

**BRADFORD UNITED CHURCH OF CHRIST, INC., PETITIONER, VS.
DANTE ANDO, ABENIGO AUGIS, EDGAR CARDONES, ZACARIAS
GUTIERREZ, CORNELIO IBARRA, JR., ZENAIDA IBARRA, TEOFILOI
LIRASAN, EU...**

G.R. No. 195669. May 30, 2016

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Well-settled is the rule that the filing of the summary action for unlawful detainer during the pendency of an action for recovery of ownership of the same parcel of Land subject of the summary action of unlawful detainer does not amount to forum-shopping.

Assailed in this Petition for Review on Certiorari[1] are the December 10, 2010 Decision[2] of the Court of Appeals (CA) which dismissed the Petition in CA-GR. SP No. 01935 and its January 26, 2011 Resolution[3] which denied petitioner's

Motion for Reconsideration thereon.[4]

Proceedings before the Municipal Trial Court in Cities (MTCC)

Before Branch 2 of the MTCC of Mandaue City, the petitioner Bradford United Church of Christ, Inc. (BUCCI) filed a Complaint for unlawful detainer and damages against herein respondents Dante Ando, Abenigo Augis, Edgar Cardones, Zacarias Gutierrez, Cornelio Ibarra, Jr., Zenaida Ibarra, Teofilo Lirasan, Eunice Lirasan, Ruth Mission, Dolly Resales and Eunice Tambangan, in their capacities as Members of the Mandaue Bradford Church Council, the Mandaue Bradford Church (MBC), and the United Church of Christ in the Philippines, Inc. (UCCPI). This Complaint was docketed thereat as Civil Case No. 4936.[5]

In an Order dated February 9, 2005, the MTCC directed BUCCI to show cause why its Complaint should not be dismissed for its failure to comply with the requirement on the certification against forum-shopping under Rule 7, Section 5 of the Rules of Court.[6] According to the MTCC, BUCCI failed to mention in its certification against non-forum-shopping a complete statement of the present status of another case concerning the recovery of ownership of certain parcels of land earlier filed before the Regional Trial Court (RTC) by the UCCPI and the MBC against BUCCI. (Civil Case No. MAN-1669, captioned "United Church of Christ in the Philippines, Inc. and Mandaue Bradford Church, Plaintiff v. Bradford United Church of Christ in the Philippines, Defendant, for Recovery of Ownership with Preliminary Injunction").[7]

The recovery of ownership case also involved Lot 3-F, the same parcel of land subject of the unlawful detainer case, and yet another parcel of land, denominated simply as Lot 3-C. On October 13, 1997, the RTC of Mandaue City-rendered its judgment in the recovery of ownership case against therein plaintiffs UCCPI and MBC and in favor of therein defendant BUCCI. On November 19, 1997, both the MBC and the UCCPI filed a motion for reconsideration of said decision but their motion was denied by Order of March 10, 2005.[8]

Meanwhile, the MTCC Branch 2 of Mandaue City, issued an Order[9] dated March 31, 2005 dismissing the unlawful detainer case with prejudice for BUCCI's failure to comply with the rule on certification against forum shopping. BUCCI appealed to the RTC which was docketed as Civil Case No. MAN-5126-A.

Proceedings before the Regional Trial Court

In its Decision[10] of March 13, 2006 in the unlawful detainer case, the RTC of Mandaue City, Branch 56, affirmed the MTCC's dismissal thereof, with prejudice. The RTC held that BUCCI was guilty of forum-shopping because it failed to certify under oath that there was another action involving the same parties and the same Lot 3-F still pending before another court.

BUCCI moved for reconsideration but it was denied in the Order[11] of June 23, 2006.

Aggrieved, BUCCI filed a Petition for Review[12] before the CA docketed as CA-GR. SP No. 01935.

Proceedings before the Court of Appeals

In its Decision[13] of December 10, 2010, the CA held that the MTCC and the RTC correctly dismissed the unlawful detainer case. The CA opined that whatever decision that would be rendered in the action for recovery of ownership of the parcels of land in question would amount to res judicata in the unlawful detainer case. The CA ruled that identity of the causes of action does not mean absolute identity, and that the test lies not in the form of action but in whether the same set of facts or evidence would support both causes of action. Furthermore, the CA found that BUCCI indeed failed to state in the certification against forum-shopping in the unlawful detainer case a complete statement of the status of the land ownership recovery case; and that such failure impinges against Section 5, Rule 7 of the Rules of Court. Accordingly, the CA dismissed BUCCI's Petition for Review. The CA likewise denied BUCCI's Motion for Reconsideration in its Resolution dated January 26, 2011.[14]

Hence, BUCCI is now before this Court through this Petition for Review on Certiorari.[15]

Issue

Petitioner presents the following issue for our consideration

WHETHER XXX THE COURT OF APPEALS IS CORRECT IN HOLDING THAT PETITIONER IS GUILTY OF FORUM[-] SHOPPING FOR FILING THE CASE FOR EJECTMENT OR UNLAWFUL DETAINER (CIVIL CASE NO. 4936) DURING THE PENDENCY OF THE [ACTION FOR] RECOVERY OF OWNERSHIP XXX (CIVIL CASE NO. MAN-1669)[.] AND FOR FAILING TO [DISCLOSE] THE PENDENCY OF THE [LATTER CIVIL CASE NO. MAN-1669] IN THE CERTIFICATION OF NON[-] FORUM[-]SHOPPING IN THE [FORMER CIVIL CASE NO. 4936].[16]

The fundamental issue to be resolved in this case is whether BUCCI committed forum-shopping when it failed to disclose in the certification on non-forum shopping of the unlawful detainer case a complete statement of the status of the action for recovery of ownership of property then pending before the RTC of Mandaue City. The unlawful detainer suit involved Lot 3-F which was also involved in the complaint for recovery of ownership.

Herein petitioner BUCCI's verification and certification against forum-shopping attached to the instant Petition, stated that UCCP had also filed an appeal with the CA pertaining to the recovery of ownership suit; and this appeal was docketed as CA-GR. No. 00983, then still pending adjudication before the CA. In the same verification and certification against forum-shopping, BUCCI stressed that the case for recovery of ownership of the disputed parcels of land was entirely different from the unlawful detainer case, because the first case does not involve at all the issue of material/ physical possession of Lot 3-F.[17]

Petitioner's arguments

BUCCI posits that the most decisive factor in determining the existence of forum-shopping is the presence of all the elements of *litis pendentia*, namely, (1) identity of parties or representation in both cases; (2) identity of rights asserted and reliefs prayed for; (3) the reliefs are founded on the same facts; and (4) the identity of the preceding particulars should be such that any judgment which may be rendered in the other action, will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

BUCCI likewise maintains that there is only identity of parties between the unlawful detainer case and the case for recovery of ownership; and that the other three essential elements are absent, to wit: that there be identity of cause/s of action; that the reliefs sought are founded on the same facts; and that the identity of the two preceding particulars be such that any judgment which may be rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. Specifically, BUCCI maintains that the cause of action in Civil Case No. MAN-1669 is for recovery of ownership of the parcels of land in dispute, whereas the cause of action in Civil Case No. 4936, the summary action of unlawful detainer, is the determination of who has the better or superior right to the material/physical possession (or possession *de facto*), of Lot 3-F; that the prayer that they be declared the lawful owners of the disputed lots in said Civil Case No. MAN-1669 is entirely different or dissimilar from the reliefs prayed for in the summary action of unlawful detainer (Civil Case No. 4936) by BUCCI, which is that BUCCI be given or awarded the material or physical possession (or possession *de facto*) of the disputed Lot 3-F.

Respondents' arguments

Respondents counter that BUCCI's claim that the issues involved in the two cases are dissimilar or different is of no moment or consequence because the latter's deliberate non-disclosure in the certificate against non-forum shopping in the summary action of unlawful detainer of the pendency-in-fact of the action for recovery of ownership of the disputed parcels of land, which involved the same parties and the same property, in the action for recovery of ownership, is an irremissibly fatal defect that cannot be cured by mere amendment pursuant to Section 5, Rule 7 of the Rules of Court.

Our Ruling

The Petition is meritorious.

Section 5, Rule 7 of the Rules of Court, provides:

SEC. 5. Certification against forum[-]shopping. - The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission, of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum[-]shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions, (n)

The above-stated rule requires a twofold compliance, and this covers both the non-commission of forum-shopping

itself, and the submission of the certification against forum-shopping.[18]

xxx The essence of forum-shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. It exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. On the other hand, for *litis pendentia* to be a ground for the dismissal of an action, the following requisites must concur: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[19]

Here, there is only identity of parties between the summary action of unlawful detainer and the land ownership recovery case. However, the issues raised are not identical or similar in the two cases. The issue in the unlawful detainer case is which party is entitled to, or should be awarded, the material or physical possession of the disputed parcel of land, (or possession thereof as a fact); whereas the issue in the action for recovery of ownership is which party has the right to be recognized as lawful owner of the disputed parcels of land.

With respect to *res judicata*, the following requisites must concur to bar the institution of a subsequent action: "(1) the former judgment must be final; (2) it must have been rendered by a court having jurisdiction over the subject matter and [over] the parties; (3) it must be a judgment on the merits; and (4) there must be, between the first and second actions, (a) identity of parties, (b) identity of subject matter, and (c) identity of cause of action." [20] It bears notice that in its certification against non-forum shopping, now attached to this instant Petition, BUCCI mentioned that the decision in the land ownership recovery case was still pending appeal before the CA, a claim that was not controverted at all by respondents. Simply put, this means that the former judgment is not yet final. Furthermore, the causes of action in the two cases are not identical or similar. To repeat, in the summary action of unlawful detainer, the question to be resolved is which party has the better or superior right to the physical/material possession (or *de facto* possession) of the disputed premises. Whereas in the action for recovery of ownership, the question to be resolved is which party has the lawful title or dominical right (i.e., owner's right) to the disputed premises. Thus, in *Malabanan v. Rural Bank of Cabuyao, Inc.* [21] the petitioner therein asserted, among others, that the complaint for unlawful detainer against him must be dismissed on grounds of *litis pendentia* and forum-shopping in view of the pending case for annulment of an action for *dacion en pago* and for the transfer certificate of title in another case, this Court reiterated the well-settled rule that a pending action involving ownership neither suspends nor bars the proceedings in the summary action for ejectment pertaining to the same property, in view of the dissimilarities or differences in the reliefs prayed for.

Petitioner and respondent are the same parties in the annulment and ejectment cases. The issue of ownership was likewise being contended, with same set of evidence being presented in both cases. However, it cannot be inferred that a judgment in the ejectment case would amount to *res judicata* in the annulment case, and vice-versa.

The issue is hardly a novel one. It has been laid to rest by heaps of cases iterating the principle that a judgment rendered in an ejectment case shall not bar an action between the same parties respecting title to the land or building nor shall it be conclusive as to the facts therein found in a case between the same parties upon a different cause of action involving possession.

It bears emphasizing that in ejectment suits, the only issue for resolution is the physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants. However, the issue of ownership may be provisionally ruled upon for the sole purpose of determining who is entitled to possession *de facto*. Therefore, the provisional determination of ownership in the ejectment case cannot be

clothed with finality.

Corollarily, the incidental issue of whether a pending action for annulment would abate an ejectment suit must be resolved in the negative.

A pending action involving ownership of the same property does not bar the filing or consideration of an ejectment suit, nor suspend the proceedings. This is so because an ejectment case is simply designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings.[22]

The CA thus erred in holding that, "[a]n adjudication in respondents' recovery of ownership case would constitute an adjudication of petitioner BUCCI's unlawful detainer case, such that the court handling the latter case would be bound thereby and could not render a contrary ruling in the issue of physical or material possession." [23] It bears belaboring that BUCCI alleged in the instant Petition that although the RTC dismissed the complaint against it in the ownership recovery case, it still filed the unlawful detainer case because there was never a ruling in the former case as to who between the parties had the better right to the material or physical possession (or possession de facto) of the subject property. Of course, no less significant is the assertion by BUCCI that although it had previously tolerated or put up with the lawful occupation of the disputed property by respondent MBC, it nonetheless had to put an end to such tolerance or forbearance, because all possible avenues for reconciliation or compromise between the parties in this case had already been closed.[24] Thus, a favorable ruling for BUCCI in the action for recovery of ownership would not at all compel or constrain the other court (here the MTCC of Mandaue City) to also obligatorily rule in the summary action of ejectment that BUCCI is entitled to the material or physical possession, (or possession de facto) of the disputed Lot 3-F because even if it be proved that it has the lawful title to, or the ownership of, the disputed lots, there is still born the need and necessity to resolve in the summary action of unlawful detainer whether there are valid or unexpired agreements between the parties that would justify the refusal to vacate by the actual occupants of the disputed property. Indeed, in a summary action of ejectment, even the lawful owner of a parcel of land can be ousted or evicted therefrom by a lessee or tenant who holds a better or superior right to the material or physical (or de facto) possession thereof by virtue of a valid lease or leasehold right thereto.

In *Custodio v. Corrado*, [25] we declared that *res judicata* did not obtain in the case because, among others, the summary action of ejectment was different from the case for recovery of possession and ownership. There, we expounded that:

There is also no identity of causes of action between Civil Case Nos. 116 and 120. xxx

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The distinction between a summary action of ejectment and a plenary action for recovery of possession and/or ownership of the land is well-settled in our jurisprudence. What really distinguishes an action for unlawful detainer from a possessory action (*action publiciana*) and from a reivindicatory action (*action reivindicatoria*) is that the first is limited to the question of possession de facto. An unlawful detainer suit (*action interdical*) together with forcible entry are the two forms of an ejectment suit that may be filed to recover possession of real property. Aside from the summary action of ejectment, *action publiciana* or the plenary action to recover the right of possession and *action reivindicatoria* or the action to recover ownership which includes recovery of possession, make up the three kinds of actions to judicially recover possession.

Further, it bears stressing that the issue on the applicability of *res judicata* to the circumstance obtaining in this case is far from novel and not without precedence. In *Vda. de Villanueva v. Court of Appeals*, we held that a judgment in a case for forcible entry which involved only the issue of physical possession (*possession de facto*)

and not ownership will not bar an action between the same parties respecting title or ownership, such as an accion reivindicatoria or a suit to recover possession of a parcel of land as an element of ownership, because there is no identity of causes of action between the two.[26]

This ruling holds true in the present Petition.

WHEREFORE, the Petition is GRANTED. The December 10, 2010 Decision of the Court of Appeals and its January 26, 2011 Resolution in CA-GR. SP No. 01935 are REVERSED and SET ASIDE. The Municipal Trial Court in Cities of Mandaue City, Branch 2 is hereby DIRECTED to give due course to the complaint for unlawful detainer and damages, docketed thereat as Civil Case No. 4936, instituted therein by petitioner Bradford United Church of Christ, Inc. against therein respondents.

Without costs.

SO ORDERED.

Carpio, (Chairperson), Brion, Mendoza, and Leonen, JJ., concur.

[1] Rollo, pp. 3-46.

[2] Id. at 47-55; penned by Associate Justice Socorro B. Inting and concurred in by Executive Justice Portia A. Hormachuelos and Associate Justice Edwin D. Sorongon.

[3] Id. at 63-64.

[4] CA rollo, pp. 118-125. 5

[5] Rollo, p. 48.

[6] Id.

[7] Id.

[8] CA rollo, p. 64; penned by Presiding Judge Augustine A. Vestil.

[9] Id. at 42-44.

[10] Rollo, pp. 56-61.

[11] Id. at 62,

[12] CA rollo, pp. 2-27.

[13] Rollo, pp. 47-55.

[14] Id. at 63-64.

[15] Id. at 3-46.

[16] Id. at 16-17.

[17] Id. at 44.

[18] Spouses Melo v. Court of Appeals, 376 Phil. 204, 213-214 (1999); Spouses Ong v. Court of Appeals, 433 Phil. 490, 501-502 (2002).

[19] *Spouses Melo v. Court of Appeals*, id. at 211.

[20] *Custodio v. Corrado*, 479 Phil. 415, 424 (2004).

[21] 605 Phil. 523 (2009).

[22] Id. at 530-531.

[23] *Rollo*, p. 54.

[24] Id. at 14.

[25] *Custodio v. Corrado*, supra note 19.

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