GLORIA S. DY, PETITIONER, VS. MANDY COMMODITIES CO., INC., RESPONDENT.

G.R. No. 171842. July 22, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This Petition for Review on Certiorari filed by petitioner Gloria S. Dy seeks to reverse and set aside the 15 September 2005 Decision[1] of the Court of Appeals in CA-G.R. SP No. 86478 dismissing petitioner's appeal on the ground of forum shopping and its Resolution[2] dated 3 March 2006, denying the petitioner's motion for reconsideration.

This case has its origin in the contract entered into by the National Government with the Philippine National Bank (PNB) on 9 June 1978, wherein the former leased in favor of the latter the 21,727-square meter government-owned land located at Numancia Street, corner Urbiztondo, Binondo, Manila. The lease was good for 25 years which commenced on 1 August 1978 and was to expire on 31 July 2003, renewable for the same period upon agreement of both parties.

On 17 October 1994, PNB sublet a portion of the subject land consisting of 8,530.l6 square meters to respondent Mandy Commodities Co., Inc. (Mandy Commodities), for a period corresponding to PNB's contract with the National Government. Respondent constructed on the subleased portion a two-storey warehouse which was leased out to its tenants.

When the expiration of the subject lease contract was approaching, then Department of Environment and Natural Resources (DENR) Secretary Heherson Alvarez (Secretary Alvarez), on behalf of the government, issued a Memorandum Order dated 6 May 2002 initially approving the renewal of PNB's lease for another 25 years. In another Memorandum dated 6 August 2002, Secretary Alvarez, however, recalled the earlier 6 May 2002 Memorandum and revoked the renewal of the said lease contract for the purpose of clarifying the terms thereof and re-evaluating the role, qualifications and capability of the subject realty's sub-lessees. Later, in a Final Endorsement dated 29 November 2002, Secretary Alvarez had a change of heart and approved the renewal of the lease in favor of PNB and included respondent as one of the sub-lessees. This Final Endorsement, though, did not last long as the then new DENR Secretary, Elisea Gozun, issued a Memorandum dated 27 May 2003, withdrawing the lease contract with PNB and, consequently calling off the sub-lease contract with the respondent.

Since the subject lease was about to expire, the Land Management Bureau (LMB), on behalf of the National Government, in a letter dated 25 July 2003, informed PNB that a take over team was created to effect repossession of the subject property and requested the PNB to turn it over to the DENR upon the termination of the lease contract.

On 30 July 2003, in order to avert the eventual take over, PNB commenced a complaint for Injunction (PNB Injunction Case) with prayer for the issuance of a Temporary Restraining Order (TRO) or Writ of Preliminary Injunction and damages docketed as Civil Case No. 03-0368-CFM before the Regional Trial Court (RTC) of

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Pasay, Branch 118. The PNB alleged that the contract of lease between it and the National Government had already been renewed by virtue of the 29 November 2002 Final Endorsement of then Secretary Alvarez; hence, PNB's possession of the disputed property must be respected by the LMB. The PNB Injunction Case prompted Secretary Gozun to issue a Memorandum dated 31 July 2003 directing the LMB to observe the status quo until further advice from her office or from the Pasay RTC.

In an Order dated 28 August 2003, the Pasay RTC in the PNB Injunction Case denied PNB's application for TRO and/or Writ of Preliminary Injunction. The Pasay RTC also ordered the LMB to secure and take over the subject land. PNB questioned this order before the Court of Appeals in CA-G.R. SP No. 78980. Although the 28 August 2003 Order of the Pasay RTC had yet to be decided by the Court of Appeals, the LMB was able to implement said order and gain possession of the subject property on 29 August 2003.

On 18 September 2003, the Court of Appeals, in the PNB Injunction Case, nullified the said RTC Order and granted PNB's application for TRO.

Since the LMB had already taken possession of the questioned property, thereby rendering the 18 September 2003 TRO issued by the Court of Appeals moot, the LMB sought the legal advice of the Office of the Solicitor General (OSG). In its Opinion dated 23 September 2003, the OSG opined, among other things, that the TRO issued by the Court of Appeals against it was indeed moot, and that provisional permits for occupancy of the same property could be issued to qualified applicants, subject to the outcome of the main PNB Injunction Case involving the property before the RTC.

In a letter dated 6 October 2003, PNB demanded the pull-out of the guards posted by the LMB in the premises of the property. This demand letter was ignored by the LMB on the strength of the Solicitor General's opinion.

In the meantime, banking on the same OSG opinion, LMB granted petitioner Gloria Dy a provisional permit to occupy the subject realty. Equipped with the provisional permit from the LMB, petitioner was able to enter and install her own guards in the premises of the property on 10 October 2003. Petitioner also posted notices announcing that all the tenants therein should secure from her an authorization to enter the same.

On 15 October 2003, respondent Mandy Commodoties, being the sub-lessee, reacted to petitioner's intrusion on the subject property by filing a complaint for Damages with prayer for injunction (Respondent's Injunction Case) and TRO docketed as Civil Case No. 03108128 before the Manila RTC, Branch 25. On 21 October 2003, through the aid of its own security personnel, respondent regained possession of the same property.

Meanwhile, in the PNB Injunction Case, the Court of Appeals in its 30 October 2003 Decision, affirmed the 28 August 2003 Order of the Pasay RTC denying PNB's application for TRO on the ground that PNB failed to establish its right to the disputed property. Although the Court of Appeals affirmed the 28 August 2003 Order of the Pasay RTC, it nonetheless declared void the take over order, since the subject matter of the PNB Injunction Case was limited to whether the grant of the provisional remedy of TRO was warranted or not; hence, the RTC Pasay went beyond the matter submitted for adjudication when it ordered the take over of the property. The Court of Appeals went on by declaring that the take over by LMB of the property was void, and that any action affecting PNB and its lease was also condemned as lacking any legal basis, since such order to take over amounted to a disposition of the main case of injunction. PNB elevated this adverse decision to this Court, which case was docketed as G.R. No. 164786.

On 7 November 2003, petitioner was able to wrest from respondent possession of the property in question.

On 4 December 2003, respondent commenced the instant case with the Metropolitan Trial Court (MeTC) of Manila, Branch 20, for Forcible Entry (Respondent's Forcible Entry Case), with prayer for mandatory injunction,

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docketed as Civil Case No. 176953-CV.

On 6 April 2004, in Respondent's Forcible Entry Case, the MeTC Manila ruled against respondent, opining that, by virtue of the expiration of PNB's lease contract, respondent lost its right to possess said property. Concomitantly, as respondent's right thereto was intertwined with that of PNB, the same right also vanished.

Respondent appealed to the RTC Manila, Branch 30, for the dismissal of its forcible entry complaint.

On 12 July 2004, the RTC Manila, in Respondent's Forcible Entry Case, reversed the MeTC decision and ordered petitioner to vacate the subject property. It ruled that despite the take over by the LMB, respondent was allowed to continue its business and possession of the disputed landholding. Hence, it was respondent who had prior, actual and physical possession of the property and had a better right over it. This favorable decision prompted respondent to file a motion for immediate execution which was granted by the RTC Manila and, accordingly, a Writ of Execution dated 7 September 2004 was issued in favor of the respondent. Conversely, petitioner's motion for reconsideration of the RTC decision was denied. Undaunted, petitioner elevated the case to the Court of Appeals, where it was docketed as CA-G.R. SP No. 86478.

Meanwhile, the OSG filed an Omnibus Motion seeking intervention in Respondent's Forcible Entry Case, as well as the admission of its motion for reconsideration-in-intervention of the RTC decision and opposition-in-intervention to respondent's motion for immediate execution. The RTC Manila denied the Omnibus Motion filed by the OSG. This adverse ruling was questioned by the OSG before the Court of Appeals, where it was docketed as CA-G.R. SP No. 86307 (OSG Certiorari).

On 8 November 2004, petitioner moved for the consolidation of CA-G.R. SP No. 86307 and CA-G.R. SP No. 86478, a motion that was granted by the Court of Appeals, subject to the conformity of the ponente in the former case.

On 21 April 2005, the OSG Certiorari (CA-G.R. SP No. 86307) was dismissed by the Court of Appeals upon a motion filed by respondent. The Court of Appeals said that the OSG should address its motion to intervene in CA-G.R. SP No. 86478. No further action was taken by the OSG in CA-G.R. SP No. 86307.

In the meantime, on 15 May 2005, without waiting for the result of Respondent's Forcible Entry Case (CA-G.R. SP No. 86478) pending before the Court of Appeals, petitioner filed an Unlawful Detainer case (Petitioner's Unlawful Detainer Case) against respondent before the MeTC Manila, Branch 15, where it was docketed as Civil Case No. 00000004-CV. In her complaint, petitioner made use of the same facts as in CA-G.R. SP No. 86478.

On account of the foregoing fact, respondent moved for the dismissal of CA-G.R. SP No. 86478 on the ground of forum shopping. Calling the Court of Appeals' attention to the 10 November 2004 and 2 February 2005 Resolutions of this Court in G.R. No. 164786 (PNB's Injunction Case) denying PNB's application for TRO, petitioner opposed the motion to dismiss on the ground that, among other things, her Unlawful Detainer Case was now premised on the settled termination of PNB's contract of lease with the National Government as implied by said Resolutions.

In a Decision dated 15 September 2005, the Court of Appeals dismissed CA-G.R. SP No. 86478 on the ground of forum shopping and for lack of merit. The Court of Appeals stated that petitioner's filing of the Unlawful Detainer Case during the pendency of the Respondent's Forcible Entry Case (CA-G.R. SP No. 86478) in the Court of Appeals constituted forum shopping. The dispositive portion thereof reads:

> WHEREFORE, the petition is DISMISSED on account of forum shopping and for lack of merit[3].

On 6 October 2005, petitioner filed a Motion for Reconsideration. For its part, respondent filed an Urgent Motion

to Include in the Decision an Order Dismissing the Case Simultaneously Commenced by the Petitioner Together with the Instant Petition. The Court of Appeals was also apprised that petitioner's Unlawful Detainer Case had already been decided by the MeTC Manila in petitioner's favor and was now pending appeal before the Manila RTC, Branch 9.

In its 3 March 2006 Resolution, the Court of Appeals denied petitioner's motion for reconsideration. The Court of Appeals, on the other hand, granted respondent's urgent motion to dismiss Petitioner's Unlawful Detainer Case, which is now on appeal before the RTC Manila.

Hence, the instant petition.

Petitioner maintains that she did not commit forum shopping, since there is no identity of the cause of action or of the issue between Respondent's Forcible Entry Case and Petitioner's Unlawful Detainer Case.

The petition is not meritorious.

Forum shopping is a deplorable practice of litigants consisting of resorting to two different fora for the purpose of obtaining the same relief, to increase the chances of obtaining a favorable judgment.[4] What is pivotal to the determination of whether forum shopping exists or not is the vexation caused to the courts and the party-litigants by a person who asks appellate courts and/or administrative entities to rule on the same related causes and/or to grant the same or substantially the same relief, in the process creating the possibility of conflicting decisions by the different courts or fora upon the same issues.[5]

The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case. To stamp out this abominable practice, which seriously impairs the efficient administration of justice, this Court promulgated Administrative Circulars No. 28-91 and No. 04-94, which are now embodied as Section 5, Rule 7 of the Rules of Court, which reads:

> SEC. 5. Certification against forum shopping. -- The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading, but shall be a cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification of or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be a ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

The test for determining the existence of forum shopping is whether the elements of litis pendentia are present, or whether a final judgment in one case amounts to res judicata in another. Thus, there is forum shopping when the following elements are present: (a) identity of parties, or at least such parties as represent the same interests in

both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration. Said requisites are also constitutive of the requisites for auter action pendant or lis pendens.

In the instant case, the first element of forum shopping is present. The parties to CA-G.R. SP No. 86478 and Petitioner's Unlawful Detainer Case are the same. As to the second element, it must be stressed that in ejectment cases, either in unlawful detainer or in forcible entry cases, the only issue to be resolved is the question of who is entitled to the physical or material possession of the premises or possession de facto.[6] Thus, these are summary proceedings intended to provide an expeditious means of protecting actual possession or right of possession of property. Title is not involved; that is why it is a special civil action with a special procedure.[7] Here, the rights asserted in both cases are also identical, namely, the right of possession over the subject property. In fact, in the Unlawful Detainer case, petitioner's cause of action was based on her alleged superior right over the property in question as a lessee thereof, pursuant to the provisional permit from the LMB, as against respondent's allegedly expired sub-lease contract with the National Government.[8] This is the very same assertion of petitioner and the contentious fact involved in CA-G.R. SP No. 86478 (Respondent's Forcible Entry Case). As the issues in both cases refer singularly to the right of material possession over the disputed property, then an adjudication in Repondent's Forcible Entry Case constitutes an adjudication of Petitioner's Unlawful Detainer Case, such that the latter court would be bound thereby and could not render a contrary ruling on the very same issue.

Petitioner insists that, assuming arguendo he is guilty of forum shopping, the Court of Appeals should have only dismissed CA-G.R. SP No. 86478 (Respondent's Forcible Entry Case) and allowed Petitioner's Unlawful Detainer Case be decided first by the MeTC.

Petitioner's argument is inaccurate.

Once there is a finding of forum shopping, the penalty is summary dismissal not only of the petition pending before this Court, but also of the other case that is pending in a lower court. This is so because twin dismissal is a punitive measure to those who trifle with the orderly administration of justice.

In Buan v. Lopez, Jr.,[9] petitioners therein instituted before the Court a special civil action for prohibition and, almost a month earlier, another special civil action for "prohibition with preliminary injunction" before the RTC Manila. Finding petitioners guilty of forum shopping, the Court dismissed not only the action before it, but also the special civil action still pending before the RTC, viz:

> Indeed, the petitioners in both actions x x x have incurred not only the sanction of dismissal of their case before this Court in accordance with Rule 16 of the Rules of Court, but also punitive measure of dismissal of both their actions, that in this Court and that in Regional Trial Court as well.[10]

Also, in First Philippine International Bank v. Court of Appeals,[11] an action for specific performance became the subject of a petition for review before the Court. While said case was pending, a second one -- denominated as a derivative suit and involving the same parties, causes of action and reliefs -- was filed before the RTC Makati. The Court therein dismissed the petition before it and the derivative suit that was pending before the RTC Makati, thus:

> [F]inding the existence of forum-shopping x x x, the only sanction now is the dismissal of both cases x x x.[12]

Taking our cue from these cases, the Court of Appeals' action of dismissing petitioner's appeal relative to Respondent's Forcible Entry Case and Petitioner's Unlawful Detainer Case is, therefore, warranted.

Moreover, even as we pass upon the merit of the instant case, we find that the Court of Appeals did not err in

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dismissing the same.

There is forcible entry or desahucio when one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy or stealth.[13] The basic inquiry centers on who has the prior possession de facto. 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 cases, what is important is determining who is entitled to the physical possession of the property. Thus, the plaintiff must prove that he was in prior physical possession of the premises until he was deprived thereof by the defendant. Indeed, any of the parties who can prove prior possession de facto may recover the 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.

In the case under consideration, the Court of Appeals found that respondent as sub-lessee of the PNB was acting within its prerogatives as possessor when it filed the forcible entry suit against petitioner. From 1994 until the controversy arose, respondent was in peaceful possession of the property in question. The Court of Appeals even pointed out that even when the LMB gained possession of the property on 29 August 2003, respondent was allowed to continue business within the premises. In contrast, petitioner's possession was predicated on the provisional permit issued to her by LMB and the 28 August 2003 Order of the Pasay City RTC in the PNB Injunction Case. It must be noted that the said order directing the take over of the disputed property was declared void by the Court of Appeals, even when it denied the propriety of the issuance of a TRO in the PNB Injunction Case. The said ruling of the Court of Appeals was in turn affirmed in the 10 November 2004 and 2 February 2005 Resolutions in G.R. No. 164786. Considering that the possession of petitioner was declared void, and bearing in mind that the validity of petitioner's provisional permit to occupy the property is yet to be settled in the PNB Injunction Case, still pending in the Pasay City RTC, petitioner's occupation thereof is without legal authority. Simply put, petitioner has no right to occupy the property. In contrast, respondent's right to occupy it remains intact, since the records of the case are barren of any indication that the National Government or the PNB made a formal demand on the respondent to vacate said property. The way things stand, respondent, whose prior possession over the property remains intact, has the better right over it. Thus, when it filed the instant forcible entry case against petitioner who forcibly took possession thereof on 7 November 2003, respondent was just exercising its right.

In sum, this Court defers to the findings of the Court of Appeals, there being no cogent reason to veer away from such findings.

WHEREFORE, premises considered, the instant petition is DENIED. The Decision of the Court of Appeals dated 15 September 2005 and its Resolution dated 3 March 2006 dismissing petitioner's appeal of the adverse resolution against her in Respondent's Forcible Entry Case (CA-G.R. No. 86478) and Petitioner's Unlawful Detainer Case ((Civil Case No. 00000004-CV) in the MeTC Manila, Branch 15, are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

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

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[1] Penned by Associate Justice Rebecca de Guia-Salvador with Associate Justices Conrado M. Vasquez, Jr. and

Aurora Santiago-Lagman, concurring. Rollo, pp.13-34.

[2] Rollo, pp. 35-39.

[3] Id. at 33.

[4][4] Collantes v. Court of Appeals, G.R. No. 169604, 6 March 2007, 517 SCRA 561, 568.

[5] Id.

[6] University Physicians Services, Inc. v. Court of Appeals, G.R. No. 100424, 13 June 1994, 233 SCRA 86, 89.

[7] Id.

[8] Rollo, p. 458.

[9] 229 Phil. 65 (1986).

[10] Id. at 70.

[11] 322 Phil. 280 (1996).

[12] Id. at 313-314.

[13] Bañes v. Lutheran Church in the Philippines, G.R. No. 142308, 15 November 2005, 475 SCRA 13, 34.

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