

## THIRD DIVISION

[ G.R. No. 227411, July 15, 2020 ]

**TERESITA DAYANDAYAN, YOLLY D. LAGUNA, CLARA "CARING" TALLE, MR. & MRS. RODRIGO RIOS, AND MR. & MRS. REDEN BIGNAY, PETITIONERS, VS. SPOUSES EDUARDO P. ROJAS AND ENRIQUITA A. ROJAS, RESPONDENTS.**

### DECISION

**GAERLAN, J.:**

This resolves the Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court filed by petitioners Teresita Dayandayan (Dayandayan), Yolly D. Laguna (Laguna), Clara Talle (Talle), Mr. and Mrs. Rodrigo Rios (Spouses Rios) and Mr. and Mrs. Reden Bignay (Spouses Bignay), praying for the reversal of the September 30, 2015 Decision<sup>[2]</sup> and the July 22, 2016 Resolution<sup>[3]</sup> of the Court of Appeals (CA) Cebu City in CA-G.R. SP No. 06815.

### The Antecedents

Spouses Eduardo P. Rojas and Enriquita A. Rojas (respondents) are the lawful owners of Lot No. 635 located at Marvel Isabel, Leyte, containing an area of about 435 square meters (subject property). They purchased the subject property from Generoso and Julieta Pinar (Pinar), as evidenced by a Deed of Sale<sup>[4]</sup> executed on March 9, 1997.

Allegedly, petitioners Talle and Dayandayan asked permission from respondents to construct their houses on a portion of the subject property, with the promise that they would vacate upon the respondents' demand. Out of compassion, the respondents allowed the petitioners to stay without charging any rental fees. Later, Talle's and Dayandayan's relatives, Laguna, spouses Rios, and spouses Bignay likewise stayed in the subject property.<sup>[5]</sup>

Sometime in January 2009, respondents asked the petitioners to vacate the subject property. Petitioners refused to comply.<sup>[6]</sup>

On February 8, 2009, respondents reiterated their demand for the petitioners to vacate.<sup>[7]</sup> Still, the demand remained unheeded.<sup>[8]</sup>

On April 17, 2009, the respondents filed a Complaint for Unlawful Detainer<sup>[9]</sup> against the petitioners before the Municipal Circuit Trial Court of Merida Isabel Circuit, Isabel, Leyte (MCTC).

In their Answer with Counterclaim,<sup>[10]</sup> the petitioners claimed that their houses stand on government property and are situated outside of the respondents' lot. They

pointed out that Pinar's lot, which respondents acquired, only had an area of 306 square meters per Tax Declaration No. 17-0001-00593-R13.<sup>[11]</sup> They related that in 1983, Talle and her husband built a house on a foreshore area, which later became the back of the dry and wet public market of Poblacion, Isabel, Leyte. Meanwhile, in 1984, Dayandayan and her late husband built a house along the side of the pier at Poblacion.<sup>[12]</sup>

Sometime in 1990, the municipal government of Isabel, Leyte reclaimed the foreshore area where the house of Dayandayan stood. The municipal mayor caused her house to be relocated to a portion of the reclaimed area and her structure was placed near the house of Talle at the back of the public market.<sup>[13]</sup>

### **Ruling of the MCTC**

On October 1, 2010, the MCTC rendered a Decision<sup>[14]</sup> granting the complaint for unlawful detainer.

The MCTC ruled that the respondents as the owners of the subject property are entitled to its physical possession. The MCTC noted that the respondents purchased the subject property on March 9, 1997 and have been religiously paying the property taxes and other fees relative thereto.<sup>[15]</sup>

The dispositive portion of the MCTC ruling reads:

WHEREFORE, by preponderance of evidence, judgment is hereby rendered in favor of Plaintiffs-Spouses [respondents] Eduardo and Enriquita Rojas. Thereby, Defendants Teresita Dayandayan, Yolly D. Laguna, Clara "Caring" Talle, Spouses Rodrigo and Virginia Rios and Spouses Reden and Melody Bignay are hereby ordered, to wit:

1. To vacate the premises (Lot No. 635) occupied by them and to turn-over the possession thereof to plaintiffs;
2. To pay the plaintiffs, the sum of Twenty Thousand (Php 20,000.00) Pesos as Attorney's fees and
3. To reimburse the plaintiffs the litigation expenses amounting to Five Thousand (Php 5,000.00) Pesos.

SO ORDERED.<sup>[16]</sup>

Aggrieved, the petitioners filed an appeal with the RTC.

### **Ruling of the RTC**

In a Decision<sup>[17]</sup> dated May 13, 2011, the RTC reversed the MCTC's ruling. The RTC dismissed the complaint for unlawful detainer due to lack of jurisdiction. It noted that the respondents anchored their case for unlawful detainer on their alleged tolerance of the petitioners' stay in their lot.<sup>[18]</sup> However, the respondents failed to prove the fact of tolerance. On the contrary, the records showed that the petitioners have been residing in the subject property long before the respondents purchased

the same on March 9, 1997.<sup>[19]</sup> Thus, it was improbable for the petitioners to ask permission from the respondents to construct their houses sometime in 1997.<sup>[20]</sup> As such, the RTC opined that the respondents should avail of a different remedy to obtain possession of the subject property.<sup>[21]</sup>

The dispositive portion of the RTC ruling reads:

WHEREFORE, the instant appeal is GRANTED. The instant case is ordered DISMISSED for lack of jurisdiction and the assailed Decision of the MCTC Isabel-Merida dated October 1, 2010 is hereby SET ASIDE and VACATED ordering the plaintiffs-appellees [respondents] to respect the physical possession of the defendants-appellants [petitioners] over the affected portions of Lot No. 635 without prejudice to their right to avail of other remedies provided by law to recover possession of the subject property. No pronouncement as to costs.

SO ORDERED.<sup>[22]</sup>

Respondents filed a Motion for Reconsideration.

In an Order<sup>[23]</sup> dated March 26, 2012, the RTC denied the Motion for Reconsideration for lack of merit. However, the RTC clarified that the case for unlawful detainer was dismissed not due to lack of jurisdiction but rather due to lack of evidence, mainly of the alleged tolerance granted by the respondents unto the petitioners.

The decretal portion of the Order states:

WHEREFORE, premises considered, the Decision of 13 May 2011 being assailed by herein plaintiffs-appellees (on motion for reconsideration) is partially modified in that the dismissal of the instant case (on appeal to this Court) is not for lack of jurisdiction but for lack of evidence. Consequently, except for said modification the rest of the dispositive portion in the said Decision of May 13, 2011 is maintained. The instant motion for reconsideration is therefore DENIED for lack of merit.

SO ORDERED.<sup>[24]</sup>

Dissatisfied with the ruling, the respondents filed a Petition for Review under Rule 42 of the Rules of Court with the CA.

### **Ruling of the CA**

On September 30, 2015, the CA rendered the assailed Decision<sup>[25]</sup> reversing the RTC's pronouncement. The CA noted that the respondents sufficiently alleged in their complaint all the necessary allegations that make a case for unlawful detainer based on tolerance. The respondents stated in their Joint Affidavit the overt acts which prove how the petitioners obtained permission from them to occupy the subject property.<sup>[26]</sup>

Moreover, the CA rejected the petitioners' claim that their houses were built on the

reclaimed area, and not on the subject property. The CA held that the Commissioner's Report and Tax Declaration, among others, confirmed that the subject property has been classified as a residential land since 1979. As such, it cannot form part of the reclaimed area.<sup>[27]</sup>

Furthermore, the CA opined that even assuming that Lot No. 635 forms part of the reclaimed area, the petitioners failed to prove that their entry into the subject land preceded respondents' acquisition thereof. The declaration of the RTC that the petitioners entered the property sometime in 1990 was merely based on the latter's affidavits.<sup>[28]</sup> Overall, the CA held that the preponderance of evidence tilts in favor of the respondents.<sup>[29]</sup>

The dispositive portion of the CA ruling reads:

WHEREFORE, the petition is hereby GRANTED. The Decision dated May 13, 2011 and Order dated March 26, 2012 of the Regional Trial Court, Branch 12, Ormoc City in Civil Case No. R-Orm-10-100121-AP are hereby SET ASIDE. The Decision dated October 1, 2010 of the Municipal Circuit Trial Court, Merida-Isabel Circuit is REINSTATED.

SO ORDERED.<sup>[30]</sup>

Undeterred, the petitioners filed the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

### **The Issue**

The crux of the instant petition is who between the petitioners and the respondents are entitled to the possession of the subject property.

The petitioners claim that the respondents failed to prove the fact of tolerance.<sup>[31]</sup> They maintain that they did not have any contract, express or implied, with the respondents or with the latter's predecessors-in-interest.<sup>[32]</sup> They argue that it was impossible for the respondents to have given permission or tolerated their stay, considering that they (petitioners) had been residing in the subject property long before the respondents purchased the same in 1997.<sup>[33]</sup> Respondents' claim of tolerance was merely based on an Affidavit which was self-serving.<sup>[34]</sup> Likewise, the respondents failed to present a Joint Affidavit from the Pinar spouses stating that they had tolerated petitioners' stay on the subject property.<sup>[35]</sup>

Alternatively, the petitioners urge that should the Court find that the respondents have a cause of action, then the proper party would be the Municipality of Isabel, Leyte,<sup>[36]</sup> as it was the latter who ordered the petitioners' relocation to the subject lot.<sup>[37]</sup>

On the other hand, the respondents point out that the issue of tolerance was not raised during the proceedings before the MCTC but was belatedly raised on appeal.<sup>[38]</sup> They claim that to rule on such matter would violate their right to due process.<sup>[39]</sup> Nonetheless, the respondents assert that they sufficiently proved the fact of tolerance.

Moreover, the respondents insist that the area where the petitioners' shanties were built belong to them, and not to the municipality of Isabel, Leyte.<sup>[40]</sup> The Commissioner's Report stated that the structures were located in the subject property.<sup>[41]</sup> Likewise, the Tax Declaration described the subject lot as residential even prior to the reclamation project allegedly undertaken in 1990.<sup>[42]</sup> They maintain that as the owners of the subject property, they are entitled to its possession.<sup>[43]</sup>

Lastly, the respondents aver that the petitioners failed to prove their claim that their houses have been existing on the subject property prior to the respondents' acquisition thereof.<sup>[44]</sup>

### **Ruling of the Court**

***The petition is impressed with merit.***

***The Owner of  
Real Property  
May Not  
Wrest  
Possession  
From the  
Lawful  
Occupant***

Essentially, the owner of real property has the right to enjoy and dispose of a thing, and to file an action against the holder and possessor of the same in order to recover it.<sup>[45]</sup> This stems from the fact that the right to possession is an attribute of ownership. However, ownership by itself, does not grant the owner an unbridled authority to wrest possession from the lawful occupant.<sup>[46]</sup> Rather, to recover possession, the owner must avail of the proper judicial remedy and satisfy all the conditions necessary for the chosen action to prosper.<sup>[47]</sup> These remedies can be an *accion reivindicatoria*, *accion publiciana*, or *accion interdictal*.

Particularly, an *accion reivindicatoria* is a suit to recover possession of a parcel of land as an element of ownership.<sup>[48]</sup> It is filed before the proper Regional Trial Court. The judgment in said case determines the ownership of the property and awards possession to the lawful owner.<sup>[49]</sup>

Meanwhile, an *accion publiciana* is a plenary action to recover the right of possession, and is brought before the proper RTC when the dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession independent of title.<sup>[50]</sup>

Finally, an *accion interdictal* is a summary action that determines the right to physical possession, independent of ownership. It is cognizable by the proper Municipal or Metropolitan Trial Court. An *accion interdictal* comprises two distinct causes of action - forcible entry and unlawful detainer. They are distinguished mainly by the nature of the deforciant's entry into the property. Specifically, in forcible