CRESENCIANA TUBO RODRIGUEZ (NOW DECEASED), SUBSTITUTED BY SUSANA A. LLAGAS, PETITIONER, VS. EVANGELINE RODRIGUEZ, BELEN RODRIGUEZ AND BUENAVENTURA RODRIGUEZ,

G.R. No. 175720. September 11, 2007

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari assails the Decision[1] of the Court of Appeals in CA-G.R. SP No. 91442 dated June 27, 2006, which set aside the Decision of the Regional Trial Court (RTC) of Makati City, Branch 134, in Civil Case No. 03-517, and reinstated the Decision of the Metropolitan Trial Court (MTC) of Makati City, Branch 63, in Civil Case No. 75717, dismissing the complaint for ejectment; as well as the Resolution denying the motion for reconsideration.

Juanito Rodriguez owned a five-door apartment located at San Jose Street, Guadalupe Nuevo, Makati City, and covered by TCT No. 144865.[2] On October 27, 1983, Juanito executed a "Huling Habilin at Testamento" giving petitioner Cresenciana Tubo Rodriguez, his live-in partner, apartments D and E, and his children Benjamin Rodriguez (the deceased husband of respondent Evangeline Rodriguez), apartment A, respondent Buenaventura Rodriguez, apartment B, and respondent Belen Rodriguez, apartment C.[3]

However, on June 14, 1984, Juanito executed a Deed of Absolute Sale over the property in favor of petitioner.[4] Thus, TCT No. 144865 was cancelled and a new TCT No. 150431 was issued in the name of the petitioner.[5]

The case arose when petitioner filed on September 20, 2001 a complaint for unlawful detainer against the respondents, alleging that she is the lawful and registered owner of the property; and that in 1984, she allowed respondents Evangeline, Buenaventura and Belen, out of kindness and tolerance, to personally occupy units A, B and D, respectively. However, without her knowledge and consent, respondents separately leased the units to Montano Magpantay, Mel Navarro and Socorro Escota, who despite repeated demands, failed and refused to vacate the premises and to pay the rentals thereof.[6]

In their Answer, respondents claimed ownership over the subject property by succession. They alleged that while petitioner is the registered owner of the property, however, she is not the lawful owner thereof because the June 14, 1984 Deed of Absolute Sale was simulated and void. As in Civil Case No. 01-1641 now pending before the RTC of Makati City, Branch 141, which they filed to assail the validity of the said sale, respondents maintain that petitioner exerted undue influence over their father, who at that time was seriously ill, to agree to the sale of the property for only P20,000.00 after knowing that only two apartments were given to her in the Huling Habilin at Testamento. Further, she had no cause of action against them for being a party to the August 23, 1990 Partition Agreement wherein they recognized each other as co-owners and partitioned the property in accordance with the provision of the last will and testament.[7]

On February 26, 2002, the MTC rendered a judgment in favor of the respondents and held that the deed of sale was simulated otherwise petitioner would not have entered into the Partition Agreement, which legally conferred

upon each heir exclusive ownership over their respective shares, thus:

> WHEREFORE, the Complaint is DISMISSED. Plaintiff is ordered to pay attorney's fees of P10,000.00 and the costs of suit in favor of defendants.
>
> SO ORDERED.[8]

On appeal, the RTC reversed the decision of the MTC. It held that petitioner's certificate of title is a conclusive evidence of ownership of the land described therein; and that unless and until said title has been annulled by a court of competent jurisdiction, such title is existing and valid. This is true also with respect to the deed of sale. The present action, which involves only the issue of physical or material possession, is not the proper action to challenge it. Further, the MTC erred when it relied heavily on the "Huling Habilin at Testamento," which was not probated hence has no effect and no right can be claimed therein. The Partition Agreement which was allegedly entered into pursuant to the Huling Habilin at Testamento should not also be considered. Thus:

> WHEREFORE, premises considered, the decision rendered by the Metropolitan Trial Court, Branch 63, Makati City, is hereby ordered REVERSED AND SET ASIDE. Consequently, judgment is hereby rendered ordering the defendants and all persons claiming rights under them to vacate the premises and surrender the possession thereof to the plaintiff. Defendants are likewise ordered to pay jointly and severally the plaintiff an amount of P5,000.00 a month per unit beginning 13 August 2001 until they finally vacate the premises and the costs of this suit.
>
> SO ORDERED.[9]

Aggrieved, respondents filed a petition for review before the Court of Appeals which reversed and set aside the decision of the RTC and reinstated the decision of the MTC. It held that the MTC correctly received evidence on ownership since the question of possession could not be resolved without deciding the issue of ownership. Further, the Huling Habilin at Testamento transmitted ownership of the specific apartments not only to the respondents but also to the petitioner; and pursuant thereto, the parties executed the Partition Agreement in accordance with the wishes of the testator, thus:

> WHEREFORE, this Court resolves to REVERSE and SET ASIDE the Decision of the Regional Trial Court. The decision dated February 26, 2002 of the Metropolitan Trial Court, Branch 63, Makati City in Civil Case No. 75717 dismissing the complaint for ejectment is hereby REINSTATED.
>
> SO ORDERED.[10]

The motion for reconsideration was denied hence, petitioner filed the present petition for review raising the following errors:

> I.
> THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR OF LAW AND GRAVE ABUSE OF DISCRETION IN REVERSING AND SETTING ASIDE THE DECISION OF THE REGIONAL TRIAL COURT AND REINSTATING THE DECISION OF THE METROPOLITAN TRIAL COURT DISMISSING PETITIONER'S COMPLAINT FOR UNLAWFUL DETAINER.
>
> II
>
> THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR OF LAW AND GRAVE ABUSE OF DISCRETION IN DECLARING THAT THE PROPERTY, A PARCEL OF LAND UPON WHICH A FIVE-UNIT APARTMENT STANDS, BECAME THE SUBJECT OF JUANITO RODRIGUEZ'S HULING HABILIN AT TESTAMENTO WHEREIN THE PROPERTY WAS DISTRIBUTED TO HIS HEIRS (HEREIN RESPONDENTS) INCLUDING THE RESPONDENT (PETITIONER HEREIN).[11]

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Petitioner alleges that as the registered owner of the subject property, she enjoys the right of possession thereof and that question of ownership cannot be raised in an ejectment case unless it is intertwined with the issue of possession. While the court may look into the evidence of title or ownership and possession de jure to determine the nature of possession, it cannot resolve the issue of ownership because the resolution of said issue would effect an adjudication on ownership which is not proper in the summary action for unlawful detainer. Petitioner insists that the Court of Appeals erred in ruling that the Huling Habilin at Testamento transmitted ownership of the specific apartments disregarding the fact that the same is not probated yet and that the testator changed or revoked his will by selling the property to petitioner prior to his death.

Contrarily, respondents pray that the instant petition for review be dismissed since the resolution of the question of ownership by the MTC and the Court of Appeals was provisional only to resolve the issue of possession. Petitioner can always avail of legal remedies to have the issue of ownership passed upon by the proper court. Aware of the provisional nature of the resolution on ownership in ejectment cases, respondents filed Civil Case No. 01-1641 to assail the validity of the deed of sale of the property and the registration thereof in petitioner's name.

The petition has merit.

An action for unlawful detainer exists when a person unlawfully withholds possession of any land or building against or from a lessor, vendor, vendee or other persons, after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied.[12] The sole issue to be resolved is the question as to who is entitled to the physical or material possession of the premises or possession de facto.[13] Being a summary proceeding intended to provide an expeditious means of protecting actual possession or right to possession of property, the question of title is not involved[14] and should be raised by the affected party in an appropriate action in the proper court.[15]

However, when the issue of ownership is raised the court is not ousted of its jurisdiction. Section 16 of Rule 70 of the Rules of Court provides:

> SEC 16. Resolving defense of ownership. —When the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

Thus, all that the trial court can do is to make an initial determination of who is the owner of the property so that it can resolve who is entitled to its possession absent other evidence to resolve ownership.[16] But this adjudication is only provisional and does not bar or prejudice an action between the same parties involving title to the property.[17]

In the case at bar, petitioner's cause of action for unlawful detainer was based on her alleged ownership of land covered by TCT No. 150431 and that she merely tolerated respondents' stay thereat. However, when respondents leased the apartments to other persons without her consent, their possession as well as those persons claiming right under them became unlawful upon their refusal to vacate the premises and to pay the rent. On the other hand, respondents assailed petitioner's title by claiming that the deed of sale upon which it was based was simulated and void. They insisted that they were co-owners thus, they have the right to possess the said property. To prove their claim, they presented the Huling Habilin at Testamento of Juanito Rodriguez and the Partition Agreement.

The lower courts considered the following documentary evidence in arriving at their respective decisions, albeit the RTC decision contradicts that of the MTC and Court of Appeals: 1) Huling Habilin at Testamento executed by Juanito Rodriguez on October 27, 1983; 2) Deed of Sale of the property executed by Juanito Rodriguez and the petitioner on June 14, 1984; 3) TCT No. 150431 in the name of the petitioner; and 4) the August 23, 1990

Partition Agreement executed by both the respondents and the petitioner.

Based on the foregoing documentary evidence, we find that there is preponderance of evidence in favor of the petitioner's claim. Respondents failed to prove their right of possession, as the Huling Habilin at Testamento and the Partition Agreement have no legal effect since the will has not been probated. Before any will can have force or validity it must be probated. This cannot be dispensed with and is a matter of public policy.[18] Article 838 of the Civil Code mandates that "[n]o will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court." As the will was not probated, the Partition Agreement which was executed pursuant thereto can not be given effect. Thus, the fact that petitioner was a party to said agreement becomes immaterial in the determination of the issue of possession.

Moreover, at the time the deed of sale was executed in favor of the petitioner, Juanito Rodriguez remained the owner thereof since ownership would only pass to his heirs at the time of his death. Thus, as owner of the property, he had the absolute right to dispose of it during his lifetime. Now, whether or not the disposition was valid is an issue that can be resolved only in Civil Case No. 01-1641, an action instituted by the respondents for that purpose.

We are, thus, left with the deed of sale and the certificate of title over the property to consider.

We agree with the RTC that a certificate of title is a conclusive evidence of ownership of the land described therein; the validity of which shall not be subject to a collateral attack, especially in an ejectment case which is summary in nature.

In Ross Rica Sales Center, Inc. v. Ong,[19] the Court held that:

> The long settled rule is that the issue of ownership cannot be subject of a collateral attack.
>
> In Apostol v. Court of Appeals, this Court had the occasion to clarify this:
> . . . Under Section 48 of Presidential Decree No. 1529, a certificate of title shall not be subject to collateral attack. It cannot be altered, modified or cancelled, except in a direct proceeding for that purpose in accordance with law. The issue of the validity of the title of the respondents can only be assailed in an action expressly instituted for that purpose. Whether or not the petitioners have the right to claim ownership over the property is beyond the power of the court a quo to determine in an action for unlawful detainer.

Further, in Co v. Militar,[20] it was held that:

> [T]he Torrens System was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized.
>
> It is settled that a Torrens Certificate of title is indefeasible and binding upon the whole world unless and until it has been nullified by a court of competent jurisdiction. Under existing statutory and decisional law, the power to pass upon the validity of such certificate of title at the first instance properly belongs to the Regional Trial Courts in a direct proceeding for cancellation of title.
>
> As the registered owner, petitioner had a right to the possession of the property, which is one of the attributes of ownership. x x x

We emphasize, however, that our ruling on the issue of ownership is only provisional to determine who between the parties has the better right of possession. It is, therefore, not conclusive as to the issue of ownership, which is the subject matter of Civil Case No. 01-1641. Our ruling that petitioner has a better right of possession was arrived at on the basis of evidence without prejudice to the eventual outcome of the annulment case, where the issue as to who has title to the property in question is fully threshed out. As the law now stands, in an ejectment

suit, the question of ownership may be provisionally ruled upon for the sole purpose of determining who is entitled to possession de facto.

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals in CA-G.R. SP No. 91442 dated June 27, 2006 is REVERSED and SET ASIDE. The Decision of the Regional Trial Court of Makati City, Branch 134, in Civil Case No. 03-517, reversing the Decision of the Metropolitan Trial Court (MTC) of Makati City, Branch 63, in Civil Case No. 75717, is REINSTATED.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and Reyes, JJ., concur.

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[1] Rollo, pp. 39-49. Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Sesinando E. Villon.

[2] Id. at 157.

[3] Id. at 160-162.

[4] Id. at 168.

[5] Id. at 145.

[6] Id. at 78-82.

[7] Id. at 92-97.

[8] Id. at 177. Penned by Judge Evelyn S. Arcaya-Chua.

[9] Id. at 217. Penned by Judge Perpetua Atal-Paño.

[10] Id. at 48.

[11] Id. at 18.

[12] Racaza v. Gozum, G.R. No. 148759, June 8, 2006, 490 SCRA 302, 312.

[13] Domalsin v. Valenciano, G.R. No. 158687, January 25, 2006, 480 SCRA 114, 131.

[14] Id.

[15] Ocampo v. Tirona, G.R. No. 147812, April 6, 2005, 455 SCRA 62, 74.

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

[17] Ross Rica Sales Center, Inc. v. Ong, G.R. No. 132197, August 16, 2005, 467 SCRA 35, 50.

[18] Tolentino, Civil Code of the Philippines, Vol. III (1979), pp. 151-152.

[19] Supra note 17 at 51.

[20] G.R. No. 149912, January 29, 2004, 421 SCRA 455, 459-460.

[20] G.R. No. 149912, January 29, 2004, 421 SCRA 455, 459-460.

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