

## THIRD DIVISION

[ G.R. No. 174082, January 16, 2012 ]

**GEORGIA T. ESTEL, PETITIONER, VS. RECAREDO P. DIEGO, SR.  
AND RECAREDO R. DIEGO, JR., RESPONDENTS.**

### DECISION

**PERALTA, J.:**

Before the Court is a petition for review on *certiorari* seeking to annul and set aside the Decision<sup>[1]</sup> promulgated on September 30, 2005 and Resolution<sup>[2]</sup> dated August 10, 2006 by the Court of Appeals (CA) in CA-G.R. SP No. 77197. The assailed Decision affirmed the Decision dated October 7, 2002 of the Regional Trial Court (RTC) of Gingoog City, Branch 27, Misamis Oriental, while the questioned Resolution denied petitioner's Motion for Reconsideration.

The factual and procedural antecedents of the case are as follows:

The present petition originated from a Complaint for Forcible Entry, Damages and Injunction with Application for Temporary Restraining Order filed by herein respondents Recaredo P. Diego, Sr., and Recaredo R. Diego, Jr. with the Municipal Trial Court in Cities (MTCC) of Gingoog City, Misamis Oriental. Respondents alleged that on April 16, 1991, they entered into a contract of sale of a 306 –square-meter parcel of land, denominated as Lot 19, with petitioner; after receiving the amount of P17,000.00 as downpayment, petitioner voluntarily delivered the physical and material possession of the subject property to respondents; respondents had been in actual, adverse and uninterrupted possession of the subject lot since then and that petitioner never disturbed, molested, annoyed nor vexed respondents with respect to their possession of the said property; around 8:30 in the morning of July 20, 1995, petitioner, together with her two grown-up sons and five other persons, uprooted the fence surrounding the disputed lot, after which they entered its premises and then cut and destroyed the trees and plants found therein; respondent Recaredo R. Diego, Jr. witnessed the incident but found himself helpless at that time. Respondents prayed for the restoration of their possession, for the issuance of a permanent injunction against petitioner as well as payment of damages, attorney's fees and costs of suit.<sup>[3]</sup>

On July 26, 1995, the MTCC issued a Temporary Restraining Order<sup>[4]</sup> against petitioner and any person acting in her behalf.

In her Answer with Special/Affirmative Defenses and Counterclaims, petitioner denied the material allegations in the Complaint contending that respondents were never in physical, actual, public, adverse and uninterrupted possession of the subject lot; full possession and absolute ownership of the disputed parcel of land, with all improvements thereon, had always been that of petitioner and her daughter; the agreement she entered into with the wife of respondent Recaredo P.

Diego, Sr. for the sale of the subject lot had been abrogated; she even offered to return the amount she received from respondents, but the latter refused to accept the same and instead offered an additional amount of P12,000.00 as part of the purchase price but she also refused to accept their offer; the subject of the deed of sale between petitioner and respondents and what has been delivered to respondents was actually Lot 16 which is adjacent to the disputed Lot 19; that they did not destroy the improvements found on the subject lot and, in fact, any improvements therein were planted by petitioner's parents.<sup>[5]</sup>

On February 16, 2002, the MTCC rendered a Decision, the dispositive portion of which reads as follows:

WHEREFORE, viewed in the light of the foregoing, judgment is hereby rendered in favor of the plaintiffs [herein respondents], dismissing defendant's [herein petitioner's] counterclaim and ordering the defendant, her agents and representatives:

1. To vacate the premises of the land in question and return the same to the plaintiffs;

2. To pay plaintiffs, the following, to wit:

a) P100.00 a month as rentals for the use of the litigated property reckoned from the filing of the complaint until the defendant vacates the property;

b) P5,000.00 representing the value of the fence and plants damaged by the defendants as actual damages;

c) P20,000.00 as and for attorney's fees;

d) P2,000.00 for litigation expenses;

3. Ordering the defendant to pay the cost of suit;

Execution shall immediately issue upon motion unless an appeal has been perfected and the defendant to stay execution files a *supersedeas* bond which is hereby fixed at P10,000.00 approved by this Court and executed in favor of the plaintiffs, to pay the rents, damages and costs accruing down to the time of the judgment appealed from and unless, during the pendency of the appeal, defendant deposits with the appellate court the amount of P100.00 as monthly rental due from time to time on or before the 10<sup>th</sup> day of each succeeding month or period.

SO ORDERED.<sup>[6]</sup>

Aggrieved, petitioner appealed to the RTC of Gingoog City.<sup>[7]</sup>

On October 7, 2002, the RTC rendered its Decision<sup>[8]</sup> affirming the assailed Decision of the MTCC.

Petitioner then filed a petition for review with the CA.

On September 30, 2005, the CA promulgated its Decision which affirmed the Decision of the RTC.

Petitioner filed a Motion for Reconsideration, but the CA denied it in its Resolution dated August 10, 2006.

Hence, the instant petition based on the following arguments:

[THE] COURT OF APPEALS, 23<sup>rd</sup> DIVISION, ERRED IN FAILING TO CONSIDER THAT THE RTC BRANCH 27 OF GINGOOG CITY ERRONEOUSLY CONCLUDED THAT THE MTCC OF GINGOOG CITY HAS JURISDICTION OVER THE SUBJECT MATTER OF THE ACTION.

[THE] COURT OF APPEALS ERRED IN NOT RECOGNIZING THAT THE RTC BRANCH 27 OF GINGOOG CITY FAILED TO MAKE A FINDING OF FACT THAT THE COMPLAINT STATES NO CAUSE OF ACTION.

THE COURT OF APPEALS ERRED LIKEWISE IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT BRANCH 27 OF GINGOOG CITY OVERLOOKING THE FACT THAT ITS FINDING OF FACTS AND CONCLUSIONS ARE AGAINST OR NOT SUPPORTED BY COMPETENT MATERIAL EVIDENCE.<sup>[9]</sup>

Petitioner contends that since respondents failed to allege the location of the disputed parcel of land in their complaint, the MTCC did not acquire jurisdiction over the subject matter of the said complaint. Petitioner also avers that the MTCC did not acquire jurisdiction over the case for failure of respondents to specifically allege facts constitutive of forcible entry. On the bases of these two grounds, petitioner argues that the MTCC should have dismissed the complaint *motu proprio*.

Petitioner also avers that the complaint states no cause of action because the verification and certificate of non-forum shopping accompanying the complaint are defective and, as such, the complaint should be treated as an unsigned pleading. As to the verification, petitioner contends that it should be based on respondent's personal knowledge or on authentic record and not simply upon "knowledge, information and belief." With respect to the certificate of non-forum shopping, petitioner claims that its defect consists in respondents' failure to make an undertaking therein that if they should learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals or any other tribunal or agency, they shall report that fact within five (5) days therefrom to the court or agency wherein the original pleading and sworn certification have been filed.

The Court does not agree.

A review of the records shows that petitioner did not raise the issue of jurisdiction or venue in her Answer filed with the MTCC. The CA correctly held that even if the geographical location of the subject property was not alleged in the Complaint, petitioner failed to seasonably object to the same in her Affirmative Defense, and