

THIRD DIVISION

[G.R. No. 175720, September 11, 2007]

**CRESENCIANA TUBO RODRIGUEZ (NOW DECEASED),
SUBSTITUTED BY SUSANA A. LLAGAS, PETITIONER, VS.
EVANGELINE RODRIGUEZ, BELEN RODRIGUEZ AND
BUENAVENTURA RODRIGUEZ,**

D E C I S I O N

YNARES-SANTIAGO, J.:

This petition for review on *certiorari* assails the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 91442 dated June 27, 2006, which set aside the Decision of the Regional Trial Court (RTC) of Makati City, Branch 134, in Civil Case No. 03-517, and reinstated the Decision of the Metropolitan Trial Court (MTC) of Makati City, Branch 63, in Civil Case No. 75717, dismissing the complaint for ejectment; as well as the Resolution denying the motion for reconsideration.

Juanito Rodriguez owned a five-door apartment located at San Jose Street, Guadalupe Nuevo, Makati City, and covered by TCT No. 144865.^[2] On October 27, 1983, Juanito executed a "*Huling Habilin at Testamento*" giving petitioner Cresenciana Tubo Rodriguez, his live-in partner, apartments D and E, and his children Benjamin Rodriguez (the deceased husband of respondent Evangeline Rodriguez), apartment A, respondent Buenaventura Rodriguez, apartment B, and respondent Belen Rodriguez, apartment C.^[3]

However, on June 14, 1984, Juanito executed a Deed of Absolute Sale over the property in favor of petitioner.^[4] Thus, TCT No. 144865 was cancelled and a new TCT No. 150431 was issued in the name of the petitioner.^[5]

The case arose when petitioner filed on September 20, 2001 a complaint for unlawful detainer against the respondents, alleging that she is the lawful and registered owner of the property; and that in 1984, she allowed respondents Evangeline, Buenaventura and Belen, out of kindness and tolerance, to personally occupy units A, B and D, respectively. However, without her knowledge and consent, respondents separately leased the units to Montano Magpantay, Mel Navarro and Socorro Escota, who despite repeated demands, failed and refused to vacate the premises and to pay the rentals thereof.^[6]

In their Answer, respondents claimed ownership over the subject property by succession. They alleged that while petitioner is the registered owner of the property, however, she is not the lawful owner thereof because the June 14, 1984 Deed of Absolute Sale was simulated and void. As in Civil Case No. 01-1641 now pending before the RTC of Makati City, Branch 141, which they filed to assail the validity of the said sale, respondents maintain that petitioner exerted undue

influence over their father, who at that time was seriously ill, to agree to the sale of the property for only P20,000.00 after knowing that only two apartments were given to her in the *Huling Habilin at Testamento*. Further, she had no cause of action against them for being a party to the August 23, 1990 Partition Agreement wherein they recognized each other as co-owners and partitioned the property in accordance with the provision of the last will and testament.^[7]

On February 26, 2002, the MTC rendered a judgment in favor of the respondents and held that the deed of sale was simulated otherwise petitioner would not have entered into the Partition Agreement, which legally conferred upon each heir exclusive ownership over their respective shares, thus:

WHEREFORE, the Complaint is DISMISSED. Plaintiff is ordered to pay attorney's fees of P10,000.00 and the costs of suit in favor of defendants.

SO ORDERED.^[8]

On appeal, the RTC reversed the decision of the MTC. It held that petitioner's certificate of title is a conclusive evidence of ownership of the land described therein; and that unless and until said title has been annulled by a court of competent jurisdiction, such title is existing and valid. This is true also with respect to the deed of sale. The present action, which involves only the issue of physical or material possession, is not the proper action to challenge it. Further, the MTC erred when it relied heavily on the "*Huling Habilin at Testamento*," which was not probated hence has no effect and no right can be claimed therein. The Partition Agreement which was allegedly entered into pursuant to the *Huling Habilin at Testamento* should not also be considered. Thus:

WHEREFORE, premises considered, the decision rendered by the Metropolitan Trial Court, Branch 63, Makati City, is hereby ordered REVERSED AND SET ASIDE. Consequently, judgment is hereby rendered ordering the defendants and all persons claiming rights under them to vacate the premises and surrender the possession thereof to the plaintiff. Defendants are likewise ordered to pay jointly and severally the plaintiff an amount of P5,000.00 a month per unit beginning 13 August 2001 until they finally vacate the premises and the costs of this suit.

SO ORDERED.^[9]

Aggrieved, respondents filed a petition for review before the Court of Appeals which reversed and set aside the decision of the RTC and reinstated the decision of the MTC. It held that the MTC correctly received evidence on ownership since the question of possession could not be resolved without deciding the issue of ownership. Further, the *Huling Habilin at Testamento* transmitted ownership of the specific apartments not only to the respondents but also to the petitioner; and pursuant thereto, the parties executed the Partition Agreement in accordance with the wishes of the testator, thus:

WHEREFORE, this Court resolves to REVERSE and SET ASIDE the Decision of the Regional Trial Court. The decision dated February 26, 2002 of the Metropolitan Trial Court, Branch 63, Makati City in Civil Case No. 75717 dismissing the complaint for ejectment is hereby REINSTATED.

SO ORDERED.^[10]

The motion for reconsideration was denied hence, petitioner filed the present petition for review raising the following errors:

I.

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR OF LAW AND GRAVE ABUSE OF DISCRETION IN REVERSING AND SETTING ASIDE THE DECISION OF THE REGIONAL TRIAL COURT AND REINSTATING THE DECISION OF THE METROPOLITAN TRIAL COURT DISMISSING PETITIONER'S COMPLAINT FOR UNLAWFUL DETAINER.

II

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR OF LAW AND GRAVE ABUSE OF DISCRETION IN DECLARING THAT THE PROPERTY, A PARCEL OF LAND UPON WHICH A FIVE-UNIT APARTMENT STANDS, BECAME THE SUBJECT OF JUANITO RODRIGUEZ'S *HULING HABILIN AT TESTAMENTO* WHEREIN THE PROPERTY WAS DISTRIBUTED TO HIS HEIRS (HEREIN RESPONDENTS) INCLUDING THE RESPONDENT (PETITIONER HEREIN).^[11]

Petitioner alleges that as the registered owner of the subject property, she enjoys the right of possession thereof and that question of ownership cannot be raised in an ejectment case unless it is intertwined with the issue of possession. While the court may look into the evidence of title or ownership and possession *de jure* to determine the nature of possession, it cannot resolve the issue of ownership because the resolution of said issue would effect an adjudication on ownership which is not proper in the summary action for unlawful detainer. Petitioner insists that the Court of Appeals erred in ruling that the *Huling Habilin at Testamento* transmitted ownership of the specific apartments disregarding the fact that the same is not probated yet and that the testator changed or revoked his will by selling the property to petitioner prior to his death.

Contrarily, respondents pray that the instant petition for review be dismissed since the resolution of the question of ownership by the MTC and the Court of Appeals was provisional only to resolve the issue of possession. Petitioner can always avail of legal remedies to have the issue of ownership passed upon by the proper court. Aware of the provisional nature of the resolution on ownership in ejectment cases, respondents filed Civil Case No. 01-1641 to assail the validity of the deed of sale of the property and the registration thereof in petitioner's name.

The petition has merit.

An action for unlawful detainer exists when a person unlawfully withholds possession of any land or building against or from a lessor, vendor, vendee or other persons, after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied.^[12] The sole issue to be resolved is the question as to who is entitled to the physical or material possession of the premises or possession *de facto*.^[13] Being a summary proceeding intended to provide an expeditious means