

GEORGIA T. ESTEL, PETITIONER, VS. RECAREDO P. DIEGO, SR. AND RECAREDO R. DIEGO, JR., RESPONDENTS.*G.R. No. 174082. January 16, 2012*

Ponente: PERALTA, J.

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Before the Court is a petition for review on certiorari seeking to annul and set aside the Decision[1] promulgated on September 30, 2005 and Resolution[2] dated August 10, 2006 by the Court of Appeals (CA) in CA-G.R. SP No. 77197. The assailed Decision affirmed the Decision dated October 7, 2002 of the Regional Trial Court (RTC) of Gingoog City, Branch 27, Misamis Oriental, while the questioned Resolution denied petitioner's Motion for Reconsideration.

The factual and procedural antecedents of the case are as follows:

The present petition originated from a Complaint for Forcible Entry, Damages and Injunction with Application for Temporary Restraining Order filed by herein respondents Recaredo P. Diego, Sr., and Recaredo R. Diego, Jr. with the Municipal Trial Court in Cities (MTCC) of Gingoog City, Misamis Oriental. Respondents alleged that on April 16, 1991, they entered into a contract of sale of a 306 –square-meter parcel of land, denominated as Lot 19, with petitioner; after receiving the amount of P17,000.00 as downpayment, petitioner voluntarily delivered the physical and material possession of the subject property to respondents; respondents had been in actual, adverse and uninterrupted possession of the subject lot since then and that petitioner never disturbed, molested, annoyed nor vexed respondents with respect to their possession of the said property; around 8:30 in the morning of July 20, 1995, petitioner, together with her two grown-up sons and five other persons, uprooted the fence surrounding the disputed lot, after which they entered its premises and then cut and destroyed the trees and plants found therein; respondent Recaredo R. Diego, Jr. witnessed the incident but found himself helpless at that time. Respondents prayed for the restoration of their possession, for the issuance of a permanent injunction against petitioner as well as payment of damages, attorney's fees and costs of suit.[3]

On July 26, 1995, the MTCC issued a Temporary Restraining Order[4] against petitioner and any person acting in her behalf.

In her Answer with Special/Affirmative Defenses and Counterclaims, petitioner denied the material allegations in the Complaint contending that respondents were never in physical, actual, public, adverse and uninterrupted possession of the subject lot; full possession and absolute ownership of the disputed parcel of land, with all improvements thereon, had always been that of petitioner and her daughter; the agreement she entered into with the wife of respondent Recaredo P. Diego, Sr. for the sale of the subject lot had been abrogated; she even offered to return the amount she received from respondents, but the latter refused to accept the same and instead offered an additional amount of P12,000.00 as part of the purchase price but she also refused to accept their offer; the subject of the deed of sale between petitioner and respondents and what has been delivered to respondents was actually Lot 16 which is adjacent to the disputed Lot 19; that they did not destroy the improvements found on the

subject lot and, in fact, any improvements therein were planted by petitioner's parents.[5]

On February 16, 2002, the MTCC rendered a Decision, the dispositive portion of which reads as follows:

WHEREFORE, viewed in the light of the foregoing, judgment is hereby rendered in favor of the plaintiffs [herein respondents], dismissing defendant's [herein petitioner's] counterclaim and ordering the defendant, her agents and representatives:

1. To vacate the premises of the land in question and return the same to the plaintiffs;
2. To pay plaintiffs, the following, to wit:
 - a) P100.00 a month as rentals for the use of the litigated property reckoned from the filing of the complaint until the defendant vacates the property;
 - b) P5,000.00 representing the value of the fence and plants damaged by the defendants as actual damages;
 - c) P20,000.00 as and for attorney's fees;
 - d) P2,000.00 for litigation expenses;
3. Ordering the defendant to pay the cost of suit;

Execution shall immediately issue upon motion unless an appeal has been perfected and the defendant to stay execution files a supersedeas bond which is hereby fixed at P10,000.00 approved by this Court and executed in favor of the plaintiffs, to pay the rents, damages and costs accruing down to the time of the judgment appealed from and unless, during the pendency of the appeal, defendant deposits with the appellate court the amount of P100.00 as monthly rental due from time to time on or before the 10[th] day of each succeeding month or period.

SO ORDERED.[6]

Aggrieved, petitioner appealed to the RTC of Gingoog City.[7]

On October 7, 2002, the RTC rendered its Decision[8] affirming the assailed Decision of the MTCC.

Petitioner then filed a petition for review with the CA.

On September 30, 2005, the CA promulgated its Decision which affirmed the Decision of the RTC.

Petitioner filed a Motion for Reconsideration, but the CA denied it in its Resolution dated August 10, 2006.

Hence, the instant petition based on the following arguments:

[THE] COURT OF APPEALS, 23[rd] DIVISION, ERRED IN FAILING TO CONSIDER THAT THE RTC BRANCH 27 OF GINGOOG CITY ERRONEOUSLY CONCLUDED THAT THE MTCC OF GINGOOG CITY HAS JURISDICTION OVER THE SUBJECT MATTER OF THE ACTION.

[THE] COURT OF APPEALS ERRED IN NOT RECOGNIZING THAT THE RTC BRANCH 27 OF GINGOOG CITY FAILED TO MAKE A FINDING OF FACT THAT THE COMPLAINT STATES NO CAUSE OF ACTION.

THE COURT OF APPEALS ERRED LIKEWISE IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT BRANCH 27 OF GINGOOG CITY OVERLOOKING THE FACT THAT ITS FINDING OF FACTS AND CONCLUSIONS ARE AGAINST OR NOT SUPPORTED BY COMPETENT MATERIAL EVIDENCE.[9]

Petitioner contends that since respondents failed to allege the location of the disputed parcel of land in their complaint, the MTCC did not acquire jurisdiction over the subject matter of the said complaint. Petitioner also

avers that the MTCC did not acquire jurisdiction over the case for failure of respondents to specifically allege facts constitutive of forcible entry. On the bases of these two grounds, petitioner argues that the MTCC should have dismissed the complaint *motu proprio*.

Petitioner also avers that the complaint states no cause of action because the verification and certificate of non-forum shopping accompanying the complaint are defective and, as such, the complaint should be treated as an unsigned pleading. As to the verification, petitioner contends that it should be based on respondent's personal knowledge or on authentic record and not simply upon "knowledge, information and belief." With respect to the certificate of non-forum shopping, petitioner claims that its defect consists in respondents' failure to make an undertaking therein that if they should learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals or any other tribunal or agency, they shall report that fact within five (5) days therefrom to the court or agency wherein the original pleading and sworn certification have been filed.

The Court does not agree.

A review of the records shows that petitioner did not raise the issue of jurisdiction or venue in her Answer filed with the MTCC. The CA correctly held that even if the geographical location of the subject property was not alleged in the Complaint, petitioner failed to seasonably object to the same in her Affirmative Defense, and even actively participated in the proceedings before the MTCC. In fact, petitioner did not even raise this issue in her appeal filed with the RTC. Thus, she is already estopped from raising the said issue in the CA or before this Court. Estoppel sets in when a party participates in all stages of a case before challenging the jurisdiction of the lower court.[10] One cannot belatedly reject or repudiate the lower court's decision after voluntarily submitting to its jurisdiction, just to secure affirmative relief against one's opponent or after failing to obtain such relief.[11] The Court has, time and again, frowned upon the undesirable practice of a party submitting a case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction when adverse.[12]

In any case, since the Complaint is clearly and admittedly one for forcible entry, the jurisdiction over the subject matter of the case is, thus, upon the MTCC of Gingoog City. Section 33 of Batas Pambansa Bilang 129, as amended by Section 3 of Republic Act (R.A.) No. 7691, as well as Section 1, Rule 70 of the Rules of Court, clearly provides that forcible entry and unlawful detainer cases fall within the exclusive original jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts. Hence, as the MTCC has jurisdiction over the action, the question whether or not the suit was brought in the place where the land in dispute is located was no more than a matter of venue and the court, in the exercise of its jurisdiction over the case, could determine whether venue was properly or improperly laid.[13] There having been no objection on the part of petitioner and it having been shown by evidence presented by both parties that the subject lot was indeed located in Gingoog City, and that it was only through mere inadvertence or oversight that such information was omitted in the Complaint, petitioner's objection became a pure technicality.

As to respondents' supposed failure to allege facts constitutive of forcible entry, it is settled that in actions for forcible entry, two allegations are mandatory for the municipal court to acquire jurisdiction.[14] First, the plaintiff must allege his prior physical possession of the property.[15] 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 Revised Rules of Court, namely, force, intimidation, threats, strategy, and stealth.[16]

In the present case, it is clear that respondents sufficiently alleged in their Complaint the material facts constituting forcible entry, as they explicitly claimed that they had prior physical possession of the subject property since its purchase from petitioner, who voluntarily delivered the same to them. They also particularly described in their complaint how petitioner, together with her two sons and five other persons, encroached upon

the subject property and dispossessed them of the same. Respondents' complaint contains the allegations that petitioner, abetting and conspiring with other persons, without respondents' knowledge and consent and through the use of force and intimidation, entered a portion of their land and, thereafter, uprooted and destroyed the fence surrounding the subject lot, as well as cut the trees and nipa palms planted thereon. Unlawfully entering the subject property and excluding therefrom the prior possessor would necessarily imply the use of force and this is all that is necessary.[17] In order to constitute force, the trespasser does not have to institute a state of war.[18] No other proof is necessary.[19] In the instant case, it is, thus, irrefutable that respondents sufficiently alleged that the possession of the subject property was wrested from them through violence and force.

Anent respondents' alleged defective verification, the Court again notes that this issue was not raised before the MTCC. Even granting that this matter was properly raised before the court a quo, the Court finds that there is no procedural defect that would have warranted the outright dismissal of respondents' complaint as there is compliance with the requirement regarding verification.

Section 4, Rule 7 of the Rules of Court, as amended by A.M. No. 00-2-10-SC provides:

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.

A reading of respondents' verification reveals that they complied with the abovequoted procedural rule. Respondents confirmed that they had read the allegations in the Complaint which were true and correct based on their personal knowledge. The addition of the words "to the best" before the phrase "of our own personal knowledge" did not violate the requirement under Section 4, Rule 7, it being sufficient that the respondents declared that the allegations in the complaint are true and correct based on their personal knowledge.[20]

Verification is deemed substantially complied with when, as in the instant case, 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.[21]

As to respondents' certification on non-forum shopping, a reading of respondents' Verification/Certification reveals that they, in fact, certified therein that they have not commenced any similar action before any other court or tribunal and to the best of their knowledge no such other action is pending therein. The only missing statement is respondents' undertaking that if they should thereafter learn that the same or similar action has been filed or is pending, they shall report such fact to the court. This, notwithstanding, the Court finds that there has been substantial compliance on the part of respondents.

It is settled that with respect to the contents of the certification against forum shopping, the rule of substantial compliance may be availed of.[22] This is because the requirement of strict compliance with the provisions regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded.[23] It does not thereby interdict substantial compliance with its provisions under justifiable circumstances, as the Court finds in the instant case.[24]

WHEREFORE, the instant petition is DENIED. The assailed Decision and Resolution of the Court of Appeals are AFFIRMED.

SO ORDERED.

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

[1] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Edgardo A. Camello and Rodrigo F. Lim, Jr., concurring; Annex “A” to Petition, rollo, pp. 16-26.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Romulo V. Borja and Edgardo A. Camello concurring; Annex “A-2” to Petition, rollo, pp. 33-34.

[3] Records, pp. 1-5.

[4] Id. at 27.

[5] Id. at 57-63.

[6] Id. at 299-300.

[7] See Notice of Appeal, id. at 307.

[8] Records, pp. 373-384.

[9] Rollo, pp. 8, 10 and 11.

[10] Bernardo v. Heirs of Eusebio Villegas, G.R. No. 183357, March 15, 2010, 615 SCRA 466, 475.

[11] Id.

[12] Id.

[13] De Leon v. Aragon, 113 Phil. 323, 325 (1961).

[14] Lee v. Dela Paz, G.R. No. 183606, October 27, 2009, 604 SCRA 522, 535.

[15] Id.

[16] Id.

[17] Spouses Manuel and Florentina del Rosario v. Gerry Roxas Foundation, Inc., G.R. No. 170575, June 8, 2011.

[18] Antazo v. Doblada, G.R. No. 178908, February 4, 2010, 611 SCRA 586, 594.

[19] Id.

[20] National Housing Authority v. Basa, Jr., G.R. No. 149121, April 20, 2010, 618 SCRA 461, 477.

[21] Nellie Vda. de Formoso, et al., v. Philippine National Bank, et al., G.R. No. 154704, June 1, 2011.

[22] Ligaya B. Santos v. Litton Mills Inc. and/or Atty. Rodolfo Maria’o, G.R. No. 170646, June 22, 2011; Mediserv, Inc. v. Court of Appeals (Special Former 13th Division), G.R. No. 161368, April 5, 2010, 617 SCRA 284, 295, citing Ateneo de Naga University v. Manalo, G.R. No. 160455, May 9, 2005, 458 SCRA 325, 336-337.

[23] Heirs of Juan Valdez v. Court of Appeals, G.R. No. 163208, August 13, 2008, 562 SCRA 89, 97; Donato v. Court of Appeals, G.R. No. 129638, December 8, 2003, 417 SCRA 216, 224-225.

[24] Benedicto v. Lacson, G.R. No. 141508, May 5, 2010, 620 SCRA 82, 99; Valmonte v. Alcala, G.R. No. 168667, July 23, 2008, 559 SCRA 536, 549; MC Engineering, Inc. v. National Labor Relations Commission, G.R.

No. 142314, June 28, 2001, 360 SCRA 183, 190.

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