

TWENTY-SECOND DIVISION

[CA-G.R. SP NO. 04908-MIN, February 11, 2015]

**EUGENIA VOLPE, PETITIONER, VS. JOHN PATRICK COUGHLAN,
RESPONDENT.**

D E C I S I O N

INTING, J.:

This is a Petition for Review^[1] with prayer for Temporary Restraining Order (TRO) and Preliminary Injunction filed under Rule 42 of the Rules of Court assailing the Decision^[2] dated March 27, 2012 of the Regional Trial Court, Branch 31, Dapa, Surigao del Norte in Civil Case No. 226 for "*Forcible Entry, Injunction with Prayer for TRO and Preliminary Mandatory Injunction*" and the Order^[3] dated April 24, 2012 denying petitioner's Motion for Reconsideration.

The facts of the case are as follows:

The property subject of this controversy is a parcel of land previously covered by Original Certificate of Title (OCT) No. 18865^[4] in the name of Genalyn Ellarina (Genalyn) with an area of 1,054 square meters and located in Catangnan, General Luna, Siargao Island, Surigao del Norte. Genalyn Ellarina is the spouse of herein respondent, John Patrick Coughlan, an Australian citizen.

On August 23, 2007, Genalyn executed a Deed of Absolute Sale^[5] over the subject lot in favor of petitioner Eugenia Volpe (Eugenia). She also sold a concrete two-storey residential house to Eugenia in a separate instrument^[6]. At the time the transaction was made, Genalyn was in Australia. Moreover, the residential house had transient tenants with a contract of lease that would expire on January 2008. However, Genalyn and Eugenia agreed to respect the tenants' existing contract of lease.

In February 2008, when the tenants' contract of lease expired, Eugenia took possession of the house and started massive repair. Subsequently, on June 8, 2012, OCT No. 18865 was cancelled and Transfer Certificate of Title (TCT) No. 160-2012000129 was issued in Eugenia's name.

Meanwhile, on March 11, 2008, respondent John Patrick Coughlan (John Patrick), through his representative Atty. Del Carmen, filed a case for forcible entry and injunction against Eugenia. In his Complaint^[7], John Patrick alleged that he is a lessee of the subject lot where he constructed a house which served as their family abode. He also accused Eugenia of illegal demolition and construction of the house.

Summons was served upon Eugenia at Catangnan, General Luna during the Holy Week. On March 26, 2008, Eugenia filed her Answer with Affirmative Defenses and

Counterclaim^[8] through registered postal service. In her Answer, Eugenia alleged that her entry and physical possession of the property is by virtue of the Deed of Absolute Sale. Thereafter, the parties filed their position papers.

On July 3, 2008, the Municipal Circuit Trial Court (MCTC) rendered a Decision^[9] in favor of John Patrick. The MCTC disregarded the Answer filed by petitioner for having been filed beyond the ten (10) day reglementary period.

Eugenia appealed the Decision to the Regional Trial Court (RTC). The RTC issued its Decision^[10] which lifted and set aside the MCTC Decision and remanded the case to the court of origin for further proceedings. John Patrick moved for a reconsideration but the RTC denied it.

At the court of origin, petitioner filed a Motion for Voluntary Inhibition^[11] of Judge Ignacio Macarine. The Motion was granted in an Order^[12] dated October 28, 2009.

On September 13, 2010, the MCTC rendered a Decision^[13] dismissing the Complaint, the dispositive portion of which provides:

WHEREFORE, in the lights of the foregoing the court finds for the defendants against the plaintiff:

- a. For the dismissal of the complaint in favor of the defendant for lack of cause of action.
- b. For the plaintiff to pay defendants Moral Damages of P40,000.00 and Exemplary Damages of P20,000.00.
- c. Payment of Attorneys Fees in the amount of P20,000.00.
- d. And payment of litigation expenses fixed by the Court to P20,000.00.

SO ORDERED.

Aggrieved, John Patrick appealed the Decision to the RTC. On March 27, 2012, the court *a quo* rendered a Decision against Eugenia. The *fallo* of the Decision reads:

WHEREFORE, in view of the foregoing, the Judgment of the 9th Municipal Trial Court, Tenth Judicial Region, General Luna-Pilar, Surigao del Norte dated September 13, 2010 is hereby REVERSED and SET ASIDE and a new one is entered as follows:

1. The defendants-appellees are hereby ORDERED TO VACATE IMMEDIATELY from the subject property and TURN OVER POSSESSION thereof to the plaintiff-appellant; and
2. TO PAY plaintiff-appellant a rental of P5,000.00 beginning April 2008 up to the present.

Upon the DECISION becoming final, let the records of this case be returned to the Court of origin for appropriate action.

SO ORDERED.

The court *a quo* ratiocinated:

As correctly pointed out by the plaintiff-appellant, the construction of a concrete residential house and its occupation by the plaintiff of the property as residence when he was in the Philippines is an allegation of prior possession. The house became the family abode and its constitution is not temporary or passing but of permanence. xxx

xxx

It is not required that plaintiff is in actual occupation of every inch of the property at all times. The property in litigation is the residence of the plaintiff. It is where he, his wife and children maintain their family abode. xxx

Hence, the instant petition.

Petitioner raises the following assignment of errors^[14]:

I.

WHETHER THE COMPLAINT FOR FORCIBLE ENTRY MADE SPECIFIC ALLEGATION OF PLAINTIFF PRIOR PHYSICAL POSSESSION OF THE PROPERTY.

II.

WHETHER RESPONDENT JOHN COUGHLAN WAS IN PRIOR PHYSICAL OF THE PROPERTY WHEN EUGENIA VOLPE TOOK ITS PHYSICAL POSSESSION.

III.

WHETHER RESPONDENT JOHN COUGHLAN WAS DISPOSSESSED OF THE PROPERTY BY ANY OF THE FOLLOWING MEANS; FORCE, INTIMIDATION, THREAT, STRATEGY OR STEALTH.

IV.

WHETHER THE COURT A QUO ERRED IN REVERSING THE DECISION OF THE LOWER COURT WHICH DISMISSED THE FORCIBLE ENTRY CASE.

On August 24, 2012, this Court issued a Resolution^[15] denying petitioner's prayer for the issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction.

Our Ruling