

EVA FLOYD AND RODOLFO CALIXTRO, PETITIONERS, VS. BENJAMIN GONZALES, ATILANO NANQUIL, LINDA NISPEROS, LILIAN NISPEROS, SALVADOR NISPEROS & VIRGILIO CONSTANTINO, RESPONDENTS.

G.R. No. 169047. November 03, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari seeks to reverse the Decision[1] dated July 12, 2005 of the Court of Appeals in CA-G.R. CV No. 81618. Said Decision affirmed with modification the Decision[2] of the Regional Trial Court (RTC), Branch 45, San Fernando City, Pampanga in SP. Civil Action No. 234-0-91, dismissing the complaint for injunction which sought to prevent the demolition of petitioners' houses built on the land claimed by respondents Linda Nisperos, Lilian Nisperos and Salvador Nisperos.

The facts, as culled from the records, are as follows.

Petitioners Eva Floyd and Rodolfo Calixtro are occupants of a lot in Jolo Street, Tabacuhan Road, Sta. Rita, Olongapo City. Floyd started occupying the said lot in 1986 while Calixtro started doing so in 1988. The lot forms part of a 1,337.50-square meter property which was the subject of a complaint[3] for forcible entry filed by respondents Lilian Nisperos, Linda Nisperos and Salvador Nisperos, through their attorney-in-fact Virgilio Constantino, against Clemente Abarnas. The complaint, filed on September 25, 1984, charged Abarnas of constructing a house on the subject land in July 1984 through stealth and strategy. The Nisperoses claimed ownership and prior possession of the land by succession, alleging that their father, Igmedio Nisperos, occupied and tilled it from 1950 to 1982.

On February 10, 1986, the Municipal Trial Court in Cities of Olongapo City dismissed the ejectment complaint. On appeal however, the Olongapo City RTC on January 20, 1987 reversed the dismissal of the complaint and ordered Abarnas to remove any improvements introduced on the land and surrender possession thereof to the Nisperoses.[4]

On July 8, 1987, the Court of Appeals affirmed the Olongapo City RTC's Decision.[5] When the appellate court's decision attained finality, the Olongapo City RTC issued an Alias Writ of Execution[6] on April 3, 1991 and an Alias Writ of Special Demolition[7] on April 4, 1991. A Notice to Vacate[8] was likewise issued on April 23, 1991.

In June 1991, when respondents Sheriffs Benjamin Gonzales and Atilano Nanquil went to the subject land to implement the writs, they found that petitioners and Fe Ongsotto were also occupying the property. To prevent the demolition, petitioners and Ongsotto filed a complaint[9] for injunction, SP. Civil Action No. 234-0-91, before the RTC of Olongapo City.

On February 5, 1992, the RTC of Olongapo City issued a Writ of Preliminary Injunction.[10] It observed that

petitioners do not appear to be mere trespassers, squatters or Abarnas' agents; and that the respondent sheriffs exceeded their authority granted by the writs of execution and demolition, considering that they were only directed against Abarnas.[11]

The complaint was transferred to the RTC of San Fernando City by virtue of Supreme Court A.M. No. 00-11-523-RTC, following a judicial audit.

On August 8, 2003, the RTC of San Fernando City, dismissed the injunction complaint. It considered petitioners as occupants in bad faith and squatters on the lots, making the judgment in the ejectment case binding on them. The court recognized the Nisperoses' prior possession and claim over the lots which started in 1950 with their father, Igmedio. The RTC noted that Floyd and Calixtro admitted that they started occupying the premises only in 1986 and 1988, respectively. It also concluded that petitioners impliedly admitted that the lots are part of the Nisperoses' property because instead of claiming the opposite, they attempted to prove that they had a better right thereto. It also ordered petitioners to pay private respondents moral damages and attorney's fees.[12]

Petitioners and Ongsotto, separately, appealed the judgment in the injunction case before the Court of Appeals.

On July 12, 2005, the appellate court ruled against petitioners, thus:

WHEREFORE, upon the premises, the appealed Decision is AFFIRMED with the MODIFICATION that the awards of moral damages and attorney's fees are DELETED.

SO ORDERED.[13]

The Court of Appeals held that petitioners have not shown a clear and unmistakable right to be protected, and found that they occupied the land during the pendency of the ejectment case, thereby taking advantage of such conflict.[14]

On August 22, 2005, Ongsotto, alone, filed a Motion for Reconsideration.[15] On September 21, 2005, Floyd and Calixtro filed the instant petition.[16] On February 15, 2006, the Court of Appeals deferred ruling on Ongsotto's motion in view of this petition.[17]

Before us, petitioners raise the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION IN CIVIL CASE NO. 234-0-91 HOLDING THAT THE PETITIONERS ARE BOUND BY THE DECISION IN CIVIL CASE NO. 139-0-86 ALTHOUGH THEY WERE NOT IMPLEADED AS PARTY DEFENDANTS THEREIN.

II.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE PETITIONERS ARE NOT ENTITLED TO A WRIT OF INJUNCTION ALTHOUGH THE PROPERTY THEY ARE IN POSSESSION OF IS OWNED AND TITLED IN THE NAME OF ANOTHER PERSON.

III.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE LAND SUBJECT OF CIVIL CASE NO. 139-0-86 INCLUDES THE LOTS BEING OCCUPIED AND POSSESSED BY THE PETITIONERS.[18]

Simply stated, the issues are as follows: Are petitioners bound by the decision in the ejectment case? Are they entitled to an injunctive writ to prevent the demolition of their houses? Who has a better right of possession over

the land where their houses are erected?

Petitioners aver that only Abarnas was ordered by the Olongapo City RTC to surrender possession of the land and remove any construction thereon, and that they are not trespassers, squatters, or Abarnas' relatives, successors-in-interest, or privies. They further contend that judgments in ejectment cases are in personam. Thus, even assuming that they are occupying the premises subject of the ejectment case, the judgment cannot be enforced against them as they were not made parties to it. Petitioners likewise point to several pieces of documentary evidence which allegedly show that the Nisperoses are not the true owners of the lots on which the houses sought to be demolished stand, since said lots are registered in the name of one Rodrigo C. Domingo, Jr. They further argue that there is no factual basis for the appellate court's finding that they impliedly admitted that the lots they are occupying form part of the property claimed by the Nisperoses.[19]

The Nisperoses on the other hand state that petitioners were not impleaded as defendants in the ejectment case as the latter were not yet on the premises "or hid themselves" during the pendency of the case until the time the latter were served with a notice to vacate on December 21, 1988. They claim that petitioners connived with Abarnas and his wife Angelina, and insist that petitioners are privies of the Abarnases. They accuse petitioners of bad faith in applying for a Miscellaneous Sales Application and for belatedly securing other documents, which were "self-serving." Lastly, they aver that the genuineness of the documents presented by petitioners and the ownership of the lots mentioned in it can only be determined in a full-blown trial.[20]

An ejectment suit is an action in personam wherein judgment is binding only upon parties properly impleaded and given an opportunity to be heard.[21] Petitioners were not made party-defendants by the Nisperoses. Hence, they can be bound by said judgment in the ejectment suit, even if they were not impleaded as defendants, only if they are shown to be (a) trespassers, squatters or agents of the defendant fraudulently occupying the property to frustrate the judgment; (b) guests or other occupants of the premises with the permission of the defendant; (c) transferees pendente lite; (d) sub-lessees; (e) co-lessees; or (f) members of the family, relatives and other privies of the defendant.[22] In such cases, court hearing is a must to determine the character of such possession. If the execution court finds that they are mere successors-in-interest, guests, or agents of the defendant, the order of execution shall be enforced against them.[23]

In the forcible entry case, petitioners had not been given their day in court to present their side to prove their alleged bona fide possession. Neither was a court hearing held to prove that they are mere successors-in-interest, guests, or agents of defendant Abarnas when the ejectment judgment was sought to be enforced against them. Thus, they cannot be bound by the decision in the ejectment case.

We now go to the second issue.

A writ of preliminary injunction may only be issued upon a clear showing that there exists a right to be protected and that the action sought to be enjoined is violative of that right.[24] From the foregoing discussion, it is clear that petitioners have a right to be protected against the summary demolition of their houses. Hence, the RTC correctly issued a writ of preliminary injunction. However, whether the injunction should be made permanent is another matter.

The determination as to whether petitioners are entitled to a permanent injunction rests on the issue of who between petitioners and respondents have a better right of possession over the land on which the houses sought to be demolished stand.

It is relevant to point out that in the pre-trial conference before the Olongapo City RTC the parties agreed on the following issues for resolution:

(1)

Whether or not the plaintiffs were mere trespassers in the property in question or do they have title over the premises in question.

(2)

Whether or not the plaintiffs can be ejected or their house demolished erected on the land in question inasmuch as they are not parties in the case of Linda Nisperos, et al. versus Rodolfo Calixtro and Fe Ongsotto, Civil Case No. 139-0-86.

(3)

Whether or not the spaces which plaintiffs' houses are erected are owned by plaintiffs.[25]

Clearly, apart from the matter of enjoining the execution against petitioners of the judgment in Civil Case No. 139-0-86, the issue of who between the petitioners and respondents are entitled to possession of, as a consequence of title over, the land where the formers' houses are erected was also squarely raised and fully tried before the lower courts. During trial, petitioners fully ventilated their claim / right to possession of the subject land. Sec. 5, Rule 10 of the Rules of Court states that "[w]hen issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." Under the circumstances, it is just and proper to resolve the issue of possession over the subject land. To rule otherwise and require respondents to file another case for ejectment, or institute supplemental proceedings in Civil Case No. 139-0-86, against petitioners would not be in accord with justice and would only entail more unnecessary expenses and contribute to the clogged court dockets.

Both the RTC and the Court of Appeals categorically found that respondents have the better right to possession of the land. The RTC ruled that "[petitioners'] claim of possession that started in 1988 must ... yield to that of the Nisperoses who trace their possession of the property to that of their predecessor-in-interest, their father Igmedio who began occupying the property in 1950." [26] The Court of Appeals, for its part, ruled that:

...[Petitioner] Floyd occupied the property only in 1986; [petitioner] Calixtro occupied the property in 1988 while admitting that the property was owned by I. Hauseco Subd. Appellant Ongsotto likewise occupied the property in 1988 and expressed that she derived her alleged title from a waiver and quitclaim executed by Angelina Abarnas, the wife of ... Clemente Abarnas, defendant in the ejectment case. Thus, she is considered as the latter's successor-in-interest, bound by the judgment in the ejectment case which is conclusive between the parties and their successors-in-interest. The MSAs [Miscellaneous Sales Applications] and unapproved survey plans presented by ... Floyd and Ongsotto are self-serving and of little evidentiary value.

In sum, the [petitioners] have not proved a clear and unmistakable right to the possession of the property. On the other hand, Nisperos' better right was established by final judgment in Civil Case No. 139-0-86....[27]

We find no cogent reason to overturn the consistent findings of both the RTC and the Court of Appeals that, as against petitioners, the Nisperoses are entitled to possession of the subject land where the petitioners' houses are erected. Applicable to the instant case, which is an offshoot of an ejectment case and which also in part partakes of an ejectment case, is the following pronouncement of the Court on the matter of ejectment and possession in *Pajuyo v. Court of Appeals*: [28]

The only question that the courts must resolve in ejectment proceedings is-who is entitled to the physical possession of the premises, that is, to the possession de facto and not to the possession de jure. It does not even matter if a party's title to the property is questionable, or when both parties intruded into public land and their applications to own the land have yet to be approved by the proper government agency. 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. To repeat, the only issue that the court has to settle in an ejectment suit is the right to physical possession.[29]

Petitioners Floyd and Calixtro, in SP. Civil Action No. 234-0-91 admitted having possessed the subject land only in 1986 and 1988 respectively. These cannot prevail over the Nisperoses' possession through their father Igmedio that started in 1950. Since the Nisperoses have proven prior possession in time, they indeed have a better right to the possession of the land. Hence, petitioners must relinquish possession of the land to the Nisperoses and accordingly remove their houses which are built on the subject land.

WHEREFORE, the Decision dated July 12, 2005 of the Court of Appeals in CA-G.R. CV No. 81618 is AFFIRMED with MODIFICATION. Petitioners are ORDERED to SURRENDER to the respondents Linda, Lilian and Salvador Nisperos the possession of the land in dispute and REMOVE the improvements that they introduced thereon.

Costs against petitioners.

SO ORDERED.

Carpio-Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, pp. 33-42. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Juan Q. Enriquez, Jr. and Vicente Q. Roxas concurring.

[2] Records, pp. 528-537. Penned by Judge Adelaida Ala-Medina. Dated August 8, 2003.

[3] Civil Case No. 2467.

[4] Records, pp. 186-189. Penned by Judge Esther Nobles Bans.

[5] Id. at 190-197. Penned by Associate Justice Bonifacio A. Cacdac, Jr., with Associate Justices Esteban M. Lising and Ricardo L. Pronove, Jr. concurring.

[6] CA rollo, pp. 89-90.

[7] Id. at 91-92.

[8] Records, p. 111.

[9] Id. at 1-4.

[10] Id. at 139-140.

[11] Id. at 120-122.

[12] Id. at 528-537.

[13] CA rollo, p. 114.

[14] Id. at 112-113.

[15] Id. at 122-127.

[16] Id. at 141-152.

[17] Id. at 185-186.

[18] Rollo, pp. 11-12.

[19] Id. at 13-16.

[20] Id. at 59-61.

[21] *Biscocho v. Marero*, A.M. No. P-01-1527, April 22, 2002, 381 SCRA 430, 432.

[22] *Equitable PCI Bank v. Ku*, G.R. No. 142950, March 26, 2001, 355 SCRA 309, 312.

[23] *Gozon v. De la Rosa*, 77 Phil. 919, 921 (1947).

[24] *Tan v. Mueco*, G.R. No. 141540, October 26, 2001, 368 SCRA 429, 435.

[25] Records, pp. 227-228. See also the RTC Decision, records, p. 531.

[26] Id. at 533.

[27] CA rollo, p. 113.

[28] G.R. No. 146364, June 3, 2004, 430 SCRA 492.

[29] Id. at 510-511.

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