

**[ CV No. 91635, September 15, 2010 ]**

**GREGORIO FRANCO & LEONILA APELIT, PLAINTIFFS-APPELLEES,  
VS. MARCELO MACALINO, DEFENDANT-APPELLANT. [\*]**

**Court of Appeals**

At bench is an appeal from the Decision dated May 16, 2008 of the Regional Trial Court of San Fernando City, Pampanga, Branch 43, in Civil Case No. 12457, the dispositive portion of which states:

"WHEREFORE, in view of all the foregoing, the defendant is hereby ordered to vacate and surrender the possession and occupation of the property in question to the plaintiff; to cause at his expense, the removal of all the structures constructed on the titled property, to pay P20 000 as attorney's fees and to pay the costs.

SO ORDERED."

**The Facts**

The subject matter of the instant suit is a parcel of land ("the property"), measuring 112 square meters, located in the Barrio of Bahay Pare, Municipality of Candaba, Pampanga and registered in the name of plaintiff-appellee Leonila Apelit under Transfer Certificate of Title (TCT) No. 14367 of the Registry of Deeds of Pampanga, where it was entered on January 20, 2000.<sup>[1]</sup>

Appellee alleges that on June 10, 2000, defendant-appellant Marcelo Macalino, acting with strategy, force and stealth, illegally entered the property and started erecting a house using sturdy materials.<sup>[2]</sup> Appellee confronted appellant and demanded that he vacate the premises, but the latter refused to do so.<sup>[3]</sup> The matter was then referred to Barangay Conciliation proceedings, but no settlement was reached.<sup>[4]</sup>

Hence appellees filed an action for Forcible Entry with the Municipal Trial Court (MTC) of Sta. Ana-Candaba, Pampanga, where in addition to the issuance of a writ of preliminary mandatory and prohibitory injunction, they prayed for a permanent order for appellant to vacate the subject premises, remove the structures he built, and pay damages.<sup>[5]</sup> As evidence, appellees presented TCT No. 14367,<sup>[6]</sup> tax declarations, and Leonila Apelit's own testimony in court.<sup>[7]</sup>

Upon completion of an *ex parte* hearing on appellee's application for a writ of preliminary mandatory and prohibition injunction, the MTC granted the writ, ordering that appellees be restored in possession and ordering appellant to cease and desist from ousting appellees from their possession of the property while the case is pending.<sup>[8]</sup>

However, appellee was unable to enforce the writ, so that appellant and parties

acting in his behalf have remained in possession up to the present time.<sup>[9]</sup>

On November 8, 2000, appellant filed his answer, where he claimed that he is not a real party-in-interest in the case as the property belongs to one Wilfredo Macalino, who brought the same on November 14, 1990 from a certain Fermin Carpio, brother of the alleged previous owner Lucila Carpio.<sup>[10]</sup> Appellant claimed that from November 14, 1990, Wilfredo Macalino had taken possession of the property, and thereafter, allowed his brothers to construct houses on it.<sup>[11]</sup> To support his claim, appellant submitted the following documentary evidence:

Exhibit "1,"<sup>[12]</sup> or a "Kasunduan Sa Paglilipat ng Loteng Pamayanan" dated November 14, 1990, Wherein Wilfredo Macalino supposedly bought the property from Fermin Carpio;

Exhibit "2,"<sup>[13]</sup> or a Tax Declaration dated September 28, 1973, in the name of Lucila Carpio, the sister of Fermin Carpio.

Exhibits "3,"<sup>[14]</sup> and "4,"<sup>[15]</sup> or a DAR Official Receipt dated April 22, 1974 and a Order of Award dated October 23, 1972, respectively, also in the name of Lucila Carpio;

Exhibits "5,"<sup>[16]</sup> "6,"<sup>[17]</sup> "7,"<sup>[18]</sup> and "8,"<sup>[19]</sup> or the affidavits of Marcelo Macalino, Fermin Carpio, Wilfredo Macalino and Gerardo Macalino which repeat the allegations in the complaint that neither appellant nor appellee were the owners of the property and/or its improvements.

### ***The MTC Decision***

In its Decision dated February 18, 2002, the MTC dismissed the complaint, stating that there was no allegation by the plaintiffs of prior physical possession, and mainly holding that the central issue in the case is ownership of the property, which is beyond the jurisdiction of the MTC to decide. The decision stated, thus:

"In the case at bar, where there is a question of ownership, the first level court loses jurisdiction over the case. Thus, where the allegation of the complaint clearly establish a case for recovery of ownership, and not merely one for the recovery of possession *de facto*, or where the averments plead the claim of possession as a mere element attribute of such claim for ownership, the action is not one for forcible entry but one for ownership cognizable by the Regional Trial Court. (Bautista vs. Fernandez, 38 SCRA 548).

On view of the foregoing, the court is constrained to dismiss this case for lack of jurisdiction. The writ of preliminary mandatory injunction earlier issued is dissolved and the counter-claim of defendant is dismissed due to insufficiency of evidence.

SO ORDERED."<sup>[20]</sup>

Appellees filed a timely Notice of Appeal of the decision.<sup>[21]</sup>

On appeal, the RTC ordered a trial on the merits. In an Order dated November 22, 2002,<sup>[22]</sup> the RTC affirmed the MTC's dismissal of the case for lack of jurisdiction, noting that the existence of a question of ownership gave the RTC jurisdiction and the duty to try the case on the merits as if it was originally filed with it, following Rule 40, Sec. 8 of the Rules of Court.<sup>[23]</sup>

During the trial, plaintiffs-appellees presented the following evidence, among others:

Testimony of Leonila Apelit;<sup>[24]</sup>

Exhibit "A,"<sup>[25]</sup> or TCT No. 14367;

Exhibit "B,"<sup>[26]</sup> or the Subdivision plan of Lot 41 Blk. 60, PSD-39093;

Exhibit "C,"<sup>[27]</sup> or a Tax Declaration dated April 11, 2000;

Exhibit "D,"<sup>[28]</sup> or a Certification from the Municipal Treasurer of Candaba, Pampanga showing that appellee's tax payments were up-to-date;

Exhibit "E and series,"<sup>[29]</sup> or photographs of house being constructed;

Defendant-appellant, meanwhile, submitted the same evidence earlier presented to the MTC, and in addition, presented the testimonies in open court of Fermin Carpio,<sup>[30]</sup> Wilfredo Macalino<sup>[31]</sup> and Gerardo Macalino.<sup>[32]</sup>

### ***The RTC Decision***

The RTC treated the case as an *accion publiciana* and rendered its Decision on May 16, 2008.<sup>[33]</sup> The court ruled in favor of plaintiffs-appellees, finding that the latter's certificate of title gave them "a superior right to possess the contested property."<sup>[34]</sup> It also found that appellant's mere tax declaration and order of a wards were "not better proof of ownership than (those presented by) plaintiffs (appellees)."<sup>[35]</sup> Further, it ruled that appellees, as owners of the property, have the right to eject any person illegally occupying their property.<sup>[36]</sup> In addition, it declared that the appellant, as a builder in bad faith on appellees' property, is not entitled to indemnification for the improvements made once he is ejected.<sup>[37]</sup>

Dissatisfied with the foregoing decision, defendant-appellant perfected the appeal at bench with the filing of their June 10, 2008 Notice of Appeal.<sup>[38]</sup>

In his appeal brief, appellant faulted the RTC as follows:

"1. The RTC erred in not holding that defendant-appellant Marcelo Macalino is not the party-in-interest in the instant case;

2. The RTC erred in holding in its Order dated November 22, 2002 that the appeal of plaintiffs from the Decision dated February 18, 2002 of the first level Court (MCTC) in Civil Case No. 2000-252 should be tried by it under paragraph one (1) and not paragraph two (2) of Section 8, Rule 40 of the 1997 Rules of Civil Procedure;

3. The RTC erred in its Order dated January 26, 2004 in denying the Motion to Dismiss dated November 6, 2003 filed by the defendant-appellant on the ground that it has no jurisdiction over the nature of the action alleged in the Complaint and the Complaint states no cause of action;

4. Be that as it may, the RTC erred in declaring in its decision that defendant-appellant is a builder in bad faith even though he is not the owner of the houses erected in the lot in question; erred in ordering him to vacate and surrender the possession and occupation of the property in question and to cause at his expense, the removal of all the structures constructed on the titled property; and further erred in ordering the defendant-appellant to pay the plaintiffs P20,000.00 attorney's fees and to pay the costs; and finally.

5. The RTC erred in not as a whole dismissing the case and in not granting the counterclaim for damages, attorney's fees and costs as contained in the Answer filed by the defendant in Civil Case No. 2000-252, MCTC, Sta. Ana-Candaba, Pampanga."<sup>[39]</sup>

### ***The Issues***

The issues for our resolution are:

Whether or not the RTC had jurisdiction to try and decided the case;

Whether or not plaintiffs-appellees are entitled to judicially eject defendant-appellant and persons acting in his behalf from the subject property.

### ***The Court's Ruling***

We find the appeal bereft of merit.

First, we discuss appellant's challenge to the RTC's jurisdiction to render the assailed decision.

While it may be true that the RTC erroneously sustained the MTC's ruling dismissing the case for alleged lack of jurisdiction, the RTC's ultimate finding ordering the ejectment of defendant-appellant, among other things, must be affirmed.

The MTC erred in dismissing the case for Forcible Entry for alleged lack of jurisdiction. The fact that the defendant raised a question of ownership in the answer is not a ground for dismissing an ejectment case for lack of jurisdiction, for it is a basic rule in such cases before the MTC that jurisdiction of that court is determined by the allegations in the complaint, and not the defenses raised in the

answer.<sup>[40]</sup> In addition, even if an issue as to ownership exists, the MTC is not deprived of jurisdiction, as it may resolve the issue of ownership only for the purpose of determining the issue of possession; the title or ownership itself should still be finally settled in a litigation before the proper court.<sup>[41]</sup>

However, even if the MTC erred in divesting itself of jurisdiction, and the proper procedure should have been for the RTC to have ordered a remand of the case to the MTC, per Rule 40, Sec. 8, Par. I, we note that appellant's own estoppel and the long period of time that it had already taken the case to reach this stage demand that the case be decided as it now is, *i.e.*, an appeal from a decision of the RTC which treated the case as an *accion publiciana* under its original jurisdiction. After more than 10 years of litigation, the cause of law and justice will not be served if the case is again ordered remanded and tried anew before the MTC, to the great prejudice of the parties who are entitled to speedy resolution of the case. We are mindful of the injunction that rules of procedure must be liberally construed to speedily and efficiently attain substantial justice.<sup>[42]</sup>

Appellant's estoppel by laches is apparent in his active participation in the case before the RTC, spurred by its own representations that the MTC had no jurisdiction, since "a question of ownership is involved." Further, appellant at no point had challenged the RTC's jurisdiction, but in fact invoked it when it questioned the MTC's jurisdiction.

In his Position Paper before the MTC, appellant argued that:

From the aforesaid evidence it is also clear that Wilfredo Macaltno asserts ownership over the land in question and so the real issue is ownership over and above the issue of possession, this Honorable Court should dismiss the complaint and let the parties ventilate the matter before the Regional Trial Court, where the question of ownership of the land may be finally settled, thus:

"Where it appears during the trial that, by the nature of the evidence presented, the issue of possession can not be decided without deciding the issue of ownership, in such case, the jurisdiction of the municipal court is lost and the action should be dismissed. (Ching v. Malaya, 153 SCRA412, De los Santos vs. Court of Appeals, 40 SCRA 44)."

(Emphasis supplied.)<sup>[43]</sup>

It was upon these protestations by appellant that the MTC dismissed the case for Forcible Entry. And it is upon this dismissal that the RTC took jurisdiction and tried the case as it was originally filed before it, following Rule 40, Section 8 of the Rules of Court. Thus, in this appeal, appellant may not again question the RTC's taking of jurisdiction over the case, for if sustained, not only would it leave appellees with no legal recourse in both the MTC or RTC for their clear cause of action, it would also make appellant benefit from his abuse or procedural rules, an absurdity that the law never intended and our collective sense of justice would not permit.

In an apparent effort to escape the court's inevitable and ultimate finding, appellant contends that the second, not the first, paragraph of Rule 40, Section 8 should have