

RIZALINA P. POSITOS, PETITIONER, VS. JACOB M. CHUA, RESPONDENT.

G.R. No. 179328. December 23, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

From the Decision of July 13, 2004[1] of the Court of Appeals reversing that of the Davao City Regional Trial Court (RTC), Branch 10 dismissing without prejudice the complaint for unlawful detainer filed by Jacob Chua (respondent), Rizalina Positos (petitioner) filed the present petition for review on certiorari.

The following undisputed facts spawned the filing of the complaint by respondent against petitioner.

Petitioner had since 1980 been occupying a portion of a parcel of land covered by Transfer Certificate of Title No. T-231686[2] situated in Leon Garcia St., Davao City. The land was likewise occupied by members of the Sto. Tomas de Villanueva Settlers Association (the Association), of which petitioner was a member. On December 26, 1994, the registered owner of the land, Ansuico, Inc., transferred its rights and interests thereover to respondent.

The Association thereupon filed a complaint against respondent for prohibitory injunction before the RTC of Davao City. A compromise agreement was thereafter forged and approved by the trial court wherein the Association agreed to vacate the premises provided respondent extends financial assistance to its members.

Petitioner refused to abide by the compromise agreement, however, prompting respondent to send her a demand letter to vacate the premises within fifteen (15) days from receipt thereof.

The conflict was referred for conciliation before the Lupon following Republic Act No. 7160 (R.A. 7160), "The Local Government Code." Respondent did not appear during the proceedings but sent a representative on his behalf. No settlement having been reached, respondent filed a complaint against petitioner for Unlawful Detainer with prayer for damages and attorney's fees before the Municipal Trial Court in Cities (MTCC), Davao City.

In her Answer to the complaint, petitioner alleged that the failure of respondent to appear personally during the proceedings is equivalent to non-compliance with R.A. 7160 to thus render the complaint dismissible; that respondent did not tolerate her occupancy; and that the complaint must be dismissed for failure to state a cause of action.

During the preliminary conference before the MTCC, the parties stipulated on respondent's failure to personally appear during conciliation, the due existence of the Certificate to File Action issued by the barangay captain, and the lack of lessor-lessee relationship between the parties.[3]

By Decision of January 26, 1998, the MTCC rendered judgment in favor of respondent, disposing as follows:

ACCORDINGLY, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the latter:

- To vacate the premises in question and turn over the possession thereof to the plaintiff;

- To pay the plaintiff the sum of P10,000.00 a month as a reasonable rental of the premises starting January 25, 1997 until the defendant shall have vacated the same;
- To pay the plaintiff the sum of P10,000.00 as attorney's fees and P1,000.00 as litigation expenses; and
- To pay the costs of suit.

Defendant's counterclaim is hereby DENIED for lack of merit.

SO ORDERED.[4]

Petitioner appealed to the RTC of Davao City. As she did not file a supersedeas bond to stay the execution of its decision, the MTCC, upon motion of respondent, issued a Writ of Execution, drawing petitioner to file a Petition for Certiorari and Prohibition with Prayer for Injunctive Relief before the Davao City RTC.[5]

By Order of October 28, 1998,[6] then RTC Executive Judge Jesus V. Quitain issued a temporary restraining order (TRO) to stay the execution of the MTCC decision.

Meanwhile, Branch 8 of the Davao City RTC, acting on petitioner's appeal, affirmed the MTCC decision by Decision of March 2, 1999,[7] it holding that since respondent was duly represented in the conciliation proceedings by an attorney-in-fact, the Local Government Code was substantially complied with.

Petitioner elevated the case to the Court of Appeals which issued the challenged Decision dismissing without prejudice respondent's complaint for unlawful detainer on the ground of lack of cause of action, he having failed to comply with the barangay conciliation procedure.

Petitioner filed a motion for reconsideration of the appellate court's decision, alleging that during the pendency of the appeal she was dispossessed from the premises, hence, she prayed that she be restored thereto. The appellate court, noting that respondent's complaint was dismissed without prejudice, petitioner's cause of action should be ventilated in a separate action. It thus denied petitioner's motion for reconsideration. Hence, the present petition for review on certiorari.

In the main, petitioner argues that to compel her to file a separate action for restoration to the premises runs contrary to the avowed intent of the Rules of Court to promote just, speedy and inexpensive disposition of every action and proceeding. And she cites Section 3, Rule 2 of the Rules which provides that a party may not institute more than one suit for a single cause of action.

Further, petitioner argues that since it is not disputed that she was in physical possession of the premises when the complaint for unlawful detainer was filed, her possession must be respected until the case is decided on the merits.

At the outset, petitioner's present availment of a petition for review on certiorari under Rule 45 is doomed.

Section 1, Rule 41 of the Rules of Court provides that the remedy of appeal is not available from an order dismissing an action without prejudice.[8]

Sec. 1. Subject of appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from: x x x

(h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (*italics in the original, emphasis and underscoring supplied*)

Since the present petition prays for the modification of the appellate court's decision, this Court cannot treat it as one for certiorari, petitioner's allegations therein not being constitutive of grave abuse of discretion amounting to lack or excess of jurisdiction.

Procedural faux pas aside, the petition just the same fails.

As reflected above, respondent's complaint was dismissed for failure to comply with the conciliation process. Non-compliance affected the sufficiency of his cause of action and rendered the complaint susceptible, as in fact it resulted to dismissal on the ground of prematurity.

A dismissal without prejudice does not operate as a judgment on the merits, for there is no unequivocal determination of the rights and obligations of the parties with respect to the cause of action and subject matter thereof.

En passant, petitioner's claim of dispossession during the pendency of her appeal, which claim is disputed by respondent, is a question of fact which is not a proper subject for this Court to decide, the general rule being that only questions of law can be raised before it. Petitioner has not, however, presented convincing circumstances to take her case out from the general rule.[9]

WHEREFORE, the petition is DENIED.

SO ORDERED.

Puno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] Penned by Associate Justice Mariflor P. Punzalan-Castillo with the concurrence of Associate Justices Sesinando E. Villon and Rodrigo F. Lim, Jr.

[2] In respondent's complaint, the TCT number was indicated as "T-53124." This was later on rectified by respondent during pre-trial and the correction was reflected in the position paper submitted.

[3] Rollo, "Pre-Trial Order from the Municipal Trial Courts in Cities, Branch 1, Davao City," pp. 36-37.

[4] Id. at 38-47, 47.

[5] Respondent's "Comment" before this Court, id. at 64-69, 65.

[6] Id. at 75.

[7] Records, pp. 313-323.

[8] Philippine Export and Foreign Loan Guarantee Corporation v. Philippine Infrastructures, Inc., G.R. No. 120384, January 13, 2004, 419 SCRA 6.

[9] Natividad v. Movie and Television Review and Classification Board (MTRCB), 540 SCRA 124, 135.

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