

**IGNACIO WONG, PETITIONER, VS. HON. LUCAS D. CARPIO, AS  
PRESIDING JUDGE, COURT OF FIRST INSTANCE OF DAVAO DEL SUR,  
BRANCH V AND MANUEL MERCADO, RESPONDENTS.**

*G.R. No. 50264. October 21, 1991*

Ponente: BIDIN, J.

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**BIDIN, J.:**

This is a petition for review on certiorari, certified to this Court by the Court of Appeals as it involves purely question of law, seeking the annulment of the September 29, 1978 decision of the then Court of First Instance\* of Davao del Sur, Branch V, in Civil Case No. 1258 which reversed the February 20, 1978 decision of the Municipal Court of Sta. Maria\*\*, Davao del Sur in an action for Forcible Entry (Civil Case No. 13) ordering the dismissal of the complaint as well as the counterclaim.

The undisputed facts of this case, as found by both the trial court and the then Court of First Instance of Davao del Sur, are as follows:

"On the basis of the admission of parties in their respective pleadings, the oral testimonies of all witnesses for both plaintiff and defendants and the documentary evidence offered and admitted this Court finds that plaintiff Manuel Mercado acquired his rights to possess the land in litigation, particularly lot 3 (LRC) Pcs-295, (situated at Colonga, Sta. Maria, Davao del Sur) and which is particularly de-scribed and embraced in Transfer Certificate of title No. (T-4244) T-972 from William Giger by virtue of a deed of sale with right to repurchase which was executed in 1972 for a consideration of P3,500.00 (testimony of plaintiff, T.S.N., p. 3, hearing of January 7, 1977). Then, in 1973, William Giger again asked an addition-al amount of P2,50.00 from plaintiff and so he required William Giger to sign a new deed of Pacto de Retro Sale (Exhibit "A") on November 5, 1973 at Davao City before Notary Public Gregorio C. Batiller (T.S.N., p. 5, hearing of January 7, 1977). In 1972, plaintiff began harvesting only the coconut fruits and he paid the taxes on the land (Exhibits B to E) for Mr. Giger. He went periodically to the land to make copra but he never placed any person on the land in litigation to watch it. Neither did he re-side on the land as he is a businessman and storekeeper by occupation and resides at Lower Sta. Maria, Davao del Sur while the land in li-tigation is at Colongan, Sta. Maria. Neither did he put any sign or hut to show that he is in actual possession (p. 8, T.S.N., p. 7, hear-ing of January 14, 1978). He knew defendants laborers were in the land in suit as early as August, 1976 and that they have a hut there but he did not do anything to stop them. Instead plaintiff was happy that there were people and a hut on the land in suit (p. 14, T.S.N., hearing of January 14, 1978).

Before July, 1976, defendant Ignacio Wong went to the land in litigation to find out if there were other people residing there or claim-ing it besides the owner and he found none. So, in July, 1976, defendant Ignacio Wong bought the parcel of land in litigation from William Giger and his wife Cecilia Valenzuela (Exhibit 5). After the execution of Exhibit 5, defendant Ignacio Wong asked for the delivery of the title to him and so he has in his possession TCT No. (T-4244) T-974 (Exhibit 6) in the name of William Giger. Mr. Wong declared the land in suit for taxation purposes in his name (Exhibit 7). He tried to register the pacto de retro sale with the Register of Deeds by paying the registration fee (Exhibit 8) but due to some technicalities, the pacto de retro sale could not be registered. The defendant Wong placed laborers on the land in suit, built a small farm house

after making some clearings and fenced the boundaries. He also placed signboards (T.S.N., pp. 14-15, hearing of September 15, 1977). On September 27, 1976, plaintiff Manuel Mercado again went to the land in suit to make coprax. That was the time the matter was brought to the attention of the police of Sta. Maria, Davao del Sur and the incident entered in the police blotter (Exhibit 11). Then on November 18, 1976, defendant Wong ordered the hooking of the coconuts from the land in litigation and nobody disturbed him. But on November 29, 1976, defendant received a copy of plaintiff's complaint for forcible entry with summons to answer which is the case now before the Court. During the pendency of this instant complaint for forcible entry, spouses William Giger and Cecilia Valenzuela filed a case for reformation of instrument with the Court of First Instance of Digos, Davao del Sur against plaintiff Mercado (Exhibit 4). The case pertains to Exhibit "A" of plaintiff." (pp. 1--3, CA Decision, pp. 82-84, Rollo).

On the basis of the aforestated undisputed facts, the Municipal Court of Sta. Maria, Davao del Sur in its February 20, 1978 Decision found that herein petitioner (defendant Ignacio Wong) had prior, actual and continuous physical possession of the disputed property and dismissed both the complaint and the counterclaim.

On appeal, the then Court of First Instance of Davao del Sur, in its September 29, 1978 Decision drew a completely different conclusion from the same set of facts and ruled in favor of here-in private respondent (plaintiff Manuel Mercado). The decretal portion of the said decision, reads:

"WHEREFORE, the Court finds the plaintiff to have taken possession of the property earlier in point of time and defendant is an intruder and must, as he is hereby ordered to return, the possession of the land in question to the plaintiff, paying a monthly rental of P400.00 from August, 1976, till the property is returned with costs against the defendant. Judgment is reversed."

Petitioner filed the instant petition with the Court of Appeals. But the Court of Appeals, in its March 1, 1979 Resolution\* found that the only issue is a pure question of law - the correctness of the conclusion drawn from the undisputed facts and certified the case to this Court.

In its April 4, 1979 Resolution, the Second Division of this Court docketed the case in this Court and considered it submitted for decision.

Petitioner alleged two (2) errors committed by respondent judge, to wit:

A) THE CONCLUSION DRAWN BY RESPONDENT JUDGE THAT PETITIONER IS AN INTRUDER IS WITHOUT FACTUAL AND LEGAL BASIS FOR PURPOSES OF A FORCIBLE ENTRY.

B) THE CONCLUSION DRAWN BY RESPONDENT JUDGE THAT PETITIONER MUST PAY A MONTHLY RENTAL OF P400.00 FROM AUGUST, 1976 TILL THE PROPERTY IS RETURNED HAS NO LEGAL AND FACTUAL BASIS.

The petition is without merit.

Petitioner, in claiming that the private respondent has not established prior possession, argues that private respondent's periodic visit to the lot to gather coconuts may have been consented to and allowed or tolerated by the owner thereof for the purposes of paying an obligation that may be due to the person gathering said nuts and that a person who enters a property to gather coconut fruits and convert the same to coprax may only be a hired laborer who enters the premises every harvest season to comply with the contract of labor with the true owner of the property.

The argument is untenable.

It should be stressed that "possession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of our will, or by the proper acts and legal formalities for acquiring such

right." (Art. 531, Civil code; Rizal Cement Co., Inc. vs. Villareal, 135 SCRA 15 [1985]); and that the execution of a sale thru a public instrument shall be equivalent to the delivery of the thing, unless there is stipulation to the contrary x x x. If, however, notwithstanding the execution of the instrument, the purchaser cannot have the enjoyment and material tenancy of the thing and make use of it herself, because such tenancy and enjoyment are opposed by another, then delivery has not been effected. (Paras, Civil Code of the Philippines, Vol. II, 1989 Ed., p. 400).

Applying the above pronouncements on the instant case, it is clear that possession passed from vendor William Giger to private respondent Manuel Mercado by virtue of the first sale a retro (Ex-hibit A), and accordingly, the later sale a retro (Exhibit 5) in favor of petitioner failed to pass the possession of the property because there is an impediment - the possession exercised by private respondent. Possession as a fact cannot be recognized at the same time in two different personalities except in the cases of co-possession. Should a question arise regarding the fact of possession, the present possessor shall be preferred; if there are two possessions, the one longer in possession, if the dates of possession are the same, the one who presents a title; and if these conditions are equal, the thing shall be placed in judicial deposit pending determination of its possession or ownership through proper proceedings (Art. 538, Civil Code).

As to petitioner's query that "Is the entry of petitioner to the property characterized by force, intimidation, threat, strategy, or stealth in order to show that private respondent has had possession so that the case is within the jurisdiction of the inferior court?" (p. 15, Petition; p. 16, Rollo). The same is answered in the affirmative.

The act of entering the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property, and this is all that is necessary. Under the rule, entering upon the premises by strategy or stealth is equally as obnoxious as entering by force. The foundation of the action is really the forcible exclusion of the original possessor by a person who has entered without right. The words "by force, intimidation, threat, strategy, or stealth" include every situation or condition under which one person can wrongfully enter upon real property and exclude another who has had prior possession therefrom. If a trespasser enters upon land in open daylight, under the very eyes of person already clothed with lawful possession, but without the consent of the latter, and there plants himself and excludes such prior possessor from the property, the action of forcible entry and detainer can unquestionably be maintained, even though no force is used by the trespasser other than such as is necessarily implied from the mere acts of planting himself on the ground and excluding the other party. (Tolentino, Civil Code of the Philippines, Vol. II, 1983 Ed., pp. 243-244; Drillon vs. Gaurana, 149 SCRA 342 [1987]).

Anent the award of rentals in favor of private respondent, the same is in order. Petitioner's argument that there is no legal or factual basis for the payment of monthly rentals because bad faith on the part of petitioner was never proved" deserves no merit.

It should be noted that possession acquired in good faith does not lose this character except in the case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully. (Art. 528, Civil Code).

Possession in good faith ceases from the moment defects in the title are made known to the possessors, by extraneous evidence or by suit for recovery of the property by the true owner. Whatever may be the cause or the fact from which it can be deduced that the possessor has knowledge of the defects of his title or mode of acquisition, it must be considered sufficient to show bad faith. (Tolentino, Civil Code of the Philippines, Vol. II, p. 226). Such interruption takes place upon service of summons (Manotok Realty vs. Judge Tecson, 164 SCRA 587 [1988] citing Mindanao Academy, Inc. v. Yap (13 SCRA 190 [1965])). In the latter case, this Court held:

"x x x Although the bad faith of one party neutralizes that of the other and hence as between themselves their rights would be as if both of them had acted in good faith at the time of the transaction, this legal fiction of Yap's good faith ceased when the complaint against him was filed, and consequently the court's declaration of liability for the rents thereafter is correct and proper. A possessor in good faith is entitled to the fruits only so long as his possession is not legally interrupted, and such interruption takes place upon service of judicial summons (Arts. 544 and 1123, Civil Code)."

A perusal of the records of the case shows that petitioner received private respondent's complaint for forcible entry with summons on November 29, 1976 (Rollo, p. 46). His good faith therefore ceased on November 29, 1976. Accordingly, the computation of the payment of monthly rental should start from December, 1976, instead of August, 1976.

WHEREFORE, with the modification that the computation of the monthly rental should start from December, 1976 instead of August, 1976, the September 29, 1978 decision of respondent judge is Affirmed in all other respects, with costs against petitioner.

**SO ORDERED.**

Fernan, C.J., (Chairman), Gutierrez, Jr., Feliciano, and Davide, Jr., JJ., concur.

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\* Presided by Hon. Judge Lucas D. Carpio.

\*\* Presided by Actg. Judge Rosalinda L. Montejo.

\* Penned by then Justice Hugo Gutierrez and concurred in by Justices Lourdes San Diego and Serafin Cuevas.

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