

SPOUSES ROGELIO F. LOPEZ AND TEOTIMA G. LOPEZ, PETITIONERS, VS. SPOUSES SAMUEL R. ESPINOSA AND ANGELITA S. ESPINOSA, RESPONDENTS.

G.R. No. 184225. September 04, 2009

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Assailed in this petition[1] for review on certiorari is the March 24, 2008 Decision[2] of the Court of Appeals in CA-G.R. CV No. 00113 finding petitioners, Spouses Rogelio F. Lopez and Teotima G. Lopez, liable for forcible entry and damages as well as the August 7, 2008 Resolution[3] denying petitioners' motion for reconsideration.

Respondents, Spouses Samuel R. Espinosa and Angelita S. Espinosa, owned a house located at Barangay Washington, Surigao City. Constructed in 1983, the house was situated at the back of petitioners' residence and stood over a portion of a parcel of land covered by Transfer Certificate of Title No. T-12332[4], which was issued under the name of petitioners on June 28, 1996.

It appears from the records that the parties have had conflicting claims over the subject property since 1994 when petitioners, together with a Mr. Nolan Kaimo, filed an action for recovery of possession against respondents. The case was docketed as Civil Case No. 4301 before Branch 2 of the Municipal Trial Court in Cities of Surigao City, but was dismissed on September 7, 1994 on technical grounds.[5] On June 9, 1997 and July 2, 1997, petitioners were also summoned by the Office of the Punong Barangay of Barangay Washington, in connection with a complaint for malicious mischief filed by respondents.[6]

Meanwhile, the instant case stemmed from a complaint[7] for Forcible Entry with Damages filed by respondents against petitioners on September 30, 2002. The case was docketed as Civil Case No. 02-5950 before Branch 2 of the Municipal Trial Court in Cities of Surigao City.

Respondents alleged that on May 10, 2002, petitioners took advantage of their absence and demolished their house by means of stealth and strategy. Aided by hired personnel, petitioners removed and destroyed respondents' house and enclosed the property with a concrete fence.

In their Answer,[8] petitioners denied having demolished respondents' house and claimed that it was destroyed by the elements. They also averred that respondents permanently transferred residence in 1999 considering that they paid their water bill only until February 1999 while the electrical utility was disconnected on the same year.[9]

On February 5, 2004, the Municipal Trial Court in Cities ruled in favor of respondents and held that petitioners forcibly entered the subject premises. It noted that:

[I]n 1994 defendant Lopez and a certain Nolan Kaimo filed a case for recovery of possession versus herein plaintiffs [respondents] who were already occupants of a portion thereof, but the same was dismissed for technical reasons. In 1996, the defendants were able to secure TCT T-12332 in their name and which cover not only their residential lot but also the adjacent lot which plaintiffs occupied and where their house was erected.

Then, in 1997 the plaintiffs had a clash with defendants when the latter allegedly destroyed plaintiffs' fence which conflict reached Barangay Captain Laxa's attention. These series of events clearly tend to show the many attempts of defendant Lopez to oust the plaintiffs from the premises and occupy the same as his own. And, the last event is the one related in the instant case where the defendants, sensing that plaintiffs were not present and their house already destroyed by the elements, had the lot relocated and fenced as a consequence of which plaintiffs were totally deprived of possession thereof.[10]

The Municipal Trial Court did not lend credence to petitioners' claims that respondents abandoned their house and that the same was destroyed by natural elements. It held that despite petitioners' constructive possession following the issuance of TCT No. T-12332, they were not justified in making such forcible entry.[11] The dispositive portion of the Decision[12] states:

WHEREFORE, judgment is hereby rendered:

1. Directing defendants [petitioners] to remove the concrete fence, steel gate, grills and other structures found on the premises occupied by plaintiffs previous to the forcible entry, and after which to deliver possession thereof to plaintiffs smoothly and peacefully;
2. Directing defendants [petitioners] to pay the value of the house and improvements in the sum of P85,200.00;
3. Ordering defendants [petitioners] to further pay litigation expenses and the costs, and the sum of P10,000.00 as attorney's fees.

SO ORDERED.[13]

Petitioners appealed to the Regional Trial Court of Surigao City/Surigao del Norte, which reversed the ruling of the Municipal Trial Court in Cities. In its August 17, 2004 Decision, [14] the Regional Trial Court dismissed the case on the ground that the evidence clearly prove abandonment on the part of respondents.[15]

Respondents filed a petition for review[16] before the Court of Appeals which affirmed in toto the Decision of the Municipal Trial Court in Cities. It found that while respondents left the house in 1999 when respondent Samuel was assigned to Placer, Surigao del Norte, this fact alone does not establish abandonment. Moreover, the appellate court noted that respondents enjoy priority of possession, and that they paid the corresponding taxes due on the house.[17] Thus:

WHEREFORE, the instant petition is hereby GRANTED. The Decision dated 17 August 2004 of the Regional Trial Court, Tenth (10th) Judicial Region, Branch No. 29 of Surigao City in Civil Case No. 6229 is REVERSED and SET ASIDE. The Judgment dated 05 February 2004 of the Municipal Trial Court in Cities, Branch No. 2 of Surigao City in Civil Case No. 02-5950 for Forcible Entry with Damages is AFFIRMED IN TOTO.

SO ORDERED.[18]

Petitioners' motion for reconsideration was denied, hence this petition on the following grounds:

THE COURT OF APPEALS ERRED IN RULING THAT THE HEREIN RESPONDENTS DID NOT ABANDON THEIR NIPA HOUSE DESPITE THE FOLLOWING UNDISPUTED FACTS, TO WIT:

A

THE LOT OVER WHICH THE NIPA HOUSE WAS CONSTRUCTED IS OWNED BY THE HEREIN PETITIONERS AND COVERED BY TCT-T12332;

B

NOBODY WAS LEFT STAYING IN THE NIPA HOUSE FOR YEARS AND THE WATER AND ELECTRICAL CONNECTIONS IN THE NIPA HOUSE WERE ALREADY CUT OFF AS EARLY AS 1999.

Petitioners argue that the disconnection of water and electric supply in respondents' house is proof of their intention to abandon the house, especially because respondents are not the owners of the land on which the house stood. Petitioners also allege that, even assuming *arguendo* that the Municipal Trial Court correctly decided on the issue of possession, the award of Php85,200.00 representing the value of improvements and attorney's fees is not supported by evidence.

On the other hand, respondents claim that they did not abandon their house, and that the abandonment of a right, claim or property must be clear, absolute, and irrevocable. On the award of Php85,200.00, respondents aver that the issue was raised for the first time on appeal.

The petition lacks merit.

In *Dy v. Mandy Commodities Co., Inc.*,^[19] the Court held that 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. The basic inquiry centers on who has the prior possession *de facto*. The plaintiff must prove that he was in prior possession and that he was deprived thereof.

In the instant case, respondents' house was constructed in 1983 and they had prior physical possession until they were deprived thereof by petitioners. To substantiate their claims, respondents submitted the affidavit, dated September 20, 2002,^[20] of Carlos C. Menil and Lolito S. Bito, who witnessed the demolition of respondents' house during the latter's absence. Mr. Menil and Mr. Bito attested that they saw petitioner Rogelio personally supervising the demolition of respondents' house, and that he erected a concrete fence enclosing the area where the house formerly stood. Petitioners failed to refute the foregoing allegations except with bare denials.

While petitioners hold title to the subject property where the house was located, the sole issue in forcible entry cases is who had prior possession *de facto* of the disputed property.^[21] In *Dy*, the Court held that 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.^[22]

The Court of Appeals correctly held that respondents did not abandon their house. Abandonment requires (a) a clear and absolute intention to renounce a right or claim or to desert a right or property; and (b) an external act by which that intention is expressed or carried into effect. The intention to abandon implies a departure, with the avowed intent of never returning, resuming or claiming the right and the interest that have been abandoned.^[23] There is none in this case.

The disconnection of water and electric supply and the fact that respondents left the house when respondent Samuel was assigned to Surigao del Norte in 1999, do not constitute abandonment. As correctly found by the Court of Appeals, respondents left valuables inside the house and had the same padlocked, which acts constitute assertion and protection of their right over the subject house and negate renunciation and intention to lose the same.^[24]

It bears stressing that the instant case was preceded by the filing of actions for recovery of possession and malicious mischief before the Office of the Punong Barangay. Likewise, upon discovery of petitioners' acts of intrusion, respondents immediately filed a complaint for forcible entry and damages before the Municipal Trial Court in Cities. The Certification to File Action dated August 26, 2002 shows that no settlement or conciliation was reached.^[25] It is clear from the foregoing that respondents have not been remiss in asserting their rights and

that petitioners' claims over the subject property have not gone unchallenged.

The Court affirms the award of Php85,200.00 representing the value of improvements and attorney's fees. The issue on the propriety of the award was raised for the first time on motion for reconsideration before the Court of Appeals. Well-settled is the rule that issues not raised below cannot be raised for the first time on appeal.[26]

WHEREFORE, based on the foregoing, the petition is DENIED. The March 24, 2008 Decision of the Court of Appeals in CA-G.R. SP No. 00113-MIN finding petitioners liable for forcible entry is AFFIRMED.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and Peralta, JJ., concur.

[1] Rollo, pp. 29-41.

[2] Id. at 42-51. Penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Romulo V. Borja and Elihu A. Ybañez.

[3] Id. at 61-65.

[4] Id. at 115.

[5] Id. at 89.

[6] Id. at 90-91.

[7] Id. at 71-76.

[8] Id. at 77-80.

[9] Id. at 78.

[10] Id. at 116-117.

[11] Id. at 117.

[12] Id. at 116-118. Penned by Judge Victor A. Canoy.

[13] Id. at 118.

[14] Id. at 119-127. Penned by Judge Jose Manuel P. Tan.

[15] Id. at 127.

[16] CA rollo, pp. 3-15.

[17] Rollo, p. 19.

[18] Id. at 20.

[19] G.R. No. 171842, July 22, 2009.

[20] Rollo, p. 75.

[21] Perez v. Falcatan, G.R. No. 139536, September 26, 2005, 471 SCRA 21, 31.

[22] Supra note 19.

[23] Dela Cruz v. Quiazon, G.R. No. 171961, November 28, 2008.

[24] Rollo, pp. 16-17.

[25] Id. at p. 76.

[26] Hermogenes v. Osco, G.R. No. 141505, August 18, 2005, 467 SCRA 301, 310.

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