

**GUILLERMO NACTOR, SPS. ANSELMO & ELENA NACTOR,
PRECILIANO NACTOR, JOSE NACTOR & GLORIA NACTOR
ASSISTED BY HER HUSBAND MANUEL CLAYTOS, PETITIONERS, VS.
INTERMEDIATE APPELLATE COU...**

G.R. No. 74122. March 15, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking to set aside or reverse the decision of the Intermediate Appellate Court[**] (now Court of Appeals) dated January 30, 1986 in AC G.R. SP No. 07595 entitled Guillermo Nactor, et al. vs. Nicolas A. Gerochi, Jr. affirming the decision of the Regional Trial Court, National Capital Region, Br. 139 in Civil Case No. 9307 on June 4, 1985, which in turn affirmed in toto the appealed decision of the Metropolitan Trial Court in Civil Case No. 25607 dated September 5, 1984. Respondent Court of Appeals dismissed the petition seeking to set aside the Omnibus Order of the Regional Trial Court not only because the decision of the said court had already become final but also because on the merits of said decision, the affirmance thereof was in complete accord both with the facts and the law on the matter.

The antecedent facts of this case as found by the Metropolitan Trial Court are as follows:

Sometime in 1962, the herein plaintiffs-respondents (Spouses Melchor) allowed Guillermo Nactor (one of the defendants-petitioners) to build a shanty on their property as at that time they were intending to go abroad. Guillermo Nactor occupied the premises without any contract and without any rental, but with the understanding that he would watch over the property of the plaintiffs so as to prevent squatters from entering the said property. Instead of complying with the said agreement, Guillermo Nactor allowed his relatives to build houses inside the said property without the knowledge and consent of the Melchor spouses, so that when the latter returned to the Philippines, they discovered that many people were squatting inside their property. Hence, they lost no time in demanding that Guillermo Nactor and his group vacate the property in question. When petitioners refused to vacate the premises, the Melchor spouses filed a complaint with the Barangay, which was later elevated to the Metropolitan Trial Court, Branch 64, Makati, Metro Manila. The trial court decided the case in favor of the Melchor spouses on September 5, 1984, the dispositive portion of the decision reading as follows:

"WHEREFORE, judgment is hereby rendered ordering the defendants and any and all persons claiming right/ title under them to vacate the lot at 7713 St. Paul Street, Barangay San Antonio Village, Makati, Metro Manila and surrender peaceful occupation and possession thereof to plaintiffs and to pay jointly and severally to the latter a monthly rental of P100.00 from the date of the filing of the complaint on 30 August 1983 until they finally vacate the premises and to demolish and/or transfer all the improvements they have introduced thereon. Defendants are likewise ordered to pay the Plaintiffs P2,000.00 as attorney's fees and litigation expenses plus costs of suit. (Rollo, p. 17)

On appeal, the Regional Trial Court of Makati affirmed in toto the decision of the Metropolitan Trial Court on

June 4, 1985, with the following observations and conclusions:

"After a careful perusal of the evidence on record and the supporting arguments proffered by plaintiffs-appellees in their memorandum, this court finds no cogent reason to disturb the decision of the Court a quo, to which reference is hereby made.

"Furthermore, as admitted by the defendants, particularly, defendant-appellant Guillermo Nactor, that his occupancy of the said land was by mere tolerance and generosity of plaintiffs-appellees, allowing him to have a temporary place to build his abode, while the couple — plaintiffs-appellees — were still abroad.

"Evidently, while the actual physical possession might have been temporarily transferred to defendant-appellant Guillermo Nactor as a caretaker thereof for almost 20 years, the legal and juridical possession thereof remains in the hands of plaintiffs-appellees, more especially so that the land in question falls within the protective mantle of indefeasibility of the torrens system.

"Acts merely tolerated, and those executed clandestinely and without the knowledge of the possessor of a thing or by violence, do not affect possession (Art. 537, New Civil Code; Mercedes vs. Go Bio, et al., 78 Phil. 279).

'Acts of possessory character executed in virtue of license or by mere tolerance of the owner shall not be available for the purpose of possession.' (Art. 1119, New Civil Code) (Italics supplied)

"To deny plaintiffs-appellees or their right to physically repossess the said land as uncontested and uncontroverted lawful owners thereof, would be tantamount to extending premium, if not license, to a pretender of 'lawful possession' arising only from the charity and benevolence of its owners.

"This Court, both in law and equity, under these antecedents, and after having extended benevolence to defendants-appellants for so long, should now allow plaintiffs the full enjoyment and use of their property.

"WHEREFORE, in view of the foregoing, decision appealed from is hereby AFFIRMED IN TOTO, with costs against defendants-appellants." (pp. 17-18, Rollo).

The defendants-petitioners moved for reconsideration on June 24, 1985, which motion was denied by respondent Judge, in an Omnibus Order dated October 22, 1985, for having been filed after the decision had become final and executory. Simultaneously, on motion of plaintiffs-appellees, a writ of execution was issued.

The motion for reconsideration having been denied, defendants-petitioners filed a petition for review on certiorari on October 31, 1985 with the Court of Appeals.

On January 30, 1986, the Court of Appeals affirmed the decision of the Regional Trial Court, the pertinent portion of the affirmance reading:

"The petition is thus without merit. Not only had the respondent Judge's decision become final, and beyond the respondent Judge's competence to vary, set aside or modify, but that on the merits of the said decision, the affirmance thereof by the respondent Judge is in complete accord both with the facts and the law applicable on the matter. No reversible error has, therefore, been committed.

"WHEREFORE, the petition for review is hereby DISMISSED, with costs."

The defendant-petitioner filed a motion for reconsideration dated February 22, 1986 which motion was denied on March 21, 1986 for lack of merit.

Hence, this petition.

In the resolution dated June 11, 1986, the Second Division of this Court, before acting on the petition, required the petitioners to comply with the rule by submitting to the Court proof of service of the petition on the Intermediate

Appellate Court and the adverse party and to sign the petition, the verification and the jurat (Rollo, p. 22). However, before petitioners could comply with said requirements which were filed on August 26, 1986, (Rollo, pp. 40-47; 56) respondents filed their comment dated June 30, 1986 (Rollo, p. 23). In the Resolution of October 15, 1986, the court required the petitioners to file a reply to the comment of counsel for respondent (Rollo, p. 58). On October 28, 1986, respondents filed an urgent motion for Exigent Resolution and Refutal to the Petition for Review on certiorari (Rollo, p. 59).

The resolution of November 10, 1986, gave due course to the petition and required both parties to file their respective memoranda (Rollo, p. 67). On that same date, however, the petitioners thru counsel filed their manifestations/explanation (Rollo, p. 68) stating that they are therewith submitting the attached Supplemental Reply to the comment of counsel for the respondents (Rollo, p. 78, Annex "D"). Respondents filed their memorandum on December 15, 1986 (Rollo, p. 91), and a motion for early conclusive resolution and/or final resolution on February 19, 1987 (Rollo, p. 98), followed by another motion reiterating early conclusive resolution and/or final decision by the same respondents on March 23, 1987 (Rollo, p. 100).

On April 8, 1987, petitioners filed their comment on the motion for early resolution while respondents filed their urgent ex-parte motion to withdraw deposit and prayed that the amount be released through their authorized representative and attorney-in-fact (Rollo, p. 107). A special power of attorney was attached thereto (Rollo, p. 110). In the resolution of June 3, 1987, the court required the private respondents to file a reply to the comments on the motion for early resolution filed by counsel for petitioners and petitioners to comment on the urgent ex-parte motion of private respondents to withdraw deposit. The latter was filed on July 3, 1987 (Rollo, p. 114).

Petitioners raised the following assignments of error:

I

THE DECISION ERRED IN RULING THAT THE MOTION FOR RECONSIDERATION FILED ON THE 24 OF JUNE 1985 IS ALREADY LATE BY ONE DAY, THE PRECEDING DAY, JUNE 23 BEING A SUNDAY.

II

THE DECISION ERRED IN BINDING THEREIN THE DEFENDANTS IN THE FORCIBLE ENTRY CASE WHICH WAS PREVIOUSLY DISMISSED.

III

THE DECISION ERRED IN NOT DISMISSING THE CASE FOR WANT OF JURISDICTION.

Otherwise stated, the issues raised in this case are two fold: (1) as regards the timeliness of the motion for reconsideration filed and (2) the lack of cause of action on the part of the complainants and lack of jurisdiction to try the case on the part of the court a quo.

Petitioners contend that the motion for reconsideration was filed on time with the Regional Trial Court on June 24, 1985 because the fifteenth day, June 23, 1985 is a Sunday.

There is merit in this contention.

Pertinent thereto, Section 39 of the Judiciary Reorganization Act, B.P. 129 provides:

"The period for appeal from final orders, resolutions, awards, Judgments, or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment or decision appealed from: x x x"

On the other hand, the rule on the computation of periods for filing of pleadings is now embodied in Article 13 of the Civil Code of the Philippines which provides:

"Art. 13. xxx xxx xxx

In computing a period, the first day shall be excluded, and the last day included."

and also in the Revised Administrative Code which likewise provides:

"Section 13. Computation of time. — In computing any fixed period of time, with reference to the performance of an act required by law or contract to be done at a certain time or within a certain limit of time, the day or date, or day from which the time is reckoned, is to be excluded and the date of performance, included, unless otherwise provided."

However, in case the last day is a Sunday or a legal holiday, it is understood that where the time refers to a period prescribed or allowed by the Rules of Court, by an order of the court, or by any other applicable statute, the last day should really be the next day: provided said day is neither a Sunday nor a legal holiday. The law cannot require compliance on a day when entities supposed to receive pleadings or documents are closed in view of the holiday.

Thus, as authoritatively formulated by this Court, the computation of the appeal periods is to the effect that the first day shall be excluded but the last day of the period so computed is to be included unless it is a Sunday or a legal holiday in which event the time shall run until the end of the next day which is neither a Sunday nor a holiday (*Kabigting v. Acting Director of Prisons*, 6 SCRA 281 [1962]; *De las Alas v. Court of Appeals*, 83 SCRA 200 [1978]. Accordingly, in said cases, the period to perfect an appeal is extended ipso jure to the first working day immediately following.

It will be noted, however, that petitioners' motion for reconsideration was denied by the Regional Trial Court in its Omnibus Order, not only because said motion was purportedly filed late but also for lack of merit. Thus, in said Order, the Court ruled as follows:

"In passing though, even a careful consideration of the grounds relied upon by defendants-appellants in their Motion for Reconsideration as well as the opposition thereto by plaintiffs-appellees, thru counsel, this Court finds no cogent reason to alter its aforesaid decision sought to be reconsidered, as the main grounds relied upon by defendants-appellants had been amply discussed in the decision of this Court in affirmance of the one rendered by the court a quo." (Original Records, p. 20).

On review, the Court of Appeals was even more specific in denying the petition which seeks, to set aside aforesaid Order, not only because the decision of the Regional Trial Court has ostensibly become final but for lack of merit.

All these notwithstanding, petitioners would have this Court review the findings and conclusions of the court a quo which have been affirmed in toto not only by the Regional Trial Court but also by the Court of Appeals, on the basis of technicalities obviously resorted to only for purpose of delay.

Petitioners Allege that it is only Guillermo Nactor whose entrance into the premises was with the knowledge and concept of the plaintiffs, who can be bound by the judgment in the unlawful detainer case but not the rest of the defendants whose company was termed by the plaintiffs as unlawful and/or illegal, without any written consent and/or authority from them. They claim that such defendants should therefore be changed with forcible entry, but without compliance with the Rules on Forcible Entry cases among which are, a written demand to vacate which must be definite, petitioners claim that the complaint is devoid if a sufficient cause of action and invests upon the court on jurisdiction to try and decide the case (Rollo, pp. 10-11).

The allegation is untenable.

Aside from the findings of the trial court itself, that there is no contract at all between the plaintiffs and defendants and that the occupation of the property by the latter was only by tolerance of the former, such fact was confirmed by the testimony of the principal defendant Guillermo Nactor, whose testimony was quoted in the decision of the court a quo as follows:

“Q. You mean to tell the Honorable Court all the defendants in this case were allowed to stay in this place?

"A. Yes, Sir, spouses Melchor told us that we can stay there so that nobody will stay in the place." (TSN dated May 9, 1984)."

It will likewise be noted that defendants, all surnamed Nactor are the relatives of Guillermo Nactor who was the caretaker thereof. It is obvious that they gained access to the property through him and occupied the same under his responsibility. Consequently, if Guillermo Nactor has admittedly lost the right to stay on or occupy the property in question, with all the more reason have the rest of the defendants who are only occupying the property under him, no right to stay on the premises.

Thus, the trial court in unmistakable language, in ordering that the property be vacated and possession thereof surrendered peacefully to the plaintiffs, included all the defendants and any and all persons claiming right/title under Guillermo Nactor.

While it is true that the instant case was tried by the court a quo on the basis of the unlawful detainer charge instead of forcible entry for the rest of the defendants excluding Guillermo, it is an elementary rule of procedure that what is controlling is not the caption of the case which does not materially alter the situation but the allegations therein that determine the nature of the action and even without the prayer for a specific remedy, proper relief may nevertheless be granted by the court if the facts alleged in the complaint and the evidence introduced so warrant (*Ras v. Sua*, 25 SCRA 158-159 [1968]). Besides since the rest of the petitioners were on the property under the apparent protection of Guillermo, an unlawful detainer case (and not necessarily one of forcible entry) may properly be used against them.

Still further, petitioners claim that they fall within the protective mantle of P.D. No. 1517 “Urban Land Reform” as per Proclamation Nos. 1767 and 1967, as amended by Proclamation No. 2284. However, the records show that the property in question is outside the DECLARED URBAN LAND REFORM ZONE” (ULRZ), and situated on the northeast side along Saint Paul Road, has never been within the areas covered by BOUNDARY DESCRIPTION PURSUANT TO PROCLAMATION NO. 1967, as certified by the Human Settlements Regulation Commission. (Annexes "A" and "A-1", Rollo, pp. 28 & 29).

In resume, petitioners did not dispute the fact that private respondents are the lawful owners of the property in question, that Guillermo Nactor and the rest of the defendants are occupying the property only by tolerance of the owners and that under whatever remedy private respondent may avail themselves of, to enforce their rights, petitioners have to vacate the property because they have no right to stay therein. The main thrust therefore, of their objection is not on the merits of their claim but on the technicality that the nature of the action taken by the private respondents is erroneous. That the position of petitioners is totally devoid of merit, is shown by the fact that the end result would be the same.

PREMISES CONSIDERED, the assailed decision of the Court of Appeals is AFFIRMED.

This Decision is immediately executory.

SO ORDERED

Yap, (Chairman), Melencio-Herrera, Padilla, and Sarmiento, JJ., concur.

[*] Said Appellate Court is hereby ordered impleaded.

[**] Penned by CA Justice Nathanael P. De Pano, Jr., concurred in by Justices Jose A.R. Melo and Rizalina S. Bonifacio-Vera.

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