

RUBEN LAGROSA, PETITIONER, VS. COURT OF APPEALS, SPOUSES ROMULO & EVELYN A. BANUA, AND CESAR OROLFO, RESPONDENTS.*G.R. Nos. 115981-82. August 12, 1999*

Ponente: GONZAGA-REYES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-115981-82/>**GONZAGA-REYES, J.:**

Petitioner seeks to review and set aside the Decision[1] of respondent Court of Appeals dated January 7, 1994 affirming the July 12, 1993 decision of the Regional Trial Court of Manila (Branch 42) in Civil Case No. 93-65646 (CA-G.R. SP No. 31683); and reversing the decision dated March 15, 1993 of the Regional Trial Court of Manila (Branch 12) in Civil Case No. 92-62967 (CA-G.R. SP No. 32070). The two petitions for review of two (2) conflicting decisions rendered by two different branches of the Regional Trial Court of Manila in ejectment suits involving the same parties and property were consolidated before the Court of Appeals upon motion of one of herein respondents, Cesar Orolfo. The consolidation was granted considering the property involved is one and the same in both petitions and Ruben Lagrosa, petitioner in CA-G.R. SP No. 31683 is the same Ruben Lagrosa, who is the private respondent in CA G. R. SP No. 32070; in the same manner that Evelyn Arizapa Banua is the private respondent in CA-G. R. SP No. 31683 while Cesar Orolfo who is the caretaker of the subject property representing Evelyn Arizapa Banua, is the petitioner in CA-G. R. SP No. 32070.[2]

Both petitions involve the possession of sixty-five (65) square meters of residential lot located in Paco, Manila, originally owned by the City of Manila which, in due course, following its land and housing program for the under-privileged, awarded it to one Julio Arizapa who constructed a house and upholstery shop thereon. The award was in the nature of a "Contract to Sell" payable monthly for a period of twenty (20) years. Julio Arizapa is the predecessor-in-interest of respondent Evelyn Arizapa Banua in CA-G.R. SP No. 31683, while Cesar Orolfo, petitioner in CA-G.R. SP No. 32070, is the caretaker of the same subject property as authorized and appointed by Evelyn Arizapa Banua, in whose name Transfer Certificate of Title No. 197603 covering the said property is registered. Cesar Orolfo, as aforestated, represented Evelyn Arizapa Banua, in CA-G.R. SP No. 32070.[3]

As found by the trial court, the title of respondent Evelyn Arizapa Banua to the subject property is evidenced by the "Deed of Sale" executed by the City of Manila in her favor and the Transfer Certificate of Title No. 197603, issued to her by the Register of Deeds of Manila.[4] Respondent Evelyn Arizapa Banua derived her title as follows: Before Julio Arizapa could make the full payment for the said lot, he died on January 20, 1987, intestate, at the age of 67 and was survived by his wife, Josefa Albaytar Arizapa and children[5] His wife Josefa Albaytar Arizapa died intestate on January 21, 1988. On February 17, 1988, Evelyn Arizapa and her brothers and sisters executed a "Deed of Extrajudicial Partition" adjudicating unto themselves as the sole heirs of the deceased, the aforesaid lot and a "Renunciation" in favor of Evelyn Arizapa under which they renounced and waived all their rights over the aforesaid lot in favor of Evelyn Arizapa. The "Notice of Extrajudicial Settlement of Estate of Deceased Julio Arizapa and Josefa Albaytar" was duly published in the 'BALITA' in its March 4, 11 and 18, 1988 issues. On March 22, 1988, the heirs of Julio Arizapa wrote a letter to the City of Manila, through the City

Tenants Security Committee, requesting that the award of said lot be placed under the name of Evelyn Arizapa based on said "Deed of Extrajudicial Partition" and the "Renunciation". On December 26, 1988, the Committee approved the request by Resolution. On January 8, 1990, Evelyn Arizapa paid the amount of P29,500.00 to the City of Manila which constituted the full payment of the lot for which Evelyn Arizapa was issued Official Receipt No. 738608 by the City Treasurer. On April 8, 1991, the City of Manila executed a "Deed of Sale" over the lot in favor of Evelyn Arizapa and, on the basis thereof, Transfer Certificate of Title No. 197603 was issued to Evelyn Arizapa.

Petitioner Ruben Lagrosa claims to be the lawful possessor of the subject property by virtue of the 'Deed of Assignment of Real Estate Mortgage' executed in his favor by Presentacion Quimbo on the basis of a "Contract of Real Estate Mortgage" executed by Julio Arizapa in favor of the latter. Lagrosa posits that he cannot be evicted from the subject property because he had prior possession as assignee of the said "Assignment of Real Estate Mortgage" executed by Presentacion Quimbo in his favor, and with the consent of Mauricia Albaytar, the sister of the deceased Josefa Albaytar Arizapa, after the demise of the spouses Julio Arizapa and Josefa Albaytar.

The first petition (CA-G.R. SP No. 31683) sought the review of the decision rendered by the Regional Trial Court of Manila, Branch 49, with the Honorable Romeo J. Callejo presiding in Civil Case No. 93-65646 entitled "Spouses Romulo and Evelyn Arizapa-Banua, plaintiffs-appellees, vs. Ruben Lagrosa, et al., defendants-appellants," affirming in toto the judgment dated March 24, 1993 of the Metropolitan Trial Court of Manila, Branch 2, the dispositive portion of which reads:

"WHEREFORE, judgment is rendered for the PLAINTIFFS.

The DEFENDANTS and all other persons claiming rights under them are hereby ordered:

(a) To vacate the land covered by T.C.T. No. 197603 situated in Paco, Manila;

(b)

To pay the amount of P1,000.00 per month as reasonable compensation for the use and enjoyment of the premises, from the filing of this complaint until possession is restored to the plaintiffs;

(c) To pay the amount of P2,000.00 as attorney's fees; and costs of suit.

SO ORDERED." (Rollo, 73-74)[6]

The second petition (CA-G.R. SP No. 32070) sought the review of the decision rendered on March 15, 1993 by the Regional Trial Court of Manila, Branch 12, with the Honorable Edgardo Sundiam presiding in Civil Case No. 92-62967 entitled "Ruben Lagrosa, plaintiff, versus, Cesar Orolfo, defendant," affirming in toto on appeal the judgment of the Metropolitan Trial Court of Manila, Branch 5, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant Cesar Orolfo ordering the said defendant and all the persons claiming rights under him to vacate the leased premises located at 1765 La Purisima Concepcion, Pedro Gil, Paco, Manila; ordering the Defendant to pay the plaintiff the sum of P5,950.00 representing the arrears in monthly rental from October 1989 up to February 1991; ordering the defendant to pay the monthly rental of P350.00 starting March 1991 until the defendant actually vacates the leased premises in question and, ordering the defendant to pay plaintiff the sum of P5,000.00 as attorney's fees plus the costs of suit."[7]

In sum, in Civil Case No. 93-65646 (subject of CA-G.R. SP No. 31683), the trial court upheld the rightful possession of Evelyn Arizapa Banua over the subject lot and accordingly ordered the immediate execution of its judgment against Ruben Lagrosa, et al. On the other hand, in Civil Case No. 92-62967 (subject of CA-G.R. SP No. 32070), the trial court opined that a preponderance of evidence tilted on the side of Ruben Lagrosa and gave judgment in his favor, all because defendant therein, Cesar Orolfo, through utter negligence of his former counsel, failed to submit countervailing evidence on time, i.e. prior to the rendition of judgment by the Metropolitan Trial Court.[8]

After a careful review of the records, the respondent Court of Appeals proceeded to determine which of the two conflicting decisions should be sustained and given effect, the decision in Civil Case No. 93-65646 in favor of Evelyn Arizapa Banua, or the decision in Civil Case No. 92-62967 in favor of Ruben Lagrosa. The controlling operative facts as found by the respondent Court of Appeals are:

- The subject property involved in both petitions is more particularly described as Lot No. 2, Block No. 29 of the former Fabmar Estate owned by the City of Manila. Subject property contains an area of 65 square meters.
- On June 24, 1977, the City of Manila awarded said lot to Julio Arizapa under its land for the landless program. It was payable in monthly installments for a period twenty (20) years.
- Julio Arizapa obtained a loan of P17,000.00 from one Presentacion B. Quimbo and he executed on August 2, 1985 a Contract of Real Estate Mortgage of his right over the subject property in favor of the latter. He failed to pay his loan and on top of which he borrowed more from Presentacion Quimbo until his account reached P28,000.00.
- Julio Arizapa died intestate on January 20, 1987, leaving no other property except the lot in question. Meanwhile, his wife Josefa Albaytar, on account of her deteriorating health, borrowed P40,000.00 from Ruben Lagrosa, for which she executed a deed mortgaging her one-half right to the lot. When Quimbo was poised to foreclose the mortgage, Albaytar convinced her to execute instead a Deed of Assignment of Mortgage in favor of Ruben Lagrosa for a certain consideration, which she did.
- Josefa Albaytar died on January 21, 1988. For her burial expenses, Mauricia Albaytar sister of the deceased, borrowed P65,000.00 from Ruben Lagrosa. In the meantime, Ruben Lagrosa with the permission of Mauricia Albaytar, allowed his relatives, to occupy and take possession of the subject property. Ruben Lagrosa himself was never in actual physical possession or occupation of the property.
- Thus, the tenuous claim of Ruben Lagrosa over the subject property rests on the Deed of Assignment of Mortgage executed by Presentacion B. Quimbo in his favor. This deed of assignment was correctly declared illegal by the Honorable Romeo Callejo in SP No. 31683. It was declared illegal for the simple reason that the Deed of Mortgage executed by the late Julio Arizapa in favor of Presentacion D. Quimbo was fatally defective in that the property subject thereof was still owned by the City of Manila when said deed of mortgage was executed.
- Concerning the issue of possession of the subject property, the rightful possession thereof of Evelyn Arizapa Banua is traceable to the possession of the City of Manila, then to her father Julio Arizapa; whereas, the possession claimed by Ruben Lagrosa is founded on that illegal Deed of Assignment of Mortgage (which was not even notarized), and the permission given him by Mauricia Albaytar after the death of her sister Josefa Albaytar, a permission which derives no legal authority or validity because Mauricia, apart from her being a sister of the deceased, was not and has never been appointed as a legal representative or administratrix of the deceased spouses."[9]

In light of the foregoing, the respondent Court of Appeals affirmed the decision of the Regional Trial Court of Manila (Branch 49) in Civil Case No. 93-65646 finding for spouses Romulo and Evelyn Arizapa Banua. The

dispositive portion of said decision reads:

"WHEREFORE, considering that respondent court has committed no error of law or fact in the decision under review, the same is affirmed and the petition is hereby DISMISSED. Costs against petitioner." [10]

On the other hand, the respondent Court of Appeals reversed the decision of the Regional Trial Court of Manila (Branch 12) in Civil Case No. 92-62967 which ruled in favor of Ruben Lagrosa. The dispositive portion of said decision reads:

"WHEREFORE, the decision under review in SP No. 32070 is reversed and set aside, and another one is hereby entered dismissing the complaint for ejectment against petitioner Cesar Orolfo. Accordingly, the writ of execution and notice to vacate issued by respondent court in Civil Case No. 92-12917 [11] are hereby declared null and void and set aside. Costs against private respondents. [12]

Thus, the conflict between the two decisions as to who is entitled to the possession of the subject property, Ruben Lagrosa on the one hand, or Evelyn Arizapa-Banua on the other, with Cesar Orolfo merely representing the latter in Civil Case No. 92-62967, was resolved.

Hence, the instant petition on grounds that may be summarized as follows: (1) that the respondent Court of Appeals erred in declaring the 'Contract of Real Estate Mortgage' and the 'Assignment of Mortgage' as illegal; (2) that the respondent Court of Appeals erred in upholding the validity of Transfer Certificate of Title No. 197603 in the name of Evelyn Arizapa Banua despite the fact that Josefa Arizapa was the only legal wife of Julio Arizapa and that they were childless; (3) that the respondent Court of Appeals erred in declaring that Cesar Orolfo was appointed caretaker of the subject property and that he was not given a chance to present his evidence before the lower court.

The petition is bereft of merit.

The only issue to be resolved in ejectment cases is the question as to who is entitled to the physical or material possession of the premises or possession de facto. [13] In the event the issue of ownership is raised in the pleadings, such issue shall be taken up only for the limited purpose of determining who between the contending parties has the better right of possession. [14] As it were, herein petitioner Ruben Lagrosa also filed before the Regional Trial Court of Manila (Branch 32), in Civil Case No. 90-55315 entitled "Ruben Lagrosa, versus, City Tenants Security Committee, represented by its Chairman, Hon. Gemiliano Lopez, Jr., Intestate Estate of Julio Arizapa represented by Mauricia Albaytar, Evelyn Arizapa Banua and Register of Deeds of Manila," a "Complaint for Foreclosure of the 'Real Estate Mortgage', Annulment of Awards with Damages, and Cancellation of Title and Reconveyance of Real Property." [15]

As mentioned earlier, petitioner Lagrosa claims to be the lawful possessor of the subject property by virtue of the 'Deed of Assignment' of 'Real Estate Mortgage' executed by Julio Arizapa in favor of the latter. Lagrosa posits that he cannot be evicted from the subject property because he had prior possession as assignee of the said "Assignment of Real Estate Mortgage" executed by Presentacion Quimbo in his favor, and with the consent of Mauricia Albaytar, the sister of the deceased Josefa Albaytar Arizapa, after the demise of the spouses Julio Arizapa and Josefa Albaytar.

On the other hand, Evelyn Arizapa Banua's title to the property is evidenced by a "Deed of Sale" executed by the City of Manila in her favor and the Transfer Certificate of Title No. 197603 issued to her by the Register of Deeds. Evelyn Arizapa Banua sought to evict Lagrosa from the subject property citing, among others, the need to repossess the property for her own personal use.

We agree with the respondent Court of Appeals that petitioner Lagrosa's right to possess the subject property is

clearly inferior to or inexistent in relation to Evelyn Arizapa Banua.

As correctly held by the lower courts, the "Deed of Real Estate Mortgage" executed by Julio Arizapa is null and void, the property mortgaged by Julio Arizapa being then owned by the City of Manila under Transfer Certificate of Title No. 91120. For a person to validly constitute a valid mortgage on real estate, he must be the absolute owner thereof as required by Article 2085 of the Civil Code of the Philippines.[16] Since the mortgage to Presentacion Quimbo of the lot is null and void, the assignment by Presentacion Quimbo of her rights as mortgagee to Lagrosa is likewise void. Even if the mortgage is valid as insisted by herein petitioner, it is well-settled that a mere mortgagee has no right to eject the occupants of the property mortgaged.[17] This is so, because a mortgage passes no title to the mortgagee. Indeed, by mortgaging a piece of property, a debtor merely subjects it to lien but ownership thereof is not parted with.[18] Thus, a mortgage is regarded as nothing more than a mere lien, encumbrance, or security for a debt, and passes no title or estate to the mortgagee and gives him no right or claim to the possession of the property.

Petitioner Lagrosa now contends that what was mortgaged by Julio Arizapa in favor of Presentacion Quimbo was "his right as an awardee over the homelot in question, and not the homelot itself." Petitioner would have this Court uphold the validity and legality of the mortgage over the 'right as an awardee' rather than the homelot itself. The agreement between the City of Manila and Julio Arizapa was in the nature of a 'contract to sell', the price for the lot being payable on installment for a period of twenty (20) years which could yet prevent, such as by the non-fulfillment of the condition, the obligation to convey title from acquiring any obligatory force.[19] Hence, there is no "right" as awardee to speak of, and there is no alienable interest in the property to deal with.

The further allegation in petitioner's memorandum that Evelyn Arizapa Banua is not the lawful owner of the lot and residential house in question because the "Extrajudicial Partition" and the "Renunciation" on the basis of which the "Deed of Sale" was executed by the City of Manila and the Transfer Certificate of Title No. 197603 was issued, are all falsified because Julio Arizapa and Josefa Albaytar Arizapa were childless up to their demise deserves no prolonged consideration, being factual in nature. Factual findings of the Court of Appeals are conclusive on the parties and carry even more weight when said court affirms the factual findings of the trial court.[20] We quote the following findings of the trial court as adopted by the respondent Court of Appeals, to wit:

"The Court cannot accord its imprimatur to the stance of the Defendants-Appellants. As borne by the evidence of the Plaintiff-Appellee, Julio Arizapa and Bernardita Iñigo Arizapa were married on May 9, 1963 in Manila (Exhibit "GG"). Julio Arizapa, during his lifetime, wrote a letter to the Plaintiff-Appellee and her brothers and sisters and addressing them as his children, thus:

"Mahal kong mga anak magmahalan kayong mabuti at magtulungan habang buhay. Ala-ala ko kayo kailan mang."

-Exhibit "RR."

The bare fact that, after the demise of Bernardita Iñigo Arizapa in 1984, Julio Arizapa and Josefa Albaytar lived together as husband and wife but bore no children does not necessarily mean that Julio Arizapa was incapable of procreation. Indeed, there is persuasive authority to the effect that "it is presumed in the absence of evidence to the contrary, that a male person of mature years, is capable of sexual intercourse and procreation, even though he has reached a very advanced age (Francisco, *The Revised Rules of Court in the Philippines*, Volume VII, Part II, at pages 142-143, citing *Love versus Mcdonald*, 148 S.W. 2d. 170, 201 Ark. 882). While it is true in their "Extrajudicial Partition", the Plaintiff-Appellee and her brothers and sisters called Julio Arizapa and Josefa Arizapa, as their parents, however, this is not unusual because, after all, after the demise of Bernardita Iñigo, Josefa Albaytar and Julio Arizapa lived together as husband and wife and, in the process, the Plaintiff-Appellee must have considered Josefa Albaytar as their step-mother in deference and out

of respect to their father. (Resolution, at page 348, Records).[21]

Moreover, it is a well-known doctrine that the issue as to whether title was procured by falsification or fraud as advanced by petitioner can only be raised in an action expressly instituted for the purpose. Torrens title can be attacked only for fraud, within one year after the date of the issuance of the decree of registration. Such attack must be direct, and not by a collateral proceeding.[22] The title represented by the certificate cannot be changed, altered, modified, enlarged, or diminished in a collateral proceeding.[23] Thus, the arguments of petitioner Lagrosa in the ejectment suit are misplaced.

As to Lagrosa's prior possession of the subject property, their stay in the property as correctly found by the respondent Court of Appeals was by mere tolerance or permission. It is well-settled that "a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which, a summary action for ejectment is the proper remedy against him.[24] The trial court rationalized thus:

"On the other hand, the possession of the Plaintiff-Appellee retroacted to the possession of the City of Manila of the property in question because the Plaintiff-Appellee merely stepped into the shoes of the owner of the property when she purchased the said property from the City of Manila and thus may cause the eviction of the Defendants-Appellants from said property (Caudal versus Court of Appeals, et al., 175 SCRA 798).

It must be borne in mind that, as mere assignee of the mortgage rights of Presentacion Quimbo, the Defendant-Appellant is not entitled to the physical possession of the mortgaged property. The same is true even if the Defendant-Appellant was himself the mortgagee. In point of fact, during the lifetime of Julio Arizapa and Josefa Albaytar, they had possession of the property. The Defendant-Appellant managed to take possession of the property only because of the alleged consent thereto by Mauricia Albaytar, who was merely the sister of Josefa Albaytar. By then, the couple, Julio Arizapa and Josefa Albaytar were already dead. Mauricia Albaytar thus had no lawful authority to allow anybody to enter into and occupy the property. There is no evidence in the records that Mauricia Albaytar had been appointed by any Court as the Administratrix of the estate of the Spouses." [25]

By Lagrosa's own admission, he is merely an assignee of the rights of the mortgagee of the lot and that, consequently, the respondent Court of Appeals correctly ruled that the only right of action of Lagrosa as such assignee of the mortgagee, where the mortgagor is already dead, is that provided for in Section 7 of Rule 86[26] and Section 5 of Rule 87[27] of the Rules of Court. Thus, the mortgagee does not acquire title to the mortgaged real estate unless and until he purchases the same at public auction and the property is not redeemed within the period provided for by the Rules of Court.

The issues raised by petitioner in CA G. R. SP No. 32070 that the respondent Court of Appeals erred in declaring Cesar Orolfo as the caretaker of the subject property and that he was not given a chance to present his evidence before the lower courts are also factual. The jurisdiction of this court is limited to reviewing errors of law unless there is a showing that the findings complained of are totally devoid of support in the record or that they so glaringly erroneous as to constitute serious abuse of discretion.[28] We find no such showing in this case. More importantly, whether Cesar Orolfo is the caretaker of the property as appointed by Evelyn Arizapa Banua and the representative of the latter is now beside the point. As was discussed by this Court, petitioner Ruben Lagrosa's right to possess the subject property is clearly inexistent in relation to herein respondent Evelyn Arizapa Banua.

WHEREFORE, the joint decision of the Court of Appeals in CA-G.R. SP Nos. 31683 and 32070 promulgated on January 7, 1994 is AFFIRMED in toto.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Penned by Associate Justice Segundino G. Chua, concurred in by Associate Justices Fermin A. Martin, Jr. and Buenaventura J. Guerrero.

[2] Rollo, pp. 212-213.

[3] Ibid., p. 213.

[4] Ibid., p. 138.

[5] Purificacion, Lilia, Elizabeth, Silvestre, Josefina, Helen, Evelyn and Cezar, all surnamed Arizapa.

[6] Rollo, p. 202.

[7] Ibid., pp. 211-212.

[8] Ibid., p. 213.

[9] Ibid., pp. 214-215.

[10] Ibid., p. 211.

[11] Should be Civil Case No. 92-62967.

[12] Rollo, p. 215.

[13] University Physicians Services, Inc. vs. Court of Appeals, 233 SCRA 86.

[14] Hilario vs. Court of Appeals, 260 SCRA 420.

[15] Rollo, p. 314.

[16] Article 2085. The following requisites are essential to the contracts of pledge and mortgage:

(1) That they be constituted to secure the fulfillment of a principal obligation;

(2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;

(3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

[17] Lao vs. Court of Appeals, 275 SCRA 237.

[18] Adlawan vs. Torres, 233 SCRA 645.

[19] Bricktown Development Corporation vs. Amor Tierra Development Corporation, 239 SCRA 126.

[20] Fortune Motors (Phils.) Corporation vs. Court of Appeals, 267 SCRA 653.

[21] Rollo, pp. 137-138.

[22] Ybanez vs. Intermediate Appellate Court, 194 SCRA 743.

[23] *Cimafranca vs. Intermediate Appellate Court*, 147 SCRA 611.

[24] *Banco de Oro Savings & Mortgage Bank vs. Court of Appeals*, 182 SCRA 464, 469.

[25] *Rollo*, p. 140.

[26] Sec. 7. Mortgage debt due from estate.- A creditor holding a claim against the deceased secured by mortgage or other collateral security, may abandon the security and prosecute his claim in the manner provided in this rule, and share in the general distribution of the assets of the estate, or he may foreclose his mortgage or realize upon his security, by action in court, making the executor or administrator a party defendant, and if there is a judgment for a deficiency, after the sale of the mortgaged premises, or the property pledged, in the foreclosure or other proceedings to realize upon the security, he may claim deficiency judgment in the manner provided in the preceding section; or he may rely upon his mortgage or other security alone, and foreclose the same at any time within the period of the statute of limitations, and in that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate but nothing herein contained shall prohibit the executor or administrator from redeeming the property mortgaged or pledged, by paying the debt for which it is held as security, under the direction of the court, if the court shall adjudge it to be for the best interest of the estate that such redemption shall be made.

[27] Sec. 5. Mortgage due estate may be foreclosed.- A mortgage belonging to the estate of a deceased person as mortgagee or assignee of the right of a mortgagee, may be foreclosed by the executor or administrator.

[28] *BA Finance Corporation vs. Court of Appeals*, 229 SCRA 566.

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