

ANTONIO ARBIZO, Petitioner, vs. SPS. ANTONIO SANTILLAN and ROSARIO L. SANTILLAN, Respondents.*G.R. No. 171315. February 26, 2008*

Ponente: CHICO-NAZARIO, J.

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For review on certiorari under Rule 45[1] of the 1997 Rules of Civil Procedure filed by petitioner Antonio Arbizo is the Decision[2] of the Court of Appeals dated 31 January 2006. The Court of Appeals ordered petitioner to vacate the properties subject of this case. The assailed Decision reversed and set aside the Decision[3] dated 20 February 2004 of the Regional Trial Court (RTC) of Iba, Zambales, which affirmed in toto the Decision[4] dated 18 August 2003 of the 3rd Municipal Circuit Trial Court (MCTC) of Botolan-Cabangan, Cabangan, Zambales, in Civil Cases No. 833, No. 834, No. 835 and No. 836.

Central to this controversy is the possession of the above three adjoining parcels of land (subject properties) which are all situated in Barangay San Isidro, Cabangan, Zambales, with an area of 1,200 square meters each. The subject properties are being claimed by petitioner to be part of the property described under Tax Declaration No. 16-0032 in the name of his deceased father, Celestino Arbizo. Respondents, on the other hand, assert ownership over the same based on separate titles in their names, particularly: (a) Transfer Certificate of Title (TCT) No. T-50723 in the names of the spouses John and Luz Marie Wassmer;[5] (b) TCT No. 50722 in the name of Pacita Marcelo;[6] and (c) TCT No. T-50725 in the names of the spouses Antonio and Rosario Santillan.[7]

The records show that on 27 June 2001, the respondents filed with the MCTC three separate Complaints for Ejectment against the petitioner. Finding similarity in the issues involved, the MCTC jointly heard the three Complaints under the Rules on Summary Procedure.

In their Complaints, the respondents averred that right after they purchased the subject properties in 1998, they immediately enclosed the same with a wooden perimeter fence with barbed wire. Sometime in September 2000, the petitioner, without their knowledge, much less consent, unlawfully occupied the subject properties by removing and destroying the fence they had installed, and later replacing it with his own concrete fence. Despite repeated demands to vacate the subject properties, petitioner vehemently refused to do so. Thus, respondents prayed that the petitioner be ordered to vacate the subject properties, and to pay each of them: (1) the amount of P1,000.00 per month from September 2000 until the subject properties are vacated, as actual damages in the form of reasonable compensation for the use and occupation thereof; (2) the amount of P25,000.00 as attorney's fees plus P800.00 per court appearance; and (3) the amount of P10,000.00 as moral and exemplary damages.

In response, the petitioner countered that the subject lots formed part of the 29,345-square meter property previously owned by his father, Celestino Arbizo, who occupied the same during his lifetime as early as 1921. At the time of his father's death on 11 May 1956, he left the entire property as part of his estate to his forced and compulsory heirs; namely, Maria Facelo Arbizo (the petitioner's mother), Carolina Arbizo-Noceda, Aurora Arbizo-Ecdao, Anacleto Arbizo and Ma. Agrifina Arbizo-Mendigorin (the children of Celestino Arbizo by the

first and second marriages).[8] Petitioner's wife, Dominga Arbizo, bought the undivided shares of Anacleto Arbizo and Ma. Agrifina Arbizo-Mendigorin in the said property on 15 August 1976 and 16 November 1976, respectively. Since then, petitioner claimed to have been in peaceful, continuous and uninterrupted possession of the 11,230-square meter parcel of land which included the subject properties. By way of counterclaim, the petitioner prayed that the respondents be ordered to pay him the amount of P100,000.00 per court appearance as attorney's fees.

On 18 August 2003, on the basis of the position papers and documentary evidence adduced by the parties, the MCTC rendered a Decision dismissing the three Complaints for Ejectment filed by the respondents after finding that the petitioner had preferred possession over the subject properties. The fallo of the said Decision is quoted hereunder:

WHEREFORE, in view of the preponderance of evidence submitted by the [herein petitioner], judgment is hereby rendered dismissing the complaints against him for lack of merit.[9]

In sustaining the petitioner's position, the MCTC explained at length its disposition as follows:

From the evidence on record, it appears that the [herein respondents] obtained their respective title over the lots in the year 1998. If their and their witnesses' word were to be given credit, the [respondents] entered the land when they thereupon enclosed/fenced the same with wooden posts and barbed wire but were removed, destroyed and later replaced by the [herein petitioner] in September, 2000 with concrete fences (sic).

The relocation survey report and sketch plan of the geodetic engineer meantime reveal that the disputed adjoining lots (having an approximate area of 1,200 square meters each) are part of the 11,230 square-meter land (sic) held and occupied by the [petitioner]. Likewise, extant in the technical report and plan are the other recorded improvements consisting of huts belonging to the [petitioner] and found standing inside his occupied property. The Court itself confirmed the existence of these improvements during the ocular inspection of the property.

Equally evident from the documents presented is the fact that the large stretch of land being occupied by the [petitioner] came from his father the late Celestino Arbizo in whose name the tax declaration for the land for the year 1985 was issued. That two (2) of the Arbizo's sibling, Anacleto Arbizo and Agrifina Arbizo-Mendigorin, conveyed and sold their respective 1/5 shares from (sic) the property to Dominga P. Arbizo [petitioner's] wife is doubtlessly established by the two (2) deeds of sale executed by the former in the year 1976. This logically explains why [petitioner] Antonio Arbizo and his wife are as seen in the engineer's documents occupying an approximate area of 11,230 square meters out of the 2.9 hectare-property (sic) tax declared in the name of Celestino Arbizo who at the time of his death appeared to have left five (5) heirs. x x x.

Moreover, the corroborated declarations of [petitioner's] witnesses (one of whom [Jesus Paredes] is 81 years old and a long-time friend of [petitioner's] father convincingly prove that [petitioner] has already been occupying the Arbizo property including the controverted [three] parcels of land much long before the [respondents] bought, registered, and fenced them in the year 1998. Proof that the [petitioner] has preferred possession is the testimony of Conrado Santos, [respondents'] own witness, to the effect that said [petitioner] was at the area and that the laborers even took their refreshment at the nearby resthouse of the Arbizo's during their fencing of [respondents'] properties. On this point, [petitioner's] possession becomes even more superior if the span of years that his father and predecessor-in-interest had held the property were to be tacked to his own possession.

Over-all, the unrefuted documentary evidence brought to light by the [petitioner] indubitably proves that his physical occupation and exercise of acts of possession antedate that of the [respondents]. Clearly, since it is [petitioner's] possession that enjoys priority of time, he is, under the law, entitled to continue possessing the lands in question. (De Luna vs. Court of Appeals, 212 SCRA 276).[10]

Dissatisfied, the respondents then elevated the matter to the RTC. On 20 February 2004, the RTC sustained the dismissal by the MCTC of the respondents' Complaints for Ejectment, holding that the petitioner had a better right of possession over the subject properties for having been in possession of the same long before they were acquired by the respondents in 1998. The respondents then sought the reconsideration of the Decision, but the RTC denied the same for lack of merit in the Order dated 17 March 2004.[11]

Herein respondents then raised the case to the Court of Appeals. In its Decision dated 31 January 2006, it held:

WHEREFORE, the foregoing premises considered, the instant Petition is hereby GRANTED. The Decision dated February 20, 2004 of Branch 71 of the Regional Trial Court of Iba, Zambales, affirming in toto the Decision dated August 18, 2003 of the 3rd Municipal Circuit Trial Court of Botolan-Cabangan, Cabangan, Zambales in Civil Case Nos. 834, 835 and 836 is hereby REVERSED and SET ASIDE. A new one is being entered ORDERING the [herein petitioner] (1) to vacate the subject lots and peacefully surrender the possession thereof to the [herein respondents]; and (2) to pay each of the [respondents] the amount of P1,000.00 per month from September 2000 until the possession of the subject lots shall have been completely restored to the [respondents] as reasonable compensation for the use and occupation thereof, and the amount of P10,000.00 as attorney's fees.[12]

To support its contrary conclusion reversing the MCTC and the RTC, the Court of Appeals declared:

The records of the case reveal that prior to 1998, the possession of the subject lots was undoubtedly in the hands of the [herein petitioner]. To substantiate his allegation that he had prior possession of the subject lots, the [petitioner] adduced in evidence Tax Declaration No. 16-0032 which was issued in 1985, and the two (2) deeds of sale in 1976 executed in favor of his wife, Dominga Arbizo, by Anacleto Arbizo and Agrifina Arbizo-Mendigorin. In addition, the [petitioner] presented the affidavits of his witnesses, Jesus Paredes and Rosario Corpuz, both stating therein that he remained in possession of the subject lots even up to the present time. However, We find that these pieces of evidence do not successfully debunk the claim of the [herein respondents] that they were able to wrest physical possession of the subject lots in 1998 when they installed a fence enclosing the same. Furthermore, the fact that the MCTC found [petitioner's] several huts standing on the subject lots during the ocular inspection does not necessarily establish that the [petitioner] had been in peaceful, continuous and uninterrupted possession of the subject lots. As the records disclose, the ocular inspection was conducted in 2003 which was approximately three (3) years after the unlawful intrusion by the [petitioner]. Hence, We cannot readily conclude that the huts were already there when the [respondents] took actual possession of the subject lots in 1998 as these huts could be easily constructed.

Upon the other hand, the [respondents] presented their respective certificates of title and tax declarations to prove that they had been the registered owners of the subject lots since 1998. While it is admitted that tax declarations and certificates of title evidencing their ownership over the subject lots did not squarely address the issue of prior actual possession raised in a forcible entry case (*German Management Services, Inc. vs. Court of Appeals*, 177 SCRA 495, 499 [1989]), they nevertheless bolstered the stance of the [respondents] that they took physical possession of the subject lots by virtue of such ownership. Significantly, to further corroborate their claim that they were the actual possessors of the subject property at the time of the illegal dispossession, they submitted the affidavit of Conrado Santos establishing that he and his son constructed a wooden fence enclosing the subject lots bought by the [respondents], and that of Gloria Dalisaymo confirming that this wooden fence was later destroyed and replaced with a concrete fence by the [petitioner] in September 2000. Clearly from the foregoing, they sufficiently established by preponderance of evidence that they were able to take material or physical possession of the subject lots from 1998 to September 2000. It must be stressed that the fencing of the subject lots by the [respondents] in 1998 without any objection or protest from the [petitioner] for nearly two (2) years is deemed sufficient to confer upon them actual possession thereof.[13]

Not to be stymied, petitioner is now before this Court raising the issue of whether the Decision of the Court of Appeals is supported by evidence on record and in accordance with laws and jurisprudence established by the

Supreme Court.[14]

The pertinent point of inquiry is whether or not private respondents have a valid ground to evict petitioner from the subject properties.

A complaint for forcible entry may be instituted in accordance with Section 1, Rule 70 of the 1997 Rules of Court:

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 (1) one 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.

The summary remedies of forcible entry and unlawful detainer under Section 1, Rule 70 of the 1997 Rules of Court are distinguished from each other as follows:

In forcible entry, one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy, or stealth. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. In forcible entry, the possession is illegal from the beginning and the basic inquiry centers on who has the prior possession de facto. In unlawful detainer, the possession was originally lawful but became unlawful by the expiration or termination of the right to possess, hence the issue of rightful possession is decisive for, in such action, the defendant is in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.

What determines the cause of action is the nature of defendant's entry into the land. If the entry is illegal, then the action which may be filed against the intruder within one year therefrom is forcible entry. If, on the other hand, the entry is legal but the possession thereafter became illegal, the case is one of unlawful detainer which must be filed within one year from the date of the last demand.[15]

It is a basic rule in civil cases that the party having the burden of proof must establish his case by a preponderance of evidence, which simply means "evidence which is of greater weight or more convincing than that which is offered in opposition to it." [16]

In filing forcible entry cases, 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, and 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, i.e., by force, intimidation, threat, strategy or stealth. It is also settled that in the resolution of such a case, what is material is the determination of who is entitled to the physical possession of the property. Indeed, any of the parties who can prove prior possession de facto may recover such possession even from the owner himself since such cases proceed independently of any claim of ownership and the plaintiff needs merely to prove prior possession de facto and undue deprivation thereof. The question of possession is primordial while the issue of ownership is unessential.[17]

Verily, in ejectment cases, the word "possession" means nothing more than actual physical possession, not legal possession, in the sense contemplated in civil law. The only issue in such cases is who is entitled to the physical or material possession of the property involved, independent of any claim of ownership set forth by any of the

party-litigants.[18] It does not even matter if the party's title to property is questionable.[19]

The Court of Appeals, in its assailed Decision, found that (1) respondents had prior physical possession of the subject properties, and (2) they were deprived thereof by petitioner by means of force, intimidation, threat, strategy or stealth.

We agree in the conclusion of the Court of Appeals.

On the issue of who has prior possession, respondents' prior physical possession of the subject properties and deprivation thereof are clear from the allegation that they are the owners of the subject properties which petitioner forcibly entered, of which they were unlawfully turned out of possession and for which they pray to be restored in possession.

In ejectment cases, the plaintiff merely needs to prove prior de facto possession and undue deprivation thereof. Respondents in their complaint averred that after they purchased the lots in 1998 they immediately enclosed the same with a fence. This prior possession of respondents is buttressed by the "Salaysay" of their witness Conrado Santos who stated:

SALAYSAY

Ako, CONRADO SANTOS, sapat ang gulang, Pilipino at naninirahan sa Cabangan, Zambales, matapos na makapanumpa ng sang-ayon sa pinag-uutos ng batas ay kusang loob na dito ay nagsasalaysay:

- Kaming dalawa ng aking anak na si Edmund Santos ay inupahan nina Atty. at Mrs. Reynaldo Dantes upang magbakod sa lupang nabili ng kanilang mga kamag anak at kaibigan sa Brgy. San Isidro, Cabangan, Zambales.
- Binakuran namin ang lupang nasasakupan ng apat na titulo.
- Ang ginamit naming pambakod ay kawayan, boho, posteng kahoy at barbed wire.
- Nang kami'y kasalukuyang nagbabakod nakamasid si Antonio Arbizo. Sa katunayan sa Resthouse pa ni Tony Arbizo kami kumain ng aming meryenda sa tabi ng nasabing lupa.
- Nang kami ay kasalukuyang nagbabakod, wala namang nagbawal o tumanggi sa aming ginagawa at maayos at mapayapa naming nabakuran ang lupang nasasakupan ng apat na titulo.
- Sa katunayan nagtagal ang aming ibinakod hanggang sa ito'y sinira at pinalitan ng konkreto sa pag-uutos ni Antonio Arbizo.[20]

Irrefragably, the above affidavit fortifies respondents' claim that they possessed the subject properties in 1998 earlier than the petitioner who came to the premises later on in the year 2000. Notably, petitioner failed to rebut the contents of the above affidavit. Thus it should be given evidentiary value. The Rule on Summary Procedure precisely provides for the submission by the parties of affidavits and position papers and enjoins courts to hold hearings only when it is necessary to do so to clarify factual matters. This procedure is in keeping with the objective of the Rule: to promote the expeditious and inexpensive determination of cases.[21] Worthy of note is that an action for forcible entry is a quieting process that is summary in nature. It is designed to recover physical possession through speedy proceedings that are restrictive in nature, scope and time limits.[22]

As to whether respondents were deprived of possession by force, intimidation, strategy or stealth, the acts of the petitioner in unlawfully entering the subject properties, erecting a structure thereon and excluding therefrom the prior possessor would necessarily imply the use of force. In order to constitute force, the trespasser does not have to institute a state of war. As expressly stated in *David v. Cordova*[23]:

The words "by force, intimidation, threat, strategy or stealth" include every situation or condition under which

one person can wrongfully enter upon real property and exclude another, who has had prior possession therefrom. If a trespasser enters upon land in open daylight, under the very eyes of the person already clothed with lawful possession, but without the consent of the latter, and there plants himself and excludes such prior possessor from the property, the action of forcible entry and detainer can unquestionably be maintained, even though no force is used by the trespasser other than such as is necessarily implied from the mere acts of planting himself on the ground and excluding the other party.

All told, after due consideration of the evidence presented by the parties in this case and the applicable jurisprudence, we hold that the Court of Appeals correctly found respondents to have a superior right of possession over the subject properties.

We emphasize that our disquisition in this case is provisional and only to the extent necessary to determine who between the parties has the better right of possession.[24] In an appropriate proceeding before the court having jurisdiction, petitioner may still have the sale of the subject property to respondents annulled, and the latter's title cancelled if petitioner's case is truly meritorious.

Additionally, it must also be remembered that the subject property is registered under the Torrens System in the names of the respondents whose title to the property is presumed legal and cannot be collaterally attacked, less so in an action for forcible entry.

In passing, it must be stressed that the jurisdiction of Supreme Court in cases brought before it from the Court of Appeals via Rule 45, as in this case, is limited to reviewing errors or questions of law. Where factual matters are involved, it is well-settled that a question of fact is to be determined by the evidence to support the particular contention. As found by the Court of Appeals, the evidence adduced on this score are in respondents' favor. Whether such conclusion of the Court of Appeals was supported by the evidence presented before it is also factual in nature. It is the burden of the party seeking review of a decision of the Court of Appeals or other lower tribunals to distinctly set forth in his petition for review, not only the existence of questions of law fairly and logically arising therefrom, but also questions substantial enough to merit consideration, or show that there are special and important reasons warranting the review that he seeks. If these are not shown *prima facie* in his petition, this Court will be justified in summarily spurning the petition as lacking in merit.

Admittedly, there are recognized exceptions to this rule when the evidence presented during the trial may be examined and the factual matters resolved by this Court. Among these exceptional circumstances is when the findings of fact of the appellate court differ from those of the trial court.[25]

Nonetheless, the exception is not applied unqualifiedly. In *Bank of Commerce v. Serrano*,[26] we held that this Court does not, of itself, automatically delve into the record of a case to determine the facts anew where there is disagreement between the findings of fact by the trial court and by the Court of Appeals. When the disagreement is merely on the probative value of the evidence, i.e., which is more credible of two versions, we limit our review to only ascertaining if the findings of the Court of Appeals are supported by the records. So long as the findings of the appellate court are consistent with and not palpably contrary to the evidence on record, we shall decline to make a review on the probative value of such evidence. The findings of fact of the Court of Appeals, and not those of the trial court, will be considered final and conclusive, even in this Court. In this case, we find no cogent reason to disturb the foregoing factual findings of the Court of Appeals holding respondents entitled to the possession of the subject properties.

WHEREFORE, premises considered, the instant Petition is DENIED for lack of merit. The Decision of the Court of Appeals dated 31 January 2006 in CA-G.R. SP No. 86456 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Appeal by certiorari to the Supreme Court.

[2] Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Eliezer R. De Los Santos and Arturo G. Tayag, concurring. Rollo, pp. 19-32.

[3] CA rollo, pp. 25-29.

[4] Id. at 14-24.

[5] SPOUSES JOHN WASSMER and LUZ MARIE-WASSMER

“A parcel of land (Lot 1121-A-1 of the subdivision plan, Psd-03-095551, being a portion of Lot 1121-A, Psd-030032806, L.R.C. Rec. No.), situated in San Isidro, Cabangan, Zambales. Bounded on the NE., along line 1-2 by Lot 1121-A-12 (Existing Road); on the SE., along line 2-3 by Lot 1121-A-5; on the SW., along line 3-4 by Lot 1121-A-2, all of the subdivision plan. x x x containing an area of 1,200 square meters, more or less. It is declared under Tax Declaration No. 017-0928R with an assessed value of P15,600,00 for the year 1999.” (CA rollo, 7.)

[6] PACITA MARCELO

“A parcel of land (Lot 1121-A-2 of the subdivision plan, Psd-03-095551, being a portion of Lot 1121-A, Psd-03-032806, L.R.C. Rec. No.), situated in the Barrio of San Isidro, Municipality of Cabangan, Province of Zambales. Bounded on the SE., along line 1-2 by Lot 1121-A-1; on the SW., along line 2-3 by lot 121-A-11 (Salvage Zone); on the NW., along line 3-4 by Lot 1121-A-3; on the NE., along line 4-1 by Lot 1121-A-12 (Existing Road), all of the subdivision plan. x x x containing an area of 1,200 square meters, more or less. It is declared under Tax Declaration No. 017-0929R with an assessed value of P15,600,00 for the year 1999.” (Id. at 8.)

[7]

SPS ANTONIO SANTILLAN AND ROSARIO SANTILLAN

“A parcel of land (Lot 1121-A-4 of the subdivision plan, Psd-03-095551, being a portion of Lot 1121-A, Psd-03-032806, L.R.C. Rec. No.), situated in San Isidro, Cabangan, Zambales. Bounded on the SE., along line 1-2 by Lot 1121-A-3; on the SW., along line 2-3 by lot 1121-A-11 (Salvage Zone), both of the subdivision plan; on the NW., along line 3-4 by Lot 1121-B; Psd-03-032806; on the NE., along line 4-1 by Lot 1121-A-12 (Existing Road), of the subdivision plan. x x x containing an area of 1,200 square meters, more or less. It is declared under Tax Declaration No. 017-0931R with an assessed value of P15,000,00 for the year 1999.” (Id.)

[8] Except for those enumerated, the records do not state the names of the other heirs of petitioner’s father, Celestino Arbizo.

[9] CA rollo, p. 24.

[10] Id. at 21-23.

[11] Id. at 33.

[12] Rollo, pp. 31-32.

[13] Id. at 27-29.

[14] Id. at 67.

[15] Arambulo v. Gungab, G.R. No. 156581, 30 September 2005, 471 SCRA 640, 648-649.

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

[17] Fige v. Court of Appeals, G.R. No. 107951, 30 June 1994, 233 SCRA 586, 590.

[18] Lao v. Lao, G.R. No. 149599, 16 May 2005, 458 SCRA 539, 546.

[19] Pajuyo v. Court of Appeals, G.R. No. 146364, 3 June 2004, 430 SCRA 492, 510.

[20] CA rollo, p. 65.

[21] Montañez v. Mendoza, 441 Phil. 47, 58-59 (2002).

[22] Buduhan v. Pakurao, supra note 16.

[23] G.R. No. 152992, 28 July 2005, 464 SCRA 384, 389-400; Bañes v. Lutheran Church in the Philippines, G.R. No. 142308, 15 November 2005, 475 SCRA 13, 34-35.

[24] Umpoc v. Mercado, G.R. No. 158166, 21 January 2005, 449 SCRA 220, 238.

[25] Ortega v. Valmonte, G.R. No. 157451, 16 December 2005, 478 SCRA 247, 256.

[26] G.R. No. 151895, 16 February 2005, 451 SCRA 484, 492.

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