

## THIRD DIVISION

[ G.R. No. 170864, February 16, 2010 ]

**NELSON LAGAZO, PETITIONER, VS. GERALD B. SORIANO AND  
GALILEO B. SORIANO, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 80709, promulgated on October 28, 2005, granting herein respondents' petition for review, and the CA Resolution<sup>[2]</sup> promulgated on December 20, 2005, denying herein petitioner's motion for reconsideration, be reversed and set aside.

The undisputed facts are as follows.

On January 16, 2001, respondents filed with the Municipal Trial Court of Tabuk, Kalinga (MTC), a complaint for Forcible Entry with Application for Temporary Restraining Order and a Writ of Preliminary Injunction and Damages against petitioner. Respondents claimed they were the owners of a parcel of land covered by Original Certificate of Title No. P-665, Lot No. 816, Pls-93 with an area of 58,171 square meters. They allegedly acquired the same by purchase from their grandfather, Arsenio Baac, on September 10, 1998, but even prior thereto, they were already allowed by Arsenio Baac to cultivate said land. They paid real property taxes for said property from 1990 to 1998 and had been in actual possession from that time. However, on January 6, 2001, herein petitioner allegedly unlawfully entered the property by means of force, stealth, and strategy and began cultivating the land for himself.

On the other hand, petitioner insisted in his Answer that he, together with his mother, brothers, and sisters, were the lawful owners of the land in question, being the legal heirs of Alfredo Lagazo, the registered owner thereof. They denied that the subject land was sold to Arsenio Baac, alleging instead that the agreement between Alfredo Lagazo and Arsenio Baac was merely one of mortgage. Petitioner, likewise maintained that he and his co-heirs had always been in possession of the disputed land. They allegedly tried several times to redeem the property, but Baac increased the redemption price from P10,000.00 to P100,000.00. This prompted them to bring the matter before the Barangay Lupon of Balong, Tabuk, Kalinga, but no agreement was reached.

On November 23, 2001, the MTC rendered a Decision, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered as follows:

1. Dismissing the complaint of Forcible Entry filed against defendant Nelson Lagazo;
2. Ordering the plaintiffs, Gerald B. Soriano and Galileo B. Soriano to surrender Original Certificate of Title No. P-665 in the name of Alfredo Lagazo to the heirs of Lagazo which was given to Arsenio Baac by Alfredo Lagazo when the Deed of Mortgage was executed between them;
3. Ordering the heirs of Alfredo Lagazo to execute the deed of conveyance in favor of the plaintiffs covering the one (1) hectare portion subject of the mortgage between Alfredo Lagazo and Arsenio Baac and to segregate the same from property covered by OCT P-665;
4. Plaintiffs to pay the costs of suit.

SO ORDERED.<sup>[3]</sup>

The foregoing Decision was appealed to the Regional Trial Court (RTC) of Tabuk, Kalinga. Said appellate court ruled that herein respondents failed to prove prior physical possession, thus, it reversed the MTC Decision and dismissed the complaint against herein petitioner.

Respondents then filed with the CA a Petition for Review under Rule 42 of the Rules of Court and on October 28, 2005, the CA promulgated the assailed Decision which disposed thus:

**WHEREFORE**, premises considered, the petition is **GRANTED**. Physical possession is hereby ordered returned to the petitioners, without prejudice to the respondent's right to take recourse to remedies provided for under the law, if he is so inclined. Actual, moral and exemplary damages cannot be granted because of lack of substantive evidence to prove the same. However, we grant the amount of P10,000.00 in attorney's fees plus P500.00 per appearance of petitioners' counsel, as well as another P10,000.00 in litigation expenses as prayed for in their complaint, conformably to par. 11 of Art. 2208 of the Civil Code, i.e. it is just and equitable under the circumstances, and considering that the award is well deserved by the petitioners who had shown evident good faith in, and respect for, the judicial system.

**SO ORDERED.**<sup>[4]</sup>

Petitioner moved for reconsideration, but the same was denied per CA Resolution dated December 20, 2005. Hence, this petition where the following issues are raised:

WHETHER THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THERE WAS IMPLIED ADMISSION ON THE PART OF THE PETITIONER THAT

RESPONDENTS HAD BEEN IN ACTUAL PHYSICAL POSSESSION OF THE LOT IN CONTROVERSY SINCE 1979.

WHETHER THE TRIAL COURT GRAVELY ERRED IN NOT GIVING CREDENCE TO THE EVIDENCE ADDUCED BY PETITIONER SUBSTANTIATING HIS PRIORITY IN POSSESSION OVER THE LOT IN CONTROVERSY.

WHETHER THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE RESPONDENTS HAVE BETTER RIGHT OF POSSESSION OVER THE LOT IN CONTROVERSY.<sup>[5]</sup>

The Court finds the petition unmeritorious.

Prior physical possession is an indispensable element in forcible entry cases.<sup>[6]</sup> Thus, the ultimate question here is who had prior physical possession of the disputed land.

Ordinarily, in a Petition for Review on *Certiorari*, this Court only considers questions of law, as it is not a trier of facts. However, there are exceptions to this general rule, such as, when the findings of fact of the appellate court are contrary to those of the trial court.<sup>[7]</sup> Such circumstance exists in this case, hence, the Court is compelled to take a closer look at the records.

In *Sudaria v. Quiambao*,<sup>[8]</sup> the Court held that:

Ejectment proceedings are summary proceedings intended to provide an expeditious means of protecting actual possession or right to possession of property. **Title is not involved.** The sole issue to be resolved is who is entitled to the physical or material possession of the premises or possession de facto. On this point, the pronouncements in *Pajuyo v. Court of Appeals* are enlightening, thus:

x x x x

x x x Regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror. Neither is the unlawful withholding of property allowed. Courts will always uphold respect for prior possession.

Thus, **a party who can prove prior possession can recover such possession even against the owner himself.** Whatever may be the character of his possession, **if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him.** To repeat, the only issue that the court has to settle in an ejectment suit is the right to physical possession.<sup>[9]</sup> (Emphasis supplied.)