

## **DR. DIOSCORO CARBONILLA, PETITIONER, VS. MARCELO ABIERA AND MARICRIS ABIERA PAREDES, SUBSTITUTED BY HER HEIRS, RESPONDENTS.**

*G.R. No. 177637. July 26, 2010*

Ponente: NACHURA, J.

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### **NACHURA, J.:**

Assailed in this petition for review are the Decision[1] of the Court of Appeals (CA) dated September 18, 2006 and the Resolution dated April 17, 2007, which dismissed petitioner's complaint for ejectment against respondents.

The case arose from the following antecedents:

Petitioner, Dr. Dioscoro Carbonilla, filed a complaint for ejectment against respondents, Marcelo Abiera and Maricris Abiera Paredes, with the Municipal Trial Court in Cities (MTCC), Maasin City. The complaint alleged that petitioner is the registered owner of a parcel of land, located in Barangay Canturing, Maasin City, identified as Lot No. 1781-B-P-3-B-2-B PSD-08-8452-D, Maasin Cadastre. The land is purportedly covered by a certificate of title, and declared for assessment and taxation purposes in petitioner's name. Petitioner further claimed that he is also the owner of the residential building standing on the land, which building he acquired through a Deed of Extrajudicial Settlement of Estate (Residential Building) with Waiver and Quitclaim of Ownership. He maintained that the building was being occupied by respondents by mere tolerance of the previous owners. Petitioner asserted that he intends to use the property as his residence, thus, he sent a demand letter to respondents asking them to leave the premises within 15 days from receipt of the letter, but they failed and refused to do so. Conciliation efforts with the Barangay proved futile.[2]

To corroborate his claim, petitioner presented copies of Transfer Certificate of Title (TCT) No. T-3784; Deed of Extrajudicial Settlement of Estate (Residential Building) with Waiver and Quitclaim of Ownership dated November 10, 2002, executed by the heirs of Jovita Yanto Garciano; Tax Declaration (TD) with ARP No. 07020-000019; and Demand Letter dated November 20, 2002. TCT No. T-3784 shows that the land was originally registered on January 30, 1968 in the name of Diosdado Carbonilla, petitioner's father, under Original Certificate of Title No. 185.

In their defense, respondents vehemently denied petitioner's allegation that they possessed the building by mere tolerance of the previous owners. Instead, they asserted that they occupied the building as owners, having inherited the same from Alfredo Abiera and Teodorica Capistrano, respondent Marcelo's parents and respondent Maricris' grandparents. They maintained that they have been in possession of the building since 1960, but it has not been declared for taxation purposes. As for the subject land, respondents claimed that they inherited the same from Francisco Plasabas, grandfather of Alfredo Abiera. They pointed out that the land had, in fact, been declared for taxation purposes in the name of Francisco Plasabas under TD No. 4676, before the Second World War. This TD was later cancelled by TD No. 8735 in 1948, TD No. 14363 in 1958, and TD No. 16182 in 1963. Respondents

averred that the building was previously a garage-like structure but, in 1977, Alfredo Abiera and Teodorica Capistrano repaired and remodeled it, for which reason, they obtained a building permit on April 11, 1977 from the then Municipality of Maasin. Finally, respondents contended that the case should be dismissed for failure to implead as defendants respondent Marcelo's siblings, who are co-heirs of the subject properties.[3] Respondents presented copies of the two TDs in the name of Francisco Plasabas and the Building Permit dated April 11, 1977.

The MTCC decided the case in favor of respondents. It opined that petitioner's claim of ownership over the subject parcel of land was not successfully rebutted by respondents; hence, petitioner's ownership of the same was deemed established.[4] However, with respect to the building, the court declared respondents as having the better right to its material possession in light of petitioner's failure to refute respondents' claim that their predecessors had been in prior possession of the building since 1960 and that they have continued such possession up to the present.[5] In so ruling, the court applied Art. 546[6] of the Civil Code which allows the possessor in good faith to retain the property until he is reimbursed for necessary expenses. Thus, in its decision dated March 15, 2004, the MTCC pronounced:

WHEREFORE, foregoing premises considered and the collated evidences at hand [have] preponderantly established, JUDGMENT is hereby rendered in favor of the defendants DECLARING the defendants to have the better rights of (material) possession to the assailed building and deemed as possessors in good faith and are legally entitled to its possession and occupancy.

The plaintiff judicially affirmed as the land owner is enjoined to respect the rights of the defendants pursuant to the provisions of Art. 546, Chapter III, New Civil Code of the Philippines[, w]ithout prejudice to the provisions of Arts. 547 and 548, New Civil Code of the Philippines. No pronouncement as to costs as defendants' predecessors-in-interest are deemed possessors and builders in good faith.

SO ORDERED.[7]

Petitioner elevated the case to the Regional Trial Court (RTC). On July 12, 2004, the RTC reversed the MTCC decision. The RTC agreed with the MTCC that the land is owned by petitioner. The two courts differed, however, in their conclusion with respect to the building. The RTC placed the burden upon respondents to prove their claim that they built it prior to petitioner's acquisition of the land, which burden, the court found, respondents failed to discharge. The RTC held that, either way--whether the building was constructed before or after petitioner acquired ownership of the land--petitioner, as owner of the land, would have every right to evict respondents from the land. As theorized by the RTC, if the building was erected before petitioner or his predecessors acquired ownership of the land, then Article 445[8] of the Civil Code would apply. Thus, petitioner, as owner of the land, would be deemed the owner of the building standing thereon, considering that, when ownership of the land was transferred to him, there was no reservation by the original owner that the building was not included in the transfer. On the other hand, if the building was constructed after petitioner became the owner of the land, it is with more reason that petitioner has the right to evict respondents from the land. The dispositive portion of the RTC decision reads:

WHEREFORE, premises considered, judgment is hereby rendered

- Reversing the decision of the court a quo;
- Ordering defendants to immediately vacate the residential house/building subject of this litigation;
- Ordering defendants to pay attorney's fee in the amount of P30,000.00; and
- To pay the cost of the suit.

SO ORDERED.[9]

Respondents then filed a petition for review with the CA. Finding no evidence to prove that respondents' possession of the building was by mere tolerance, the CA reversed the RTC decision and ordered the dismissal of petitioner's complaint. Because of this, the CA, following this Court's ruling in *Ten Forty Realty and Development Corporation v. Cruz*, categorized the complaint as one for forcible entry. It then proceeded to declare that the action had prescribed since the one-year period for filing the forcible entry case had already lapsed. The dispositive portion of the CA Decision dated September 18, 2006 reads:

WHEREFORE, premises considered, the assailed decision promulgated on July 12, 2004 of Branch 25 of the Regional Trial Court (RTC), Maasin City, Southern Leyte in Civil Case No. R-3382 is hereby declared NULL and VOID for failure of the plaintiff (herein respondent) to prove that the case at bar is for unlawful detainer or forcible entry. Accordingly, the instant case is hereby DISMISSED.

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SO ORDERED.[10]

Petitioner sought reconsideration of the Decision, but the CA denied petitioner's motion for lack of merit.[11] Hence, petitioner came to this Court through a petition for review on certiorari.

On September 3, 2007, respondents' counsel informed this Court that respondent, Maricris Abiera Paredes, died on June 25, 2006 of asphyxia due to hanging, and moved that the latter's heirs be allowed to substitute for the deceased.[12] In the Resolution[13] dated November 14, 2007, the Court granted the motion.

Petitioner argues that he has sufficiently established his ownership of the subject properties; consequently, he asserts the right to recover possession thereof.

The petition has no merit.

To set the record straight, while petitioner may have proven his ownership of the land, as there can be no other piece of evidence more worthy of credence than a Torrens certificate of title, he failed to present any evidence to substantiate his claim of ownership or right to the possession of the building. Like the CA, we cannot accept the Deed of Extrajudicial Settlement of Estate (Residential Building) with Waiver and Quitclaim of Ownership executed by the Garcianos as proof that petitioner acquired ownership of the building. There is no showing that the Garcianos were the owners of the building or that they had any proprietary right over it. Ranged against respondents' proof of possession of the building since 1977, petitioner's evidence pales in comparison and leaves us totally unconvinced.

Without a doubt, the registered owner of real property is entitled to its possession. However, the owner cannot simply wrest possession thereof from whoever is in actual occupation of the property. To recover possession, he must resort to the proper judicial remedy and, once he chooses what action to file, he is required to satisfy the conditions necessary for such action to prosper.

In the present case, petitioner opted to file an ejectment case against respondents. Ejectment cases--forcible entry and unlawful detainer--are summary proceedings designed to provide expeditious means to protect actual possession or the right to possession of the property involved.[14] The only question that the courts 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.[15] For this reason, an ejectment case will not necessarily be decided in favor of one who has presented proof of ownership of the subject property. Key jurisdictional facts constitutive of the particular ejectment case filed must be averred in the complaint and sufficiently proven.

The statements in the complaint that respondents' possession of the building was by mere tolerance of petitioner clearly make out a case for unlawful detainer. Unlawful detainer involves the person's withholding from another of the possession of the real property to which the latter is entitled, after the expiration or termination of the former's right to hold possession under the contract, either expressed or implied.[16]

A requisite for a valid cause of action in an unlawful detainer case is that possession must be originally lawful, and such possession must have turned unlawful only upon the expiration of the right to possess.[17] It must be shown that the possession was initially lawful; hence, the basis of such lawful possession must be established. If, as in this case, the claim is that such possession is by mere tolerance of the plaintiff, the acts of tolerance must be proved.

Petitioner failed to prove that respondents' possession was based on his alleged tolerance. He did not offer any evidence or even only an affidavit of the Garcianos attesting that they tolerated respondents' entry to and occupation of the subject properties. A bare allegation of tolerance will not suffice. Plaintiff must, at least, show overt acts indicative of his or his predecessor's permission to occupy the subject property. Thus, we must agree with the CA when it said:

A careful scrutiny of the records revealed that herein respondent miserably failed to prove his claim that petitioners' possession of the subject building was by mere tolerance as alleged in the complaint. Tolerance must be [present] right from the start of possession sought to be recovered to be within the purview of unlawful detainer. Mere tolerance always carries with it "permission" and not merely silence or inaction for silence or inaction is negligence, not tolerance.[18]

In addition, plaintiff must also show that the supposed acts of tolerance have been present right from the very start of the possession--from entry to the property. Otherwise, if the possession was unlawful from the start, an action for unlawful detainer would be an improper remedy.[19] Notably, no mention was made in the complaint of how entry by respondents was effected or how and when dispossession started. Neither was there any evidence showing such details.

In any event, petitioner has some other recourse. He may pursue recovering possession of his property by filing an accion publiciana, which is a plenary action intended to recover the better right to possess; or an accion reivindicatoria, a suit to recover ownership of real property. We stress, however, that the pronouncement in this case as to the ownership of the land should be regarded as merely provisional and, therefore, would not bar or prejudice an action between the same parties involving title to the land.[20]

WHEREFORE, premises considered, the petition is DENIED. The CA Decision dated September 18, 2006 and Resolution dated April 17, 2007 are AFFIRMED.

**SO ORDERED.**

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

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[1] Penned by Executive Justice Arsenio J. Magpale, with Associate Justices Marlene Gonzales-Sison and Antonio L. Villamor, concurring; rollo, pp. 85-95.

[2] Id. at 17-19.

[3] Id. at 20-24.

[4] Id. at 29 and 31.

[5] Id. at 29-30.

[6] Art. 546 of the Civil Code reads in full:

Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

[7] Rollo, pp. 31-32.

[8] Art. 445 of the Civil Code reads in full:

ART. 445. Whatever is built, planted or sown on the land of another and the improvements or repairs made thereon, belong to the owner of the land, subject to the provisions of the following articles.

[9] Rollo, pp. 40-41.

[10] Supra note 1, at 94-95.

[11] Rollo, p. 105.

[12] Id. at 113-115.

[13] Id. at 130.

[14] Go, Jr. v. Court of Appeals, 415 Phil. 172, 183-184 (2001).

[15] David v. Cordova, 502 Phil. 626 (2005).

[16] Republic v. Luriz, G.R. No. 158992, January 26, 2007, 513 SCRA 140, 152-153.

[17] Spouses Macasaet v. Spouses Macasaet, 482 Phil. 853 (2004).

[18] Rollo, p. 91.

[19] Valdez, Jr. v. Court of Appeals, G.R. No. 132424, May 4, 2006, 489 SCRA 369, 377.

[20] Asis v. Asis Vda. de Guevarra, G.R. No. 167554, February 26, 2008, 546 SCRA 580, 583.

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