

SECOND DIVISION

[G.R. No. 224906, October 07, 2020]

**EMMA BUENVIAJE NABO AND ALL PERSONS CLAIMING RIGHTS
UNDER HER, PETITIONER, VS. FELIX C. BUENVIAJE,
RESPONDENT.**

D E C I S I O N

INTING, J.:

This resolves the Petition for Review on *Certiorari* with Application for Temporary Restraining Order and/or Preliminary Injunction^[1] under Rule 45 of the Rules of Court praying that the Decision^[2] dated March 30, 2015 of the Court of Appeals (CA) in CA G.R. SP No. 136811 be reversed and set aside; and that the Decision^[3] dated October 4, 2013 of the Municipal Trial Court (MTC), San Mateo, Rizal in SCA No. 106-2012 for ejectment with damages be affirmed and reinstated.

The Antecedents

The case stemmed from a Complaint^[4] for Ejectment with Damages filed by Felix C. Buenviaje (respondent) against Emma Buenviaje Nabo (petitioner) and all persons claiming rights under her.

In the complaint, respondent alleged the following:

He is the registered owner of a parcel of land (subject property) situated in the Municipality of San Mateo, Province of Rizal covered by Original Certificate of Title (OCT) No. 0-1777^[5] issued by the Register of Deeds of the Province of Rizal.^[6] The title was issued pursuant to a Decision^[7] dated February 7, 2003 issued by the same MTC in LRC Case No. 070-2000 (LRA Record No. N-73603).

From the time of the issuance of the title in his favor, he had allowed petitioner to remain on the subject property considering that the latter is his niece, but with the understanding that should he decide to take it back, petitioner would peacefully surrender and vacate it.^[8]

Sometime in July 2012, he sent a letter addressed to petitioner and to all persons claiming rights under her informing them that the authority previously granted to petitioner to remain in the subject property was being withdrawn. Petitioner was given 15 days from receipt of the letter within which to vacate the subject property and to peacefully surrender it to him.^[9] Per Certification^[10] dated October 1, 2012 issued by the San Mateo Post Office, petitioner, through Ethel May Nabo, received the demand letter.

However, with the expiration of the period granted to petitioner to vacate the

subject property, she refused to comply and still continues to refuse to vacate and surrender the peaceful possession of the subject property to him; thus, depriving him of the enjoyment of his property.^[11]

Considering that he and the petitioner belong to the same *barangay*, and hoping that they could amicably settle, he reported the complaint to the *barangay*.^[12] However, the conciliation failed. A *Barangay* Certificate to File Action^[13] was then issued to him. Hence, the complaint praying, among others, that petitioner be ordered to vacate the premises and to immediately surrender peaceful possession thereof to respondent;^[14] that petitioner be ordered to pay respondent an amount of P4,000.00 per month from the time the demand was made for her to vacate the subject property until she has fully surrendered possession thereof to respondent;^[15] and that petitioner be ordered to pay respondent attorney's fees in the amount of P20,000.00.^[16]

In her Answer,^[17] petitioner alleged the following:

Since 1950 or since her childhood, she has been a resident of the subject property that was registered under the name of her father, Carlos Buenviaje, with the Office of the Assessor of the Province of Rizal on May 31, 1979 and for which reason Tax Declaration No. 08-0149 was issued in the latter's name. She formally acquired the subject property on May 12, 1983 through a Deed of Absolute Sale^[18] (Deed) executed by and between her and her spouse, as vendees and Carlos Buenviaje, as vendor. The Deed was duly notarized on even date.^[19]

Petitioner maintained that respondent was aware of her and her father's previous possession of the subject property prior to 1983 and her subsequent purchase of it in 1983. After petitioner purchased the subject property from her father, Tax Declaration No. 08-0149 was cancelled and a new one was issued in 1984 in her name and her spouse, Rolando Nabo. From then on, she and her family have been in open and continuous possession and occupancy in the concept of an owner of the subject property; and to which they have been paying real property taxes thereon since then up to the present as evidenced by the various receipts issued by the Provincial Treasurer's Office of San Mateo, Rizal.^[20]

During petitioner's undisturbed possession, she introduced improvements on the ancestral home already built thereon which she declared for real property tax on July 16, 1993 under Tax Declaration No. SM-007-0183, but was exempted from it as evidenced by a certification issued by the Provincial Treasurer of San Mateo, Rizal.^[21]

Petitioner asserted that sometime in 1998, respondent with Angeles P. Angeles, Local Assessment Operation Officer III of the Municipality of San Mateo, came to convince her to consolidate the subject property with respondent's unregistered adjacent property in a single application for registration of title under the latter's name; that the consolidation would be for the purpose of helping respondent's son, Benjamin Buenviaje, to obtain a loan using the properties as collateral. She declined their proposal.^[22]

Respondent then suggested to petitioner that they simulate a sale to which the

latter would exchange the subject property for another property of respondent. Petitioner did not agree.^[23]

Soon thereafter, respondent, through a certain Atty. Almero of the Public Attorney's Office in the Municipality of San Mateo, approached petitioner reiterating the prior request for consolidation and registration of title of the subject property and one of the properties of respondent with an assurance that respondent and his children would execute and sign an agreement stating that once the title over the properties is issued, the respondent would return the subject property to petitioner.^[24] Atty. Almero drafted an Agreement^[25] embodying respondent's offer and furnished petitioner a copy thereof. However, petitioner again turned down the request.

In 2001, petitioner was informed to attend a hearing in LRC CASE No. 070-2000 (LRA Record No. N-73603) before the MTC of San Mateo, Rizal involving the subject property; she appeared in the hearing without a counsel to enter her opposition in open court and made a statement that the subject property belonged to her. She recalled that the presiding judge informed her that she needed to secure the services of a counsel to formally oppose the Application for Registration of Title of a Parcel of Land filed by respondent. After the hearing, respondent approached petitioner and informed her that he would take care of the dropping of the case and that there was no need for petitioner to attend further hearings.^[26] Petitioner, thereafter, did not return to the MTC.

On May 17, 2012, petitioner was invited to attend a *barangay* conciliation and mediation proceeding initiated by respondent and his daughter, Elena Buenviaje Valbuena (Elena). Elena alleged that the subject property was already titled under respondent's name notwithstanding, petitioner's purchase of the subject property in 1983 and the latter's continuous possession of it prior to its purchase up to the present. Petitioner then exerted efforts to ascertain the truth behind Elena's claim. She inquired before the courts of San Mateo, Rizal if there was a case filed involving the registration of the subject property, but was told that all of the records were destroyed because of the typhoon Ondoy in 2009.^[27]

On October 1, 2012, petitioner received a letter dated July 18, 2012 from respondent's counsel demanding her to vacate the subject property in favor of respondent.

On November 14, 2012, petitioner sent her reply^[28] informing respondent's counsel that the demand to vacate had no basis in fact and in law because respondent was well aware that the subject property belonged to her as she has been in continuous and open possession thereof from May 12, 1983 up to the present.

The Ruling of the MTC

On October 4, 2013, the MTC rendered a Decision^[29] dismissing the complaint. In part, the MTC ruled that while respondent sought to acquire physical possession of the subject property on the premise that he is the titled owner and that his ownership carries with it his right to possess it, the plea, however, was unavailing in an ejectment suit.^[30]

The Ruling of the RTC

On July 10, 2014, Branch 77, Regional Trial Court (RTC), San Mateo, Rizal rendered a Decision^[31] reversing and setting aside the MTC Decision. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the Decision dated 04 October 2013 of the Municipal Trial Court of San Mateo, Rizal is hereby REVERSED and SET ASIDE and a new judgment is hereby rendered in favour of the plaintiff as against defendant and all persons claiming rights under her as follows:

1. Ordering the defendants to vacate the premises subject matter of this case and to immediately surrender peaceful possession thereof to plaintiff[;] and
2. Ordering the defendants to pay plaintiff the amount of P4,000.00 per month from the time Demand was made for her to vacate hereof, until she has fully surrendered possession of the same to the plaintiff and to pay plaintiff the amount of P20,000.00 by way of Attorney's fees.

SO ORDERED.^[32]

The Ruling of the CA

On March 30, 2015, the CA rendered the assailed Decision^[33] dismissing the petition for review filed by petitioner and affirmed the RTC Decision. The CA ruled that respondent, being the registered owner, also has the corresponding right to the recovery and possession of the subject property; and that petitioner, who is in physical occupancy of the land belonging to respondent, has no right whatsoever to unjustly withhold the possession of the subject property from the latter and she should immediately vacate it.^[34]

Petitioner alleged that a motion for reconsideration is not a condition precedent to the filing of a petition for review on *certiorari* under Rule 45 of the Rules of Court following the Court's pronouncement in *The Bases Conversion and Development Authority v. Uy*.^[35]

Hence, this petition for review on *certiorari*.

The Issue

WHETHER OR NOT RESPONDENT'S CERTIFICATE OF TITLE ENTITLES HIM TO OUTRIGHT POSSESSION OF THE SUBJECT PROPERTY UNDER RULE 70 OF THE RULES OF COURT WITHOUT NEED TO SUBSTANTIATE AND PROVE BY PREPONDERANCE OF EVIDENCE.^[36]

Our Ruling

After considering the arguments of both parties and assiduously studying the records of the case, the Court grants the instant petition.

At the crux of the instant petition is the question of whether petitioner should vacate the subject property and surrender the possession thereof to respondent.

In her petition, petitioner maintains that: (1) the elements for a case of unlawful detainer are wanting and that respondent has utterly failed to prove them by preponderance of evidence;^[37] (2) respondent failed to elaborate and substantiate the circumstances and details of the events pertaining to his alleged tolerance over petitioner's possession;^[38] (3) the mere presentation of the certificate of title covering the subject property, without more, does not entitle respondent to the remedy of unlawful detainer under Rule 70 of the Rules of Court as the first element of tolerance must still be proved by a preponderance of evidence;^[39] and (4) respondent cannot simply use unlawful detainer to oust the lawful physical and actual possession of petitioner, without substantiating and proving, his claim of tolerance only to avoid the consequences of failing to file the appropriate action.^[40]

The contentions are meritorious.

In this case, respondent identifies his complaint as an ejectment suit alleging that since the issuance of title in his favor, he has allowed petitioner to remain on the subject property considering that the latter is his niece;^[41] that despite the withdrawal of the permission to remain on the subject property, and the receipt by petitioner of the demand to vacate and the expiration of the period granted thereon to comply, petitioner still refused and continues to refuse to vacate the subject property and to surrender the peaceful possession thereof to respondent.^[42]

In *Cabrera, et al. v. Getaruela, et al.*,^[43] the Court held that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following:

- (1) initially, possession of the property by the defendant was by contract with or by tolerance of the plaintiff;
- (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;
- (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and
- (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.^[44]

After a perusal of the complaint and the available records of the case, the Court finds that respondent failed to prove the first recital. Respondent utterly failed to substantiate his claim that he merely tolerated petitioner's possession of the subject property. It must be noted that with respondent's averment that petitioner's possession was by his mere tolerance, the acts of tolerance must be proved, for a bare allegation of tolerance will not suffice.^[45] At the very least, respondent should show the overt acts indicative of his tolerance, but he miserably failed to adduce