

GRACIA R. JOVEN, PETITIONER, VS. COURT OF APPEALS, HON. MANUEL A. PATRON, IN HIS CAPACITY AS PRESIDING JUDGE OF THE RTC, BRANCH 59, LUCENA CITY, ROBERTO PAGUIA & FERNANDO LASALA...

G.R. No. 80739. August 20, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

The petitioner was the registered owner of three parcels of land which she mortgaged in favor of the Development Bank of the Philippines. Upon the extrajudicial foreclosure of the mortgage due to her failure to pay her loan, the properties were sold at public auction to DBP as the highest bidder. A certificate of sale was issued and annotated on the certificate of title on November 17, 1982.

After the expiration of the redemption period, no redemption having been made by the petitioner, DBP sold the subject properties to Roberto Pagua, one of the herein private respondents, through a deed of sale executed on December 17, 1985. On January 30, 1986, Pagua took possession of the properties through his representative, Fernando Lasala, the other private respondent.

Earlier, the petitioner had filed on December 3, 1985, an action before the Regional Trial Court of Lucena City (raffled later to Branch 55) for the annulment of the mortgage and its foreclosure. Named as defendants were DBP and the private respondents. Later, when her application for preliminary injunction and restraining order was denied, she lodged with the Municipal Circuit Trial Court of Lucban-Sampaloc a complaint against the private respondents for forcible entry with a prayer for writ of mandatory injunction. This was docketed as Civil Case No. 155.

In a decision dated May 14, 1986, the case was dismissed for lack of jurisdiction. But on May 29, 1986, the petitioner filed a motion for reconsideration, which was granted. In a resolution dated July 11, 1986,[1] the private respondents were ordered to: 1) immediately restore and deliver possession of the subject properties to the petitioner; 2) render to the petitioner an accounting of all the fruits and products gathered from said property from the time they took possession thereof until they vacate the same; and 3) reimburse the petitioner the total cost of such accounting.

This resolution was reversed on appeal by the Regional Trial Court of Lucena City, Branch 59,[2] which held that the court a quo had no jurisdiction over the ejectment case because of the issue of ownership raised therein and that, assuming such jurisdiction, the decision had already become final and executory when the resolution dated July 11, 1986, was rendered. The petitioner elevated the case to the respondent Court of Appeals, which sustained the assailed decision in toto.[3]

She is now before us in this petition for review on certiorari, contending that the Municipal Circuit Trial Court had jurisdiction over the ejectment case and that the private respondents were guilty of forcible entry on the

subject premises for occupying the same without judicial authorization.

The petition has merit:

The respondents argue that the Municipal Circuit Trial Court had no jurisdiction over the action for forcible entry on the principal ground that a question of ownership was involved therein. This view does not jibe with the following observations from Chief Justice Moran based on a consistent line of decisions from this Court:[4]

It would be a mistake to suppose that an action involves a question of title merely because the plaintiff may allege in his complaint that he is the owner of the land. Just as the plaintiff may introduce proof of his title in order to show the character of his (sic) prior possession, so he may allege ownership in himself as a material and relevant fact in the case, and the insertion of such an allegation in the complaint cannot by any possibility place the cause beyond the jurisdiction of the magistrate's court, provided it otherwise sufficiently appears that what the plaintiff really seeks is the restoration of possession as against an intruder who has seized the property within the period of one year. Much less can the defendant in such an action defeat the jurisdiction of the magistrate's court by setting up title in himself. In this connection it should be borne in mind that the factor which defeats the jurisdiction of the court of the justice of the peace is the necessity to adjudicate the question of title. The circumstance that proof of title is introduced at the hearing or that a claim of ownership is made by either or both of the parties is not material.

This ruling is embodied in Sec. 33, (2), Batas Pambansa Blg. 129, which vests municipal courts with:

Exclusive original jurisdiction over cases of forcible entry and unlawful detainer; Provided, that when, in such cases, the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership should be resolved only to determine the issue of possession.

It is true that before the petitioner instituted the action for forcible entry in the Municipal Circuit Trial Court of Lucban-Sampaloc, the case for annulment of the mortgage and foreclosure sale, which necessarily involves recovery of ownership, was already being litigated in the Regional Trial Court of Lucena City. Even so, the municipal court could, pending final adjudication of that case, exercise its jurisdiction to determine the right of possession (only) over the subject properties in the ejectment case.

The private respondents also contend that the Municipal Circuit Trial Court had no jurisdiction over the complaint for forcible entry because: a) under Section 19 par. (2) of BP 129, as amended, the Regional Trial Court has exclusive original jurisdiction over all civil actions which involve the title to, or possession of, real property or any interest therein; and b) under Section 1, par. A (1) of the Rule on Summary Procedure, cases of forcible entry and detainer involving the question of ownership are expressly excluded from the summary jurisdiction of the municipal court.

Curiously, however, they also insist that an action for forcible entry and unlawful detainer shall be governed by the Rule on Summary Procedure pursuant to Section 36 of BP 129 and that the petitioner is now estopped from assailing the applicability of that Rule.

There is no question that under Section 1, par. A (1), of the said Rule, the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts have jurisdiction over cases of forcible entry and unlawful detainer except where the question of ownership is involved or where the damages or unpaid rentals sought to be recovered by the plaintiff exceed P20,000.00 at the time of the filing of the complaint.*

However, it is incorrect to say that the question of ownership was involved in the ejectment case filed by the petitioner simply because she alleged in her complaint that she was the original owner of the subject properties. That the petitioner instituted a separate action for the annulment of the mortgage is not a valid reason either for

defeating the summary remedy of ejectment. On the contrary, it only bolsters the conclusion that the ejectment case did not involve the question of title as this was the subject of the annulment case before the Regional Trial Court of Lucena City. The Rule on Summary Procedure was clearly applicable because the ejectment case involved only the restoration of possession of the subject land and not its ownership.

The respondent court also sustained the ruling of the Regional Trial Court that the motion for reconsideration filed by the petitioner with the Municipal Circuit Trial Court did not stop the running of the reglementary period to appeal because such motion was a prohibited pleading under Section 15 (c)* of the Rule on Summary Procedure. Its conclusion was that the Municipal Circuit Trial Court had already lost jurisdiction to issue the resolution dated July 11, 1986, because the decision sought to be reconsidered had then become already final and executory.

We do not agree. The Municipal Circuit Trial Court did not err in holding that the motion for reconsideration was not covered by the prohibition under Section 15 (c). The motion prohibited by this section is that which seeks reconsideration of the judgment rendered by the court after trial on the merits of the case.[5] The decision dismissing the petitioner's ejectment case for lack of jurisdiction was not an adjudication on the merits. Review thereof could therefore be sought by the petitioner through her motion for reconsideration and this motion, which was not pro forma, had the effect of suspending the running of the period to appeal.

Now, on the issue of possession:

Section 7 of Act No. 3135, as amended by Act No. 4118, provides that in case of extrajudicial foreclosure of mortgage, the court* may issue as a matter of course a writ of possession in favor of the purchaser even during the redemption period, provided that a proper motion has been filed, a bond is approved, and no third person is involved.

Section 6 of the Act provides that where an extrajudicial sale is made, "redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act."

Sections 464-466 of the Code of Civil Procedure were superseded by Sections 25-27 and Section 31 of Rule 39 of the Rules of Court, which in turn were replaced by Sections 29 to 31 and Section 35 of Rule 39 of the Revised Rules of Court.

Section 35 provides that "if no redemption be made within twelve (12) months after the sale, the purchaser, or his assignee, is entitled to a conveyance and the possession of property, x x x. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment debtor."

To give effect to his right of possession, the purchaser must invoke the aid of the courts and ask for a writ of possession. He cannot simply take the law into his own hands and enter the property without judicial authorization.[6] We have consistently held that he need not bring a separate and independent suit for this purpose.[7] Nevertheless, it is essential that he ask for and be granted a writ of possession in order that he may be legally installed in the property he has bought.

Section 63 (b) of P.D. 1529, otherwise known as the Property Registration Decree, requires that in case of non-redemption, the purchaser at a foreclosure sale shall file with the Register of Deeds either a final deed of sale executed by the person authorized by virtue of the power of attorney embodied in the deed of mortgage or his sworn statement attesting to the fact of non-redemption. The Register of Deeds shall thereupon issue a new certificate in favor of the purchaser after the owner's duplicate certificate shall have been previously delivered and canceled.

In *F. David Enterprises vs. Insular Bank of Asia and America*,^[8] this Court held:

It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3135 as amended. No such bond is required after the redemption period if the property is not redeemed. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court. (Emphasis supplied).

In the case at bar, there is no showing that after the lapse of the redemption period without the petitioner having redeemed the lands, DBP executed an affidavit of consolidation of ownership of the subject properties. Neither has it filed with the Register of Deeds a final deed of sale or a sworn statement attesting to the fact of non-redemption. The circumstance that the properties are still in the name of the petitioner shows that DBP has also not yet obtained a new certificate of title in its name. And neither does it appear that DBP, on the basis of its purchase of the lands at the foreclosure sale, ever secured a writ of possession to authorize its entry into the said lands.

Not having done any of these, DBP had as yet not acquired any perfected right of possession that it could transfer to the private respondents. And as the petitioner continued in actual possession of the subject premises, she could undoubtedly maintain an action for forcible entry against the private respondents when, not being armed with a court order or a writ of possession, they simply entered and took possession of the subject lands.

The only issue in an action for forcible entry is the physical or material possession of real property, that is, possession *de facto* and not possession *de jure*. The philosophy underlying this remedy is that irrespective of the actual condition of the title to the property, the party in peaceable quiet possession shall not be turned out by strong hand, violence or terror. In affording this remedy of restitution, the statute seeks to prevent breaches of the peace and criminal disorder which might ensue from the withdrawal of the remedy. Another purpose is to discourage those persons who, believing themselves entitled to the possession of the property, resort to force rather than to some appropriate action in the courts to assert their claims.^[9]

Under Section 1, Rule 70, of the Rules of Court, there is forcible entry when one in physical possession of a land or building is deprived of that possession by another through force, intimidation, threat, strategy or stealth. 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 thereof. To constitute the use of "force" as contemplated in the above-mentioned provision, the trespasser does not have to institute a state of war. Nor is it even necessary that he use violence against the person of the party in possession. The act of going on the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property, and this is all that is necessary.^[10]

It is noted that the petitioner instituted the action for annulment of mortgage on December 3, 1985, while the deed of sale in favor of the private respondent was executed on December 17, 1985. Pagua cannot say that when he took possession of the subject land on January 30, 1986, he was acting in good faith. Neither can he claim that he had no knowledge of the pendency of that litigation because he was in fact one of the defendants in that case. In any event, the fact that the titles were still in the name of the petitioner should have warned him of the need to ascertain the status of the properties before he took possession of them.

The private respondents also assert that the institution of the ejectment case resulted in the splitting of a single

cause of action into two, one for the recovery of ownership and possession and the other for recovery of possession de facto.

In *Drilon vs. Gaurana*,^[11] this Court held:

It is true that a party may not institute more than one suit for a single cause of action (Rule 2, Sec. 3, Revised Rules of Court) and if two or more complaints are brought for different parts of a single cause of action, the filing of the first may be pleaded in abatement of the other (Rule 2, Sec. 4 Revised Rules of Court). However, a forcible entry or unlawful detainer action has an entirely different subject from that of an action for reconveyance of title. What is involved in a forcible entry case is merely the issue of material possession or possession de facto; whereas in an action for reconveyance, ownership is the issue. So much so that the pendency of an action for reconveyance of title over the same property does not divest the city or municipal court of its jurisdiction to try the forcible entry or unlawful detainer case, nor will it preclude or bar execution of judgment in the ejectment case where the only issue involved is material possession or possession de facto (*De la Cruz v. Court of Appeals*, 133 SCRA 520 [1984]).

While there may be identity of parties and subject matter in the two actions, the issues involved and the reliefs prayed for are not the same. In the annulment suit, the issue is the validity of the mortgage and the subsequent foreclosure sale whereas the issue in the ejectment case is whether, assuming the mortgage and foreclosure sale to be valid, the private respondents have the right to take possession of the property. In the former case, the relief prayed for is recovery of ownership of the subject land while in the latter it is restoration of possession thereof to the petitioner. Hence, the municipal court had jurisdiction to try the ejectment case while the annulment suit was being litigated in the regional trial court.

The contention that the petitioner was forum-shopping must also be rejected. As an injunction cannot be a substitute for the other suits for recovery of possession,^[12] such as an action for forcible entry or unlawful detainer and *accion publiciana*, denial of the injunction did not bar the petitioner from availing herself of the more appropriate remedy, to wit, the action for forcible entry.^[13]

In sum, the respondent court erred when it affirmed the decision of the Regional Trial Court declaring that the Municipal Circuit Trial Court had no jurisdiction over the ejectment case filed by the petitioner. We find that it had.

ACCORDINGLY, the petition is GRANTED and the resolution of the Municipal Circuit Trial Court of Lucban, Sampaloc dated July 11, 1986, in Civil Case No. 155 is REINSTATED. Costs against the private respondents.

SO ORDERED.

Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] Decided by Judge Vivencio G. Lirio of the Municipal Circuit Trial Court of Lucban, Sampaloc; Rollo, p. 24.

[2] Thru Judge Manuel A. Patron; Rollo, p. 26.

[3] Penned by Kapunan, J. with Puno and Marigomen, JJ. concurring; Rollo, p. 29.

[4] *Moran*, Comments on the Rules of Court, 1980 Ed., Vol. 3, p. 317 citing *Mediran v. Villanueva*, 37 Phil. 752, 759-760. Also *Medel v. Militante*, 41 Phil. 526; *Villaroman v. Esmundo*, 58 Phil. 937; unpub; *Fuentes v. Justice of the Peace of Pila*, 67 Phil. 364; *Lizo v. Carandang*, 73 Phil. 649; *Fabie v. Gutierrez David*, 75 Phil. 736; *Baguioro v. Barrios*, 77 Phil. 120; *Facundo v. Santos*, 77 Phil. 736; *Teodoro v. Balatbat*, 50 O.G. 601; *Subano v. Vallecer, et al.*, L-11867, March 24, 1959; *Bakit v. Asperin*, L-15700, April 26, 1961; *Torralba, et al. v. Rosales*,

et al., L-21972, April 29, 1966; Clemente v. Court of Appeals, L-18686, Jan. 24, 1967, 19 SCRA 74.

* All types of ejectment cases are now covered by the 1991 Revised Rules on Summary Procedure.

* Now Sec. 19 (c) of the Revised Rule on Summary Procedure, effective Nov. 15, 1991.

[5] Justice Leo D. Medialdea, Outline-Rule on Summary Procedure in Special Cases and Jurisdiction of Courts.

* The Court of First Instance (now, Regional Trial Court) of the province or place where the property or any part thereof is situated.

[6] Tolentino, Civil Code of the Philippines, 1990 Ed., Vol. 1, p. 68 citing 6 Von Tuhr, 294-299, I-II Enneceus Kipp & Wolff 546.

[7] F. David Enterprises vs. Insular Bank of Asia and America, 191 SCRA 516; 1FC Service Leasing and Acceptance, Corp. vs. Nera, 125 Phil. 595; Barrameda v. Gontang, et al., 15 SCRA 787; Tan Soo Huat vs. Ongwico, 63 Phil. 746; Rivera vs. CF1 of Nueva Ecija and Rupac, 61 Phil. 201.

[8] Supra.

[9] Drilon vs. Gaurana, 149 SCRA 342.

[10] Mediran vs. Villanueva 37 Phil. 752, cited in Moran, Comments on the Rules of Court, Vol. 3, 1980 Ed. p. 322-323; Martin, Rules of Court in the Philippines, 1986 Ed., Vol. 3, p. 366.

[11] Supra.

[12] PNB vs. Adil, 118 SCRA 110; Pio vs. Marcos, 56 SCRA 726; Devesa vs. Arbos, 13 Phil. 273.

[13] Garen vs. Pilar, 17 Phil. 138.

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