

## SECOND DIVISION

[ G.R. No. 185064, January 16, 2012 ]

**SPOUSES ARACELI OLIVA-DE MESA AND ERNESTO S. DE MESA,  
PETITIONER, VS. SPOUSES CLAUDIO D. ACERO, JR. AND MA.  
RUFINA D. ACERO, SHERIFF FELIXBERTO L. SAMONTE AND  
REGISTRAR ALFREDO SANTOS, RESPONDENTS.**

### DECISION

**REYES, J.:**

#### **Nature of the Petition**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by the Spouses Araceli Oliva-De Mesa (Araceli) and Ernesto S. De Mesa (Ernesto), assailing the Court of Appeals' (CA) Decision<sup>[1]</sup> dated June 6, 2008 and Resolution<sup>[2]</sup> dated October 23, 2008 in CA-G.R. CV No. 79391 entitled "*Spouses Araceli Oliva-De Mesa and Ernesto De Mesa v. Spouses Claudio Acero, Jr., et al.*"

#### **The Antecedent Facts**

This involves a parcel of land situated at No. 3 Forbes Street, Mount Carmel Homes Subdivision, Iba, Meycauayan, Bulacan, which was formerly covered by Transfer Certificate of Title (TCT) No. T-76.725 (M) issued by the Register of Deeds of Meycauayan, Bulacan and registered under Araceli's name. The petitioners jointly purchased the subject property on April 17, 1984 while they were still merely cohabiting before their marriage. A house was later constructed on the subject property, which the petitioners thereafter occupied as their family home after they got married sometime in January 1987.

Sometime in September 1988, Araceli obtained a loan from Claudio D. Acero, Jr. (Claudio) in the amount of P100,000.00, which was secured by a mortgage over the subject property. As payment, Araceli issued a check drawn against China Banking Corporation payable to Claudio.

When the check was presented for payment, it was dishonored as the account from which it was drawn had already been closed. The petitioners failed to heed Claudio's subsequent demand for payment.

Thus, on April 26, 1990, Claudio filed with the Prosecutor's Office of Malolos, Bulacan a complaint for violation of Batas Pambansa Blg. 22 (B.P. 22) against the petitioners. After preliminary investigation, an information for violation of B.P. 22 was filed against the petitioners with the Regional Trial Court (RTC) of Malolos, Bulacan.

On October 21, 1992, the RTC rendered a Decision<sup>[3]</sup> acquitting the petitioners but

ordering them to pay Claudio the amount of P100,000.00 with legal interest from date of demand until fully paid.

On March 15, 1993, a writ of execution was issued and Sheriff Felixberto L. Samonte (Sheriff Samonte) levied upon the subject property. On March 9, 1994, the subject property was sold on public auction; Claudio was the highest bidder and the corresponding certificate of sale was issued to him.

Sometime in February 1995, Claudio leased the subject property to the petitioners and a certain Juanito Oliva (Juanito) for a monthly rent of P5,500.00. However, the petitioners and Juanito defaulted in the payment of the rent and as of October 3, 1998, their total accountabilities to Claudio amounted to P170,500.00.

Meanwhile, on March 24, 1995, a Final Deed of Sale<sup>[4]</sup> over the subject property was issued to Claudio and on April 4, 1995, the Register of Deeds of Meycauayan, Bulacan cancelled TCT No. T-76.725 (M) and issued TCT No. T-221755 (M)<sup>[5]</sup> in his favor.

Unable to collect the aforementioned rentals due, Claudio and his wife Ma. Rufina Acero (Rufina) (collectively referred to as Spouses Acero) filed a complaint for ejectment with the Municipal Trial Court (MTC) of Meycauayan, Bulacan against the petitioners and Juanito. In their defense, the petitioners claimed that Spouses Acero have no right over the subject property. The petitioners deny that they are mere lessors; on the contrary, they are the lawful owners of the subject property and, thus cannot be evicted therefrom.

On July 22, 1999, the MTC rendered a Decision,<sup>[6]</sup> giving due course to Spouses Acero's complaint and ordering the petitioners and Juanito to vacate the subject property. Finding merit in Spouses Acero's claims, the MTC dismissed the petitioners' claim of ownership over the subject property. According to the MTC, title to the subject property belongs to Claudio as shown by TCT No. T-221755 (M).

The MTC also stated that from the time a Torrens title over the subject property was issued in Claudio's name up to the time the complaint for ejectment was filed, the petitioners never assailed the validity of the levy made by Sheriff Samonte, the regularity of the public sale that was conducted thereafter and the legitimacy of Claudio's Torrens title that was resultantly issued.

The petitioners appealed the MTC's July 22, 1999 Decision to the RTC. This appeal was, however, dismissed in a Decision dated November 22, 1999 due to the petitioners' failure to submit their Memorandum. The petitioners sought reconsideration of the said decision but the same was denied in an Order dated January 31, 2000.

Consequently, the petitioners filed a petition for review<sup>[7]</sup> with the CA assailing the RTC's November 22, 1999 Decision and January 31, 2000 Order. In a December 21, 2006 Decision,<sup>[8]</sup> the CA denied the petitioner's petition for review. This became final on July 25, 2007.<sup>[9]</sup>

In the interregnum, on October 29, 1999, the petitioners filed against the

respondents a complaint<sup>[10]</sup> to nullify TCT No. T-221755 (M) and other documents with damages with the RTC of Malolos, Bulacan. Therein, the petitioners asserted that the subject property is a family home, which is exempt from execution under the Family Code and, thus, could not have been validly levied upon for purposes of satisfying the March 15, 1993 writ of execution.

On September 3, 2002, the RTC rendered a Decision,<sup>[11]</sup> which dismissed the petitioners' complaint. Citing Article 155(3) of the Family Code, the RTC ruled that even assuming that the subject property is a family home, the exemption from execution does not apply. A mortgage was constituted over the subject property to secure the loan Araceli obtained from Claudio and it was levied upon as payment therefor.

The petitioners sought reconsideration of the RTC's September 3, 2002 Decision but this was denied in a Resolution<sup>[12]</sup> dated January 14, 2003.

On appeal, the CA affirmed the RTC's disposition in its Decision<sup>[13]</sup> dated June 6, 2008. The CA ratiocinated that the exemption of a family home from execution, attachment or forced sale under Article 153 of the Family Code is not automatic and should accordingly be raised and proved to the Sheriff prior to the execution, forced sale or attachment. The appellate court noted that at no time did the petitioners raise the supposed exemption of the subject property from execution on account of the same being a family home.

The petitioners then sought reconsideration of the said June 6, 2008 Decision but the same was denied by the CA in its Resolution<sup>[14]</sup> dated October 23, 2008.

Aggrieved, the petitioners filed the instant petition for review, praying for the cancellation of TCT No. T-221755 (M). They insist that the execution sale that was conducted is a nullity considering that the subject property is a family home. The petitioners assert that, contrary to the disposition of the CA, a prior demonstration that the subject property is a family home is not required before it can be exempted from execution.

In their Comment,<sup>[15]</sup> Spouses Acero claimed that this petition ought to be denied on the ground of forum-shopping as the issues raised had already been determined by the MTC in its July 22, 1999 Decision on the complaint for ejectment filed by them, which had already become final and executory following the petitioner's failure to appeal the CA's December 21, 2006 Decision affirming it.

### **Issues**

The threshold issues for resolution are the following: (a) whether the petitioners are guilty of forum-shopping; and (b) whether the lower courts erred in refusing to cancel Claudio's Torrens title TCT No. T-221755 (M) over the subject property.

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

#### **First Issue: Forum-Shopping**

On the first issue, we find that the petitioners are not guilty of forum-shopping.

There is forum-shopping when as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than an appeal or *certiorari*. Forum-shopping exists when two or more actions involve the same transactions, essential facts, and circumstances; and raise identical causes of action, subject matter, and issues.<sup>[16]</sup>

Forum-shopping exists where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other. The elements of forum-shopping are: (a) identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.<sup>[17]</sup>

There is no identity of issues and reliefs prayed for in the ejectment case and in the action to cancel TCT No. T-221755 (M). Verily, the primordial issue in the ejectment case is who among the contending parties has a better right of possession over the subject property while ownership is the core issue in an action to cancel a Torrens title.

It is true that the petitioners raised the issue of ownership over the subject property in the ejectment case. However, the resolution thereof is only provisional as the same is solely for the purpose of determining who among the parties therein has a better right of possession over the subject property.

Accordingly, a judgment rendered in an ejectment case is not a bar to action between the same parties respecting title to the land or building. Neither shall it be conclusive as to the facts therein. This issue is far from being novel and there is no reason to depart from this Court's previous pronouncements. In *Malabanan v. Rural Bank of Cabuyao, Inc.*,<sup>[18]</sup> this Court had previously clarified that a decision in an ejectment case is not *res judicata* in an annulment of title case and vice-versa given the provisional and inconclusive nature of the determination of the issue of ownership in the former.

Forum-shopping exists where the elements of *litis pendentia* are present, namely: (a) identity of parties or at least such as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amounts to *res judicata* in the other.

Petitioner and respondent are the same parties in the annulment and ejectment cases. The issue of ownership was likewise being contended, with same set of evidence being presented in both cases. However, it

cannot be inferred that a judgment in the ejectment case would amount to *res judicata* in the annulment case, and *vice-versa*.

This issue is hardly a novel one. It has been laid to rest by heaps of cases iterating the principle that a judgment rendered in an ejectment case shall not bar an action between the same parties respecting title to the land or building nor shall it be conclusive as to the facts therein found in a case between the same parties upon a different cause of action involving possession.

It bears emphasizing that in ejectment suits, the only issue for resolution is the physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants. However, the issue of ownership may be provisionally ruled upon for the sole purpose of determining who is entitled to possession *de facto*. Therefore, the provisional determination of ownership in the ejectment case cannot be clothed with finality.

Corollarily, the incidental issue of whether a pending action for annulment would abate an ejectment suit must be resolved in the negative.

A pending action involving ownership of the same property does not bar the filing or consideration of an ejectment suit, nor suspend the proceedings. This is so because an ejectment case is simply designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings.<sup>[19]</sup> (citations omitted)

### **Second Issue: Nullification of TCT No. T-221755 (M)**

Anent the second issue, this Court finds that the CA did not err in dismissing the petitioners' complaint for nullification of TCT No. T-221755 (M).

#### **The subject property is a family home.**

The petitioners maintain that the subject property is a family home and, accordingly, the sale thereof on execution was a nullity. In *Ramos v. Pangilinan*,<sup>[20]</sup> this Court laid down the rules relative to exemption of family homes from execution:

For the family home to be exempt from execution, distinction must be made as to what law applies based on **when** it was constituted and what requirements must be complied with by the judgment debtor or his successors claiming such privilege. Hence, two sets of rules are applicable.

If the family home was constructed *before* the effectivity of the Family Code or before August 3, 1988, **then it must have been constituted either judicially or extra-judicially as provided under Articles 225, 229-231 and 233 of the Civil Code**. Judicial constitution of the family