

**SPOUSES JANET URI FAHRENBACH AND DIRK FAHRENBACH
PETITIONERS, VS. JOSEFINA R. PANGILINAN, RESPONDENT.***G.R. No. 224549. August 07, 2017*

Ponente: PERLAS-BERNABE, J.

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Assailed in this petition for review on certiorari[1] are the Decision[2] dated September 21, 2015 and the Resolution[3] dated April 14, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 133552, which affirmed with modification the Decision[4] dated August 30, 2013 of the Regional Trial Court of Palawan, Branch 95 (RTC) in Civil Case No. 4924, ordering petitioners Spouses Janet Uri Fahrenbach and Dirk Fahrenbach (petitioners) to vacate the parcel of land claimed by respondent Josefina R. Pangilinan (respondent), but remanding the case to the RTC for the determination of the proper amount of monthly rentals petitioners should pay respondent.

The Facts

On September 6, 1995, respondent acquired a parcel of unregistered land (subject lot) from her aunt, Felomina Abid (Abid), through a Waiver of Rights.[5] The said lot measured 5.78 hectares and was covered by Tax Declaration No. 0056.[6] However, unknown to respondent, Abid also executed a Deed of Sale[7] on July 15, 1995 in favor of Columbino Alvarez (Alvarez) covering the same piece of land.[8] The Deed of Sale to Alvarez contained the following description:

An area of 5.7800 hectares, unirrigated riceland, more or less, under Tax Declaration No. 0056; Property Index No. 066-02-020-07-002; Bounded on the North: Mindoro Strait; East: Ass. Lot No. 005, Sec. 06; South AL No. 003; West: AL No. Oil; with an assessed value of "P8,290.00." [9]

On August 2, 2005, after purportedly learning that the description of the property he bought under the Deed of Sale was erroneous, Alvarez executed a handwritten letter stating that the subject lot, with an area of 5.78 hectares and covered by Tax Declaration No. 0056, belonged to respondent.[10] Alvarez also executed a Sinumpaang Salaysay on July 14, 2006, stating that the said land is not the property he had intended to buy from Abid but the one with an area of eight (8) hectares under Tax Declaration No. 019-0233-A.[11]

In September 2005, respondent learned that petitioners were occupying the 5.78-hectare subject lot she acquired from Abid and built structures thereon without respondent's consent.[12] Despite demands, petitioners refused to vacate the premises.[13] Thus, after the barangay conciliation proceedings failed, respondent filed a complaint[14] for forcible entry against petitioners before the Municipal Circuit Trial Court of Coron-Busuanga, Palawan (MCTC), which was docketed as Civil Case No. 601.[15] Among others, respondent prayed that petitioners be ordered to vacate the premises, pay a monthly rent of P10,000.00 from September 2005 up to the termination of the case, and pay P125,000.00 as attorney's fees and litigation expenses.[16]

In their Answer,[17] petitioners maintained that the land they were occupying is different from respondent's land which is covered by Tax Declaration No. 0056. According to petitioners, the area they were occupying is the eight

(8)-hectare property covered by Tax Declaration No. 0052, which they allegedly acquired from Alvarez in 2005 by virtue of a Deed of Sale. Petitioners further averred that Alvarez had been in possession of the same parcel of land since 1974 after Abid allowed him to cultivate it. On the other hand, respondent neither physically possessed the said property nor introduced improvements thereon.[18]

The MCTC Ruling

In a Decision[19] dated November 6, 2012, the MCTC dismissed respondent's complaint and upheld petitioners' possession. The MCTC observed that while the parties claim to have bought different properties, i.e., the 5.78-hectare property for the respondent and the eight (8)-hectare property for the petitioners, it was found and agreed that they were in fact claiming one and the same lot.[20] In resolving the issue of prior possession, the MCTC took judicial notice of the written report[21] issued by the City Environment and Natural Resources Office (CENRO) of Coron, Palawan, as well as the report[22] of the Office of the Municipal Assessor which conducted the ocular inspection and public hearing relative to respondent's and Alvarez's conflicting claims back in 2005 and 2006.[23] The MCTC noted that their findings clearly state that petitioners' predecessor-in-interest, Alvarez, was the actual occupant of the area being claimed by respondent.[24]

Anent the casual visits to the property respondent allegedly made, the MCTC ruled that the same was not sufficient to constitute actual possession contemplated by law in ejectment cases. The MCTC observed that since respondent's alleged acquisition of the property in 1995, she has not hired a caretaker nor fenced the same as an overt manifestation of her claim of ownership. Thus, respondent's action for forcible entry cannot prevail over petitioners whose possession can be traced to their predecessor-in-interest.[25]

Aggrieved, respondent appealed to the RTC.[26]

The RTC Ruling

In a Decision[27] dated August 30, 2013, the RTC reversed the ruling of the MCTC and ordered petitioners to vacate the subject lot.[28] The RTC pointed out that before one can be adjudged to have a better right of possession over another, it is necessary to first ascertain the actual premises of the property subject of actual and prior possession.[29] In this case, the RTC observed that the identity of the property petitioners were actually occupying was not clear.[30]

In this regard, the RTC observed that based on the Deed of Sale, it would appear that petitioners purchased an eight (8)-hectare lot bounded by the seashore on the east; however, the relevant tax declaration, i.e., Tax Declaration No. 0052, did not include "seashore" as a boundary.[31] This, according to the RTC, was the cause of the confusion anent the identity of the property in dispute, considering that Alvarez held another eight (8)-hectare property bounded by the seashore and covered by Tax Declaration No. 019-0233-A:[32]

Tax Declaration No. 0052 Tax Declaration No. 019-0233-A

North: ASS LOT #005 North: Seashore

South: ASS LOT #007 South: AL# 017

East: ASS LOT #007 East: AL# 003, 016

West: ASS LOT #011, Sec. 07 West: AL# 001[33]

Thus, since the word "seashore" was somehow inserted in the Deed of Sale, it would appear that what the property petitioners bought and were occupying was the lot that was previously occupied by Alvarez and covered by Tax Declaration No. 019-0233-A. However, in truth, the RTC found out that petitioners were actually occupying

respondent's property covered by Tax Declaration No. 0056.[34] Notably, the lot covered by Tax Declaration No. 0056[35] was also bounded by the seashore as the Mindoro Strait lies on its northern side:[36]

Tax Declaration No. 0056

North: Mindoro Strait

South: Ass. Lot No. 003

East: AL# 005, Sec. 6

West: Ass. Lot No. 011[37]

In view of the foregoing, the RTC concluded that petitioners acted in bad faith and, accordingly, ordered them to vacate the property and pay respondent: (a) rent in the amount of P5,000.00 per month from September 2005, plus legal interest of six percent (6%) per annum until respondent is restored to its possession; and (b) attorney's fees and litigation expenses amounting to P125,000.00.[38]

Dissatisfied, petitioners moved for reconsideration,[39] which was, however, denied in an Order[40] dated November 18, 2013, prompting them to elevate the case to the CA through a petition for certiorari.[41]

The CA Ruling

In a Decision[42] dated September 21, 2015, the CA affirmed the RTC's findings insofar as it held that respondent was the prior possessor of the subject lot, but remanded the case to the RTC for the determination of the proper amount of monthly rentals payable to respondent.[43]

The CA noted that the parties in this case are claiming one and the same property, i.e. the lot covered by Tax Declaration No. 0056,[44] and that respondent's prior possession de facto thereof has been proven as she occasionally visited the same, paid realty taxes, and even requested for a survey authority thereon.[45] Thus, since a person need not have his/her feet on every square meter of the ground before it can be said that he/she is in possession of the land, the CA ruled that respondent did not lose her possession of the subject lot, although she resided somewhere else and only occasionally visited the same.[46]

Meanwhile, the CA rejected petitioners' argument that their possession of the subject lot from the time they purchased the same in August 2005 should be tacked to Alvarez's possession. According to the CA, the concept of tacking refers to legal possession and does not apply to physical possession, which is the issue in suits for forcible entry such as this case.[47] The CA also echoed the RTC's observation that petitioners' documentary evidence are replete with inconsistencies, such as the boundary description of the property they acquired from Alvarez, as stated in the Deed of Sale vis-a-vis Tax Declaration Nos. 0052 and 019-0233-A.[48]

Anent the award of monthly rent to the respondent, the CA noted that the RTC did not cite any document showing realty assessment of the land, justify the award of P5,000.00 monthly rental in favor of respondent.[49] In this regard, the CA remanded the case to the RTC for the determination of the monthly rentals due respondent.[50]

Dissatisfied, petitioners moved for reconsideration,[51] which was, however, denied by the CA in a Resolution[52] dated April 14, 2016; hence, the present petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA erred in holding that respondent was in prior possession of the subject lot.

The Court's Ruling

The petition is denied.

At the outset, it must be emphasized that as a rule, the Court is not a trier of facts^[53] and does not normally embark in the evaluation of evidence adduced during trial.^[54] This Rule, however, allows exceptions, such as instances when the findings of fact of the trial court are conflicting or contradictory with those of the CA,^[55] as in this case where the conflicting findings of facts of the MCTC on one hand, and the RTC and the CA on the other, warrant a second look for the proper dispensation of justice.

After a thorough study of this case, the Court agrees with the findings of the CA and the RTC that respondent was the prior possessor of the subject lot.

The present controversy involves two (2) properties which are separate and distinct from each other. The first property is the 5.78-hectare lot covered by Tax Declaration No. 0056, while the second is the eight (8)-hectare parcel of land under Tax Declaration No. 0052 (now under Tax Declaration No. 019-0233-A). Petitioners contend that they are in possession of the second lot, as the same was purportedly acquired by them from Alvarez through a Deed of Sale. However, it was uncovered that due to the anent the identity of the property sold, petitioners were actually occupying the first subject lot and, hence, were erroneously claiming the same.^[56] In truth, the subject lot was not the property sold to petitioners by Alvarez, but was the one which respondent acquired from Abid in September 1995 by virtue of a Waiver of Rights.^[57] In fact, this first lot was the subject of Alvarez's handwritten letter^[58] dated August 2, 2005 and Sinumpaang Salaysay^[59] dated July 14, 2006, acknowledging respondent's ownership over it. With the true identity of the subject lot having been established, it must nonetheless be determined whether or not respondent had prior de facto possession over the same, considering that this case stemmed from a forcible entry complaint.

It is well-settled that the only question that the courts must resolve in forcible entry or unlawful detainer cases is who between the parties is entitled to the physical or material possession of the property in dispute.^[60] The main issue is possession de facto, independently of any claim of ownership or possession de jure that either party may set forth in his pleading. The principal issue must be possession de facto, or actual possession, and ownership is merely ancillary to such issue.^[61] In forcible entry, the plaintiff must prove that it was in prior physical possession of the premises until it was deprived thereof by the defendant.

In this case, respondent had sufficiently proven her prior possession de facto of the subject lot. Records disclose that respondent occasionally visited the subject lot since she acquired the same from Abid in September 1995. She even paid the lot's realty taxes, as well as requested for a survey authority thereon.^[62] In fact, she submitted old photographs^[63] showing herself on the subject lot, the identity of which petitioners did not contend. Notably, jurisprudence states that the law does not require a person to have his feet on every square meter of the ground before it can be said that he is in possession thereof.^[64] In *Bunyi v. Factor*,^[65] the Court held that "visiting the property on weekends and holidays is evidence of actual or physical possession. The fact of her residence somewhere else, by itself, does not result in loss of possession of the subject property."^[66] In contrast, petitioners themselves claim that they began occupying the subject lot only in August 2005, after Alvarez executed the corresponding Deed of Sale in their favor.^[67] Hence, in light of the foregoing, there is no doubt that respondent had prior de facto possession.

At this juncture, the Court finds it proper to dispel petitioners' mistaken notion that their possession should be tacked onto that of Alvarez who allegedly occupied the property since 1974. In *Nenita Quality Foods Corporation v. Galabo*,^[68] the Court clarified that tacking of possession only applies to possession de jure, or that possession which has for its purpose the claim of ownership, viz.:

True, the law allows a present possessor to tack his possession to that of his predecessor-in-interest to be

deemed in possession of the property for the period required by law. Possession in this regard, however, pertains to possession de jure and the tacking is made for the purpose of completing the time required for acquiring or losing ownership through prescription. We reiterate - possession in forcible entry suits refers to nothing more than physical possession, not legal possession.[69] (Emphases supplied)

As earlier stated, possession de jure is irrelevant because the only question in forcible entry - as it is here - is prior physical possession or possession de facto.

Finally, the Court clarifies that the written report issued by the CENRO of Coron, Palawan,[70] as well as the report of the Office of the Municipal Assessor[71] which - conducted the ocular inspection and public hearing relative to respondent's and Alvarez's conflicting claims back in 2005 and 2006,[72] are of no consequence to this case. As the records show, the MCTC took judicial notice of the foregoing documents in rendering a ruling favorable to petitioners. Nevertheless, the MCTC itself stated that the said reports deal with the conflict between Alvarez and respondent — not between petitioners and respondent. In fact, the report of the Office of the Municipal Assessor states:

DATE: August 30, 2006

FOR: Hon. Mario T. Reyes, Jr., Municipal Mayor

THRU: Hon. Eliseo B. Buenaflor, Municipal Vice[-]Mayor

FROM: Mr. Reynario R. Labrador, Municipal Assessor

SUBJECT: BACK TO OFFICE REPORT RE: TRAVEL TO BARANGAY SAN JOSE THIS MUNICIPALITY TO ATTEND PUBLIC HEARING REGARDING CONFLICT OF OWNERSHIP OF A PARCEL OF LAND BETWEEN JOSEFINA REYES PANGILINAN AND COLUMBINO ALVAREZ[73] (Emphasis supplied)

Meanwhile, the report of the CENRO of Coron, Palawan[74] states:

With sufficient documents to prove the claim of [Alvarez] and our findings that the area is actually occupied and cultivated by his family, [Janet Uri Fahrenbach] [,] with her desire to purchase the land, had it surveyed to be sure of the total area of the land[,], considering that it is covered by Tax Declaration, [and if it is] smaller or bigger than the declared area. Hence, a Survey Authority was issued on July 25, 2005.

x x x x

The inspection was done with positive results that [respondent] and [Alvarez], right then and there[,], agreed that her claim is 5.78 [hectares] covered by Tax Declaration No. 0056. A copy of the handwritten document dated August 2, 2005 is herewith attached.

Based on the certification of the Municipal Assessor[,], the Tax Declaration for [the] 5.78 [-hectare lot] was transferred to [respondent] by virtue of a Waiver of Rights dated September 6, 1995[;] [the same lot] was also conveyed by [Abid] to [Alvarez] by virtue of a Deed of Sale dated July 15, 1995, almost two months ahead of the Waiver of Rights.

x x x x[75] (Emphases supplied)

Thus, these reports clearly relate to the conflict between Alvarez and respondent regarding the ownership of the lot covered by Tax Declaration No. 0056, and not with respect to the possession between petitioners and respondent. In this light, the Court cannot therefore subscribe to the MCTC's conclusion that these reports established petitioners' prior possession of the subject lot. In fact, this conclusion cannot be inferred from the subject reports, which only state that Alvarez was the actual occupant of the area being claimed by

respondent.[76] As already explained, Alvarez's possession is irrelevant, considering that petitioners' alleged possession over the subject lot cannot be tacked onto that of Alvarez in suits for forcible entry, as in this case.

With regard to the rent due respondent, the CA correctly held that since petitioners disturbed respondent's possession of the subject lot, rent is due respondent from the time petitioners intruded upon her possession. Under Section 17, Rule 70 of the Rules of Court, the judgment in cases for forcible entry shall include the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises. However, in *Badillo v. Tayag*,^[77] the Court clarified that reasonable amount of rent in suits for forcible entry must be determined not by mere judicial notice, but by supporting evidence.^[78] Here, since the RTC indeed failed to cite any document showing the assessment of the subject lot, any increase in the realty taxes, and the prevailing rental rate in the area, the CA correctly remanded this aspect to the RTC for proper determination.

Anent the award of attorney's fees, the Court finds the same in order, considering that petitioners' intrusion on respondent's property has compelled the latter to incur expenses to protect her interests.^[79]

WHEREFORE, the petition is DENIED. The Decision dated September 21, 2015 and the Resolution dated April 14, 2016 of the Court of Appeals in CA-G.R. SP No. 133552 are hereby AFFIRMED.

SO ORDERED.

Sereno, C. J., (Chairperson), Leonardo-De Castro, Del Castillo, and Caguioa, JJ., concur.

[1] Dated June 30, 2016. Rollo, pp. 11-35.

[2] Id. at 41-51. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela concurring.

[3] Id. at 53-54.

[4] Id. at 246-252. Penned by Presiding Judge Bienvenido C. Blancaflor.

[5] Id. at 43.

[6] Id. at 42 and 67.

[7] Id. at 64.

[8] Id. at 42-43.

[9] Id. at 64.

[10] Id. at 43 and 68.

[11] Id. at 43 and 69.

[12] Id. at 43.

[13] Id.

[14] Dated August 30, 2006. Id. at 56-62.

[15] Id. at 43.

[16] Id. at 60.

[17] Dated September 18, 2006. Id. at 73-80.

[18] Id. at 123.

[19] Id. at 187-203. Penned by Judge Lovelle Moana R. Hitois.

[20] Id. at 195.

[21] Records, Vol. I, pp. 135-136.

[22] Id. at 128-130. Erroneously referred to in the MCTC Decision as "Office of the Municipal Court."

[23] Rollo, p. 199.

[24] Id.

[25] Id. at 199-200.

[26] Id. at 44.

[27] Id. at 246-252.

[28] See id. at 252.

[29] Id. at 248.

[30] See id. at 252.

[31] Id. at 249-250.

[32] Id. at 250-251.

[33] Id. at 251. See also Declarations of Real Property for Tax Declaration Nos. 0052 and 019-0233-A; id. at 85-86.

[34] Id. at 252.

[35] See id. at 251.

[36] See id.

[37] Id.

[38] Id. at 252.

[39] See Motion for Reconsideration dated October 8, 2013; id at 253-265.

[40] Id. at 267-272.

[41] Id. at 273-301.

[42] Id. at 41-51.

[43] Id. at 51.

[44] Id. at 48.

[45] Id. at 45.

[46] Id. at 48.

[47] Id. at 49.

[48] Id.

[49] Id. at 50.

[50] Id. at 51.

[51] See Motion for Reconsideration dated October 14, 2015; id. at 328-339.

[52] Id. at 53-54.

[53] *Spouses Dela Cruz v. Spouses Capco*, 729 Phil. 624, 633 (2014), citing *Continental Cement Corporation v. Filipinos (PREFAB) Systems, Inc.*, 612 Phil. 524, 535 (2009).

[54] *INC Shipmanagement, Inc. v. Moradas*, 724 Phil. 374, 403 (2014).

[55] Id. at 403-404.

[56] Rollo, pp. 48, 195, and 249.

[57] Id. at 67.

[58] Id. at 68.

[59] Id. at 69.

[60] See *Mangaser v. Ugay*, 749 Phil. 372, 381-382 (2014).

[61] See *Echanes v. Spouses Hailar*, G.R. No. 203880, August 10, 2016.

[62] Rollo, pp. 45.

[63] Records, Vol. II, pp. 563-566.

[64] *Mangaser v. Ugay*, supra note 60, at 382.

[65] 609 Phil. 134 (2009).

[66] Id. at 143.

[67] Rollo, pp. 73-80.

[68] 702 Phil. 506 (2013).

[69] Id. at 519.

[70] Records, Vol. I, pp. 135-136.

[71] Id. at 128-130.

[72] Rollo, p. 199.

[73] Records, Vol. I, p. 128.

[74] Id. at 135-136.

[75] Id.

[76] Id. at 128-130 and 135-136.

[77] 448 Phil. 606 (2003).

[78] Id. at 623, citing *Herrera v. Bollos*, 424 Phil. 851, 858 (2002).

[79] See Article 2208 of Civil Code of the Philippines. See also Sec. 17, Rule 70 of Rules of Court.

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