment in the complaint to the effect that she had been in prior possession of the subject property ahead of petitioner. Interestingly, indeed, there is neither reference – not even a circumstantial one – to an act of dispossession that may be attributed to petitioner in a way that would preliminarily establish that the latter had forcibly entered the disputed property and disturbed respondent's present or prior possession thereof. While there is actually an attribution to petitioner of force, intimidation, threat, strategy and stealth, it is nevertheless unascertainable whether these positive acts were employed to the end of disturbing respondent's prior possession of the property. What is only clear from the allegations, though, is that when respondent attempted to conduct a survey of the property which she bought in 1997, and later tried to build a fence around it, she and her workers were prevented by petitioner, through force, intimidation, threat, strategy and stealth, from completing the work upon the justification that he (petitioner) owned the property.

Verily, the material allegations in respondent's complaint do not establish a cause of action for forcible entry and hence, the MeTC has not acquired jurisdiction over the same. This could have accounted for the outright dismissal of the complaint at the first instance and yet, the case still progressed. And if there is anything significant which eventually unfolded, it is the fact that the conflict between petitioner and respondent is indeed beyond the competence of the MeTC to resolve, because it is actually a boundary dispute affecting the ownership of the 482-square-meter portion of the property occupied by petitioner but claimed by respondent as part of the property she acquired under her 1997 Contract to Sell.

In fact, in his answer to the complaint, petitioner declared that the property involved has always been in his open and peaceful possession since 1986 when, together with the rest of the landholding currently occupied by him and his family, it was acquired by his wife as an inheritance from her parents [70] – a claim that does not appear to have been refuted. Also, consistent with the MeTC's findings, it is clear that the conflict arose when respondent, after her purchase of the property adjoining that of petitioner, demanded of the latter to tear down the existing structures and galvanized metal sheets standing on the disputed portion. This all the more highlights the fact that said disputed portion, over which respondent lays claim as owner under her contract to sell, has been in the physical possession of petitioner, likewise under claim of ownership, but way ahead of respondent's.

In sum, We find that the conduct of the court-appointed relocation survey in this case to determine where the exact boundaries of the subject properties properly lie, has been but a futile exercise – and so is the Order of the RTC remanding the case to the MeTC for the reception in evidence and evaluation of Engr. Encisa's report on the said survey – because not being necessary under the premises, they were anathema to the policy underlying the summary nature of ejectment proceedings: that is to provide an expeditious means of resolving the issue of possession, eschewing any question as to title and ownership which ought to proceed independently, [71] in order

to speedily address breaches of the peace characteristic of disturbances of property possession. [72] This, especially because there is already an initial showing in the complaint itself that respondent, the plaintiff therein, has not been in actual possession of the property. The contending claims of ownership between petitioner and respondent in this case, as well as the opposing possessory rights that emanate from such claims, may not therefore be resolved in such summary action as ejectment but rather in a separate action. [73]

All told, it is unnecessary to pass upon the other issues raised in the petition at bar.

WHEREFORE, the petition is GRANTED. The Resolutions of the Court of Appeals in CA-G.R. SP No. 83933, dated June 8, 2004 and October 20, 2004, respectively affirming the decision of the Regional Trial Court of San Mateo, Rizal, Branch 75 in Civil Case No. 1581-01-SM, and denying reconsideration, are SET ASIDE. The September 18, 2000 decision of the Metropolitan Trial Court of Rodriguez, Rizal in Civil Case No. 1083, dismissing the complaint for forcible entry filed by respondent Julieta Ilao, is REINSTATED.

SO ORDERED.

Velasco, Jr., Abad, Mendoza, and Perlas-Bernabe, JJ., concur.

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[1] Both signed by Associate Justice Mariano C. Del Castillo (now Associate Justice of the Supreme Court), with Associate Justices Roberto A. Barrios and Magdangal M. De Leon, concurring.

[2] Entitled Eduardo Pagadora, Defendant-Appellant vs. Julieta S. Ilao, Plaintiff-Appellee.

[3] Rollo, p. 43.

[4] Id. at 45-46.

[5] Signed by Judge Elizabeth Balquin-Reyes; records, pp. 83-88.

[6] Records, pp. 5-7.

[7] The property is covered by Original Certificate of Title No. ON-641 issued by the Register of Deeds of Rizal in the name of Gregorio F. Manahan. Id. at 8-9.

[8] See Contract to Sell dated November 20, 1997, id. at 20-22.

[9] See Complaint and Amended Compalint, id. at 1-2, 42-43.

[10] The complaint was docketed as Civil Case No. 1083. It was later on amended to reflect the correct name of the defendant as “Edito Pagadora” instead of “Eduardo Pagadora.” Id. at 16-18, 42-44.

[11] Records, p. 17.

[12] Id. at 35-36.

[13] See Motion to Appoint a Surveyor dated April 22, 1999, id. at 84.

[14] See Opposition dated June 5, 1999, id. at 109-111.

[15] Order dated August 20, 1999, id. at 127.

[16] Order dated February 8, 2000, id. at 155.

[17] Records, p. 156.

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[18] See Order dated March 22, 2000

[19] See Order dated August 17, 2000, id. at 186.

[20] The OCT was issued in the name of Sabina Jacobe.

[21] Records, pp. 196-199.

[22] Id. at 200-214. It disposed of the case as follows:

WHEREFORE, following the above dictum of the Honorable Supreme Court, this Court below has no choice but to dismiss as it hereby dismisses the instant complaint for failure of plaintiff to establish its cause of action and prevail with the evidence it had against the defendant.

No pronouncement as to cost.

SO ORDERED.

[23] Records, pp. _____.

[24] Rollo, pp 188-190. The report states among others (a) that there existed no overlapping in boundaries of the properties of petitioner and respondent, except that the improvements constructed by the defendant himself are the one allegedly encroaching on plaintiff's property; (b) that such improvements consisted of a temporary fence and the house all covering an area of 482 sq m; (c) that said portion of the lot being claimed by plaintiff under her Contract to Sell was traversed by the existing river and formed part of an existing river bed; (d) that there was a basketball whose construction was sanctioned by the barangay officials and which encroached on the portion claimed by the plaintiff to the extent of 141 sq m.

[25] See RTC Order dated August 2, 2002, records, pp. _____

[26] TSN, March 26, 2003, id. at 305-307.

[27] Order dated March 26, 2003, id. at 301.

[28]

[29] Records, pp.

[30] Id. at 346-350.

[31] Order dated April 21, 2004, id. at 363.

[32] CA rollo, pp. 156-157.

[33] Pertinently, the October 20, 2004 Resolution reads:

WHEREFORE, subject Motion for Reconsideration is hereby DENIED and Our resolution of dismissal stands.

SO ORDERED.

[34] Rollo, pp. 23-28.

[35] CA rollo, p. 30. On page 23 of the Petition for Review appears the following:

Copy of the foregoing pleading is furnished by registered mail with return card to (sic):

Atty. Teodoro M. Jumamil

Brillantes Navarro Jumamil Arcilla Escolin & Martinez Law Offices
Counsel for Plaintiff-Appellee
105-B ECJ Condominium Bldg., Real cor. Arzobispo Streets,
Intramuros, 1002 Manila.

EXPLANATION

Copy of the foregoing "Manifestation and Motion to Dismiss" is served on plaintiffs through counsel via registered mail and not personally due to the unavailability of messenger and distance constraints.

[36] Rollo, pp. 19-21, 22.

[37] Id. at 21. See also petitioner's Reply, id. at 208-209.

[38] Id. at 28-32, 34-36. See also petitioner's Reply, id. at 210.

[39] Rollo, pp. 26-230.

[40] Id. at ---------36-39.

[41] Id. at 210-203.

[42] CA rollo, p. 31.

[43] SEC. 4. Verification. – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

[44] CA rollo, p. 153.

[45] Mediserve, Inc. v. Court of Appeals, G.R. No. 161368, April 5, 2010.

[46] See Santos v. Litton Mills Inc, G.R. No. 170646, June 22, 2011.

[47] SEC. 6. Construction. — These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

[48] See Millennium Erectors Corp. v. Magallanes, G.R. No. 18432, November 15, 2010, and also Antone v. Beronilla, G.R. No. 183824, December 8, 2010, and Robern Development Corporation v. Judge Quitain, G.R. No. 135042, September 23, 1999, 373 SCRA 773, 786.

[49] G.R. No. 180986, December 10, 2008, 573 SCRA 583, 596-597.

[50] Id at 597. Also cited in the fairly recent cases of Mandaue Galleon Trade, Inc. v. Isidro, G.R. No. 181051, July 5, 2010 and Vda. de Formosa v. Philippine National Bank, G.R. No. 154704, June 1, 2011.

[51] G.R. No. 170646, June 22, 2011.

[52] CA rollo, p. 30.

[53] Id. at 146-147.

[54] Registry Return Receipt No. 7922, id. at 23.

[55] Sec. 11. Priorities in modes of service and filing. — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

[56] Solar Team Entertainment, Inc. v. Ricafort, G.R. No. 132007 August 5, 1998; Maceda v. Vda. De Macatangay, G.R. No. 164947, January 31, 2006.

[57] Maceda v. Vda. De Macatangay, G.R. No. 164947, January 31, 2006; Solar Team Entertainment, Inc. v. Ricafort, supra.

[58] See Solar Team Entertainment, Inc. v. Ricafort, supra note 56; Domingo v. Court of Appeals, G.R. No. 169122, February 2, 2010.

[59] Supra note 56.

[60] Domingo v. Court of Appeals, G.R. No. 169122, February 2, 2010; Tible & Tible Co., Inc. v. Royal Savings and Loan Association, G.R. No. 155806, April 8, 2008, 550 SCRA 562.

[61] 35 Am Jur 2d, pp. 894-895

[62] See Deveza v. Montecillo, 137 Phil. 232, 238 (1969);

[63] Sarmiento v. Court of Appeals, 320 Phil. 146, 155 (1995).

[64] Id. at 157.

[65] 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 representatives 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.

[66] Delos Reyes v. Odones, G.R. No. 178096, March 23, 2011. See also Sarmienta v. Manalite Homeownsers Association, Inc., G.R. No. 182953, October 11, 2010.

[67] Cajayon v. Spouses Batuyong, 517 Phil. 648, 659 (2006).

[68] Delos Reyes v. Odones, supra note 65. See also Sarmienta v. Manalite Homeownsers Association, Inc., supra note 66.

[69] Records, pp. 16-18, 42-44.

[70] Id. at 35-36.

[71] Flores v. Lucas, G.R. No. 178907, July 4, 2008

[72] Pajuyo v. CA, G.R. No. 146364, June 3, 2004, citing Reynoso v. Court of Appeals, G.R. No. 49344, February 23, 1989, 170 SCRA 546; Aguilon v. Bohol, G.R. No. L-27169, October 20, 1977, 79 SCRA 482.

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[73] Sarmienta v. Manalite Homeownsers Association, Inc., supra note 66.

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