

SILVINO P. PIANO, RUFINO PIANO, VICTORINO PIANO, CIGELBERTO PIANO, LAZARO CENIZA, GABINO GALO, AND PEDRO GALO, PETITIONERS, VS. HON. COURT OF APPEALS, JUSTINA VDA. DE ZAMORA, AN...

G.R. No. 75439. January 26, 1989

Ponente: PARAS, J.

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PARAS, J.:

The Decision of respondent Intermediate Appellate Court[*] dated July 22, 1986 in its AC-G.R. No. 05857 which set aside the decision of the Regional Trial Court of Ormoc City and affirmed the decision of respondent Municipal Trial Court is now assailed in this petition for review on certiorari.

The facts, as shown by the evidence on record, that gave rise to this case are as follows: Eutiquio Zamora, husband of Justina Vda. de Zamora, bought on January 7, 1934 the possessory rights of the spouses Vicente Denso and Elena Denso in fifty-four (54) hectares of public land situated in Barangay Lao, Ormoc City. He cultivated the land and planted thereon bananas, bamboo and corn. At his instance, the land was surveyed, and a sketch plan was prepared which he attached to his application for a Nipa-Bacauan Plantation Permit from the Bureau of Forestry.

In 1969 Zamora went to Manila to follow up his application. It was on this occasion that he met Silvino Piano, an old acquaintance and a resident of San Juan, Paranaque, Metro Manila. Zamora confided to Silvino his problem in following up his application in the Bureau of Forestry since he did not have the assistance of a lawyer and not enough funds to boot. This led to the execution of a "Salabutan" or agreement between them which they ratified before a notary public on November 7, 1969.

In that agreement Zamora agreed to give Silvino Piano an equal share in the land applied for provided the latter would shoulder the expenses for Zamora's application including the services of a lawyer to follow it up in the Bureau of Forestry until approved. Zamora also agreed to allow Piano to possess and cultivate one-half (1/2) of the land in question.

However, on February 4, 1974, without the knowledge of Zamora, Piano applied for a fishpond permit over the entire land subject of Zamora's Nipa-Bacauan application.

A month later, Piano convinced Zamora to let him (Piano) apply for a fishpond permit over the land, on the promise that whichever of their applications (Zamora's or Piano's) may be approved by the Government, they would divide the land equally between them. Another "Salabutan" or agreement was signed by them on March 12, 1974.

Piano went to Ormoc in 1974 and began clearing a five-hectare portion of the land in question for the construction of a fishpond, while Zamora and his family continued cultivating and harvesting the fruits of the remaining hectares subject of his Nipa- Bacauan application. Everything went well until Zamora died in April, 1977.

Zamora's widow and son continued the cultivation of the land left by him while waiting for the approval of his Nipa-Bacauan plantation permit which they thought was still being pursued by Piano or the lawyer he supposedly hired.

On April 26, 1982 Piano and his companions entered the land of the Zamoras and employing force, threats and intimidation, they harvested the nipa palms, bamboo, bananas and other crops thereon. Piano claimed that the whole of Lot 6144 is covered by his fishpond application, hence, belongs to him. The Zamoras immediately reported to the police authorities the forcible seizure of their land by Piano.

On November 12, 1982, a complaint for Forcible Entry and Illegal Detainer was filed by the respondents in the Municipal Trial Court of Ormoc City. Its decision was in favor of the Zamora heirs, the dispositive portion reading as follows:

"WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against defendant Silvino Piano only dismissing the counterclaim and ordering defendant Silvino Piano only:

- a) to restore and surrender possession of the entire area of 54 hectares to plaintiffs, and to pay;
- b) P2,015.00 the value of the coconuts, bamboo poles, and nipa palms per year until the plaintiffs are restored to their actual possession;
- c) P2,500.00 in actual or compensatory damages; and
- d) P21,500.00 for the value of the shrimps, crabs and prawns;
- e) P5,000.00 in moral and exemplary damages;
- f) P2,000.00 in expenses for attorney's fees;
- g) P20,000.00 in rentals per year from April, 1982 until the plaintiffs are restored in their actual possession and;
- h) the costs of suit." (pp. 92--93, Rollo)

but was on appeal reversed by the Regional Trial Court, ruling in part -

"Since forcible entry and/or illegal detainer, under Rule 70 of the Rules of Court, is based on illegal possession or deprivation equal to a period of one year, the proper action herein is therefore not forcible entry and/or illegal detainer. The present case filed before the court below is not the correct action, as the withholding of possession is more than one year. The action should have been accion publiciana over which the court had no jurisdiction, which pertains to the Regional Trial Court under the provisions of Batas Pambansa Blg. 129 and the jurisprudence on the matter." (p. 48, Rollo)

Private respondents filed a petition for review before the Court of Appeals. They alleged that the Regional Trial Court erred in holding that the Metropolitan Trial Court did not have jurisdiction to hear and decide the case because the unlawful withholding of the possession of the 5 hectare-fishpond portion of the land in question and the illegal entry into the remaining portion occurred in 1969 or 1974 and not on April 26, 1982, hence the proper remedy of respondents was an accion publiciana in the Regional Trial Court, not a forcible entry and illegal detainer suit under Rule 70 of the Rules of Court.

The Court of Appeals granted the petition, set aside the decision of the Regional Trial Court and affirmed the decision of the Metropolitan Trial Court.

Hence, the present recourse. It is the contention of petitioners that the complaint for forcible entry and illegal detainer filed by the private respondents in the Municipal Trial Court of Ormoc City is a wrong suit because, (a)

actions for forcible entry and for illegal detainer are distinct and different from each other and therefore both can not be filed in one single action as in this case and (b) the action was filed beyond the one-year period provided for in Rule 70 of the Rules of Court and therefore no longer cognizable by the Municipal Trial Court.

We find the above contentions untenable.

While at first glance forcible entry and illegal detainer both in a single action would be incongruous this was explained by the parties that illegal detainer refers to the five-hectare portion of the land in question and forcible entry with respect to the remaining portion.

Anent the second contention - that the Municipal Trial Court has no jurisdiction because the complaint was filed beyond the one-year period from the time the cause of action accrued, We agree with the following findings of respondent Intermediate Appellate Court -

"When Silvino Piano reneged on the agreements by applying for a fishpond permit over the whole parcel of land with never the intention of halving it between him and Eutiquio Zamora as was made clear in the light of later events, and when he entered upon the land in question on April 26, 1982 claiming possessory rights over the whole parcel of land, he thereby exhibited bad faith and lost his right to possess the fishpond area. As he was never permitted by the Zamoras to enter the larger portion, by the same token of stealth and strategy he committed forcible entry in the more than 40 hectares of land as distinguished from the fishpond area of about 5 hectares.

"There is strategy and stealth here because Silvino Piano made Eutiquio Zamora believe that he would give a helping hand in following up the latter's nipa- bacauan plantation permit application when in truth and in fact he had in mind to acquire the whole area for fishpond purposes as shown by the fact that he applied for the fishpond over the entire area and when he justified his and his co-horts' entry over the land in question by virtue of his said fishpond application.

"When on April 26, 1982 the defendant by his admission no longer recognized as effective the various Salabutan-Agreements, he lost his right as between the two of them to possess even the fishpond area of 5 hectares because that was the final act showing that he reneged on the said agreement. To repeat, Silvino Piano did not follow-up the nipa--bacauan plantation, he did not hire a lawyer for that purpose but instead applied in his own name for a fishpond permit over the whole area contrary to the agreement.

"The bad faith of the defendant therefore should not entitle him to protection under the law. Since on the same date of April 26, 1982 he illegally entered by means of strategy and stealth the rest of the area consisting of more than 40 hectares he committed forcible entry thereof against the plaintiff who since 1934 up to that fateful date were in possession of the land in question.

"Plaintiff filed this case in November 1982. It is not correct therefore to claim that plaintiff filed his complaint beyond the one year period, because on that date as regards the 5 hectares of fishpond, he lost his right to possess it and as regards the rest of the larger portion that was the date he committed forcible entry." (pp. 95-96, Rollo)

There is no question that Zamora had prior possession of the land in question. Piano himself admitted on cross examination that he had developed only a five-hectare portion. (TSN July 17, 1984, p. 92 appearing on p. 422 Original Record). It should be recalled that Zamora allowed Piano to enter and develop this portion because of Piano's undertaking to help Zamora in obtaining approval of his Nipa-bacauan plantation permit application. Piano never performed his part of that bargain, a fact which the private respondents discovered only after Piano and companions entered the land on April 26, 1982 and employing force, threats and intimidation, harvested the nipa palms, bamboo and other crops thereon. This case was filed in November, 1982, well within the one-year period. Consequently, the Metropolitan Trial Court had jurisdiction.

In view of the foregoing considerations, the petition is DENIED and the assailed decision of the Intermediate Appellate Court is AFFIRMED.

SO ORDERED.

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

[*]Penned by Justice Carolina C. Grino-Aquino, concurred in by Justices Jose F. Racela, Jr., Fidel P. Purisima, and Jorge S. Imperial.

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