

NICANOR SOMODIO, PETITIONER, VS. COURT OF APPEALS, EBENECER PURISIMA AND FELOMINO AYCO, RESPONDENTS.

G.R. No. 82680. August 15, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court to reverse and set aside the Decision dated September 29, 1987 and the Resolution dated February 2, 1988 of the Court of Appeals in CA-G.R. SP No. 11602.

I

On October 21, 1974, Jose Ortigas executed an instrument designated as a Transfer of Rights, conveying to Wilfredo Mabugat the possession of a residential lot situated at Rajah Muda, Bula, General Santos City and described in the said instrument as:

"Lot No. (Unnumbered), bounded on the North by Temporary Road, on the South by Customs Zone (Sarangani Bay), on the East by Public Land, and on the West by Public Land."

Nicanor Somodio, herein petitioner, contributed one-half of the purchase price. On October 22, 1974, Mabugat executed an Affidavit of Trust expressly recognizing the right of petitioner over one-half undivided portion of the lot. Later, petitioner discovered in the District Land Office that the lot was numbered "6328-X, Csd 2281-D." Thereafter, petitioner and Mabugat partitioned the property into two portions, with petitioner taking the western part. Immediately after the partition, petitioner took possession of his portion and planted thereon ipil-ipil trees, coconut trees and other fruit-bearing trees.

In 1976, petitioner began construction of a structure with a dimension of 22-by-18 feet on his lot. His employment, however, took him to Kidapawan, North Cotabato, and he left the unfinished structure to the care of his uncle. He would visit the property every three months or on weekends when he had time.

Sometime in October 1977, petitioner allowed respondent Felomino Ayco, to transfer his hut to petitioner's lot. About six years later, petitioner demanded that Ayco vacate the premises but such demand proved futile. Hence, on August 23, 1983, petitioner filed an action for unlawful detainer with damages against respondent Ayco before the Municipal Trial Court, Branch I, General Santos, docketed as Civil Case No. 2032-II.

Meanwhile, on June 26, 1983, respondent Ebenecer Purisima entered the land and constructed a house thereon. Four days later, petitioner filed against respondent Purisima a complaint for forcible entry before the same court docketed as Civil Case No. 2013-I. Said case was later consolidated with Civil Case No. 2032-II.

In his answer, respondent Purisima averred that the lot was a portion of the land subject of his application for miscellaneous sales patent with the Bureau of Lands. Purisima described the lot in question as:

"Lot No. 6328-Y, CSD-2281-D, Bula, General Santos, Cotabato. Bounded on the North by 6328-X; on the

South by Sarangani Bay; on the East by a Municipal Road; and on the West by Lot No. 6328-W, containing an area of 1,095 square meters and covered by Tax Declaration No. 9647" (Rollo, p. 36; Underscoring supplied).

Respondent Purisima contended that his father, a geodetic engineer, had surveyed the parcel of land comprising of Lots Nos. 6427 and 6328 for the Small Farmers Fishpond Association, Inc. in February 1958, and that his father's survey plan was approved by the Director of Lands in 1960. Respondent Ayco, on the other hand, did not present any evidence but merely anchored his right to possess the property on the evidence of Purisima.

On April 30, 1986, the trial court rendered a decision finding that respondent Purisima built his house "almost on the spot where Somodio's unfinished house" stood "thru stealth and strategy," not knowing that the house was built on Lot No. 6328-X and not on Lot No. 6328-Y, the lot said respondent was claiming (Rollo, p. 43). The court went on to state that:

"xxx. He (private respondent Purisima) was a frequent visitor in Rajah Muda and had sometimes stayed with Mrs. Maturan in Judge Purisima's house on the adjoining lots, and could not have remained unaware of the possession of Somodio. He must have depended on the thought that it was his father who made the subdivision survey and had fenced an area which he had claimed. He did not exactly verify that the area fenced by his father had an area of only 1,095 square meters, which did not include the area Lot No. 6328-X. As the situation exists, there is no expectation on his part that his house on Lot No. 6328-X could eventually be standing on his property, for Lot No. 6328-X is not claimed by him and has not been applied for even by his father. His father has been abroad and has not taken steps to apply for Lot No. 6328-X. This lot is not declared for taxation purposes in the name of any claimant-applicant. Unless and until there would be an administrative proceedings and the title ultimately issued in favor of an applicant, the possession of the actual claimant and occupant has to be respected and maintained in the interest of public order xxx" (Rollo, pp. 43-44).

The Municipal Trial Court further held that petitioner was the actual possessor of Lot No. 6328-X. The court did not believe respondent Ayco's claim that the administratrix of the estate of respondent Purisima's father authorized him to build a hut on Lot No. 6328-X in 1976. At any rate, the court said that respondent Ayco was willing to vacate the premises provided he be given financial assistance to do so (Rollo, pp. 43-44).

Noting that the ocular inspection of the area showed that the houses of respondents Purisima and Ayco were "inside Lot No. 6328-X" and not on Lot No. 6328-Y, the Municipal Trial Court held that the case became one which entailed mere removal of the houses from the lot in question. Accordingly, the court ordered private respondents to remove their respective houses, to deliver the land to petitioner, and to pay attorney's fees and litigation expenses.

On appeal, the Regional Trial Court, Branch 22, General Santos City, affirmed in toto the decision of the Municipal Trial Court. Respondents then elevated the cases on a petition for review to the Court of Appeals, which, in its decision dated September 27, 1987, set aside the decisions of the two trial courts and ordered the dismissal of the two complaints filed by petitioner.

The Court of Appeals held that herein petitioner had not "clearly and conclusively established physical, prior possession over Lot No. 6328-X."

Petitioner's motion for the reconsideration of the decision of the Court of Appeals having been denied, he filed the instant petition for review on certiorari.

We grant the petition.

II

The procedural issue raised by private respondents should first be resolved. The issue is whether the instant petition is proper considering that petitioner "merely touch(es) upon questions of fact which had been carefully considered" by the Court of Appeals (Rollo, p. 92). As a general rule, the findings of fact of the Court of Appeals are binding on this Court. This rule, however, is not without exceptions, one of which is when the factual findings of the Court of Appeals and the trial court are contrary to each other. In such a case, this Court may scrutinize the evidence on record in order to arrive at the correct findings based on the record (*Valenzuela v. Court of Appeals*, 191 SCRA 1 [1990]; *Roman Catholic Bishop of Malolos, Inc. v. Intermediate Appellate Court*, 191 SCRA 411 [1990]).

Upon a review of the records, we are convinced that petitioner indeed enjoyed priority of possession over Lot No. 6328-X, notwithstanding respondent Purisima's claim to the contrary.

In ejectment cases, the only issue for resolution is who is entitled to the physical or material possession of the property involved, independent of any claim of ownership set forth by any of the party-litigants. Anyone of them who can prove prior possession *de facto* may recover such possession even from the owner himself. This rule holds true regardless of the character of a party's possession, provided that he has in his favor priority of time which entitles him to stay on the property until he is lawfully ejected by a person having a better right by either *accion publiciana* or *accion reivindicatoria* (*De Luna v. Court of Appeals*, 212 SCRA 276 [1992]).

Petitioner took possession of the property sometime in 1974 when he planted the property to coconut trees, ipil-ipil trees and fruit trees. In 1976, he started the construction of a building on the property. It is immaterial that the building was unfinished and that he left for Kidapawan for employment reasons and visited the property only intermittently. Possession in the eyes of the law does not mean that a man has to have his feet on every square meter of ground before it can be said that he is in possession (*Ramos v. Director of Lands*, 39 Phil. 175 [1918]). It is sufficient that petitioner was able to subject the property to the action of his will.

Article 531 of the Civil Code of the Philippines provides:

"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 established for acquiring such right."

Even if the Court of Appeals is correct in its finding that petitioner started introducing improvements on the land only in 1981, he still enjoyed priority of possession because respondent Purisima entered the premises only in 1983.

It should be emphasized that the Court of Appeals noted that none of the parties had produced tax declarations or applications as public land claimants. As such, what should have been scrutinized is who between the claimants had priority of possession.

Moreover, neither is the fact that respondent Purisima's father surveyed the property of help to his cause. As the Court of Appeals found, respondent Purisima's father surveyed the land for the Small Farmers Fishpond Association, Inc., not for himself. Although respondent Purisima now claims that Lot No. 6328-X was in payment of his fee for the services of his father and that he caused the construction of a perimeter wall in the area, these facts do not mean that respondent Purisima himself had prior possession. He did not present any proof that his father had authorized him to enter the land as his successor-in-interest. Neither did he present proof that between 1958, when his father allegedly took possession of the land, and 1983, when said respondent himself entered the land, his father ever exercised whatever right of possession he should have over the property. Under these

circumstances, priority in time should be the pivotal cog in resolving the issue of possession.

The Court of Appeals opined that petitioner had not properly identified the lot he had occupied. The matter of identification of the land, however, had been resolved by respondent Purisima's admission in his pleadings, as well as by two ocular inspections.

In his answer to the complaint, respondent Purisima claimed possession over Lot No. 6328-Y, while petitioner identified the lot adjacent to it, Lot No. 6328-X, as the area where private respondents built their houses. That these two lots are distinct from one another was resolved by the ocular inspection conducted by a Senior Geodetic Engineer of the Office of the City Engineer, who found that "south of lot 6328-H across a 10-meter wide road is lot 6328-Y and from thence to the south is lot 6328-X." On June 13, 1985, the Municipal Trial Court judge himself went to the premises in question and discovered that aside from the houses of respondents Purisima and Ayco, five other houses had been built on Lot No. 6328-X.

Petitioner's prior possession over the property, however, is not synonymous with his right of ownership over the same. As earlier stated, resolution of the issue of possession is far from the resolution of the issue of ownership. Forcible entry is merely a quieting process and never determines the actual title to an estate (*German Management & Services, Inc. v. Court of Appeals*, 177 SCRA 495 [1989]; *Manuel v. Court of Appeals*, 199 SCRA 603 [1991]).

WHEREFORE, the decision of the Court of Appeals is REVERSED and SET ASIDE and that of the trial courts REINSTATED. Costs against private respondents.

SO ORDERED.

Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

Cruz, J., (Chairman), on official leave.

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