

SECOND DIVISION

[G.R. No. 177637, July 26, 2010]

DR. DIOSCORO CARBONILLA, PETITIONER, VS. MARCELO ABIERA AND MARICRIS ABIERA PAREDES, SUBSTITUTED BY HER HEIRS, RESPONDENTS.

D E C I S I O N

NACHURA, J.:

Assailed in this petition for review are the Decision^[1] of the Court of Appeals (CA) dated September 18, 2006 and the Resolution dated April 17, 2007, which dismissed petitioner's complaint for ejectment against respondents.

The case arose from the following antecedents:

Petitioner, Dr. Dioscoro Carbonilla, filed a complaint for ejectment against respondents, Marcelo Abiera and Maricris Abiera Paredes, with the Municipal Trial Court in Cities (MTCC), Maasin City. The complaint alleged that petitioner is the registered owner of a parcel of land, located in *Barangay* Canturing, Maasin City, identified as Lot No. 1781-B-P-3-B-2-B PSD-08-8452-D, Maasin Cadastre. The land is purportedly covered by a certificate of title, and declared for assessment and taxation purposes in petitioner's name. Petitioner further claimed that he is also the owner of the residential building standing on the land, which building he acquired through a Deed of Extrajudicial Settlement of Estate (Residential Building) with Waiver and Quitclaim of Ownership. He maintained that the building was being occupied by respondents by mere tolerance of the previous owners. Petitioner asserted that he intends to use the property as his residence, thus, he sent a demand letter to respondents asking them to leave the premises within 15 days from receipt of the letter, but they failed and refused to do so. Conciliation efforts with the *Barangay* proved futile.^[2]

To corroborate his claim, petitioner presented copies of Transfer Certificate of Title (TCT) No. T-3784; Deed of Extrajudicial Settlement of Estate (Residential Building) with Waiver and Quitclaim of Ownership dated November 10, 2002, executed by the heirs of Jovita Yanto Garciano; Tax Declaration (TD) with ARP No. 07020-000019; and Demand Letter dated November 20, 2002. TCT No. T-3784 shows that the land was originally registered on January 30, 1968 in the name of Diosdado Carbonilla, petitioner's father, under Original Certificate of Title No. 185.

In their defense, respondents vehemently denied petitioner's allegation that they possessed the building by mere tolerance of the previous owners. Instead, they asserted that they occupied the building as owners, having inherited the same from Alfredo Abiera and Teodorica Capistrano, respondent Marcelo's parents and respondent Maricris' grandparents. They maintained that they have been in possession of the building since 1960, but it has not been declared for taxation

purposes. As for the subject land, respondents claimed that they inherited the same from Francisco Plasabas, grandfather of Alfredo Abiera. They pointed out that the land had, in fact, been declared for taxation purposes in the name of Francisco Plasabas under TD No. 4676, before the Second World War. This TD was later cancelled by TD No. 8735 in 1948, TD No. 14363 in 1958, and TD No. 16182 in 1963. Respondents averred that the building was previously a garage-like structure but, in 1977, Alfredo Abiera and Teodorica Capistrano repaired and remodeled it, for which reason, they obtained a building permit on April 11, 1977 from the then Municipality of Maasin. Finally, respondents contended that the case should be dismissed for failure to implead as defendants respondent Marcelo's siblings, who are co-heirs of the subject properties.^[3] Respondents presented copies of the two TDs in the name of Francisco Plasabas and the Building Permit dated April 11, 1977.

The MTCC decided the case in favor of respondents. It opined that petitioner's claim of ownership over the subject parcel of land was not successfully rebutted by respondents; hence, petitioner's ownership of the same was deemed established.^[4] However, with respect to the building, the court declared respondents as having the better right to its material possession in light of petitioner's failure to refute respondents' claim that their predecessors had been in prior possession of the building since 1960 and that they have continued such possession up to the present.^[5] In so ruling, the court applied Art. 546^[6] of the Civil Code which allows the possessor in good faith to retain the property until he is reimbursed for necessary expenses. Thus, in its decision dated March 15, 2004, the MTCC pronounced:

WHEREFORE, foregoing premises considered and the collated evidences at hand ^[have] preponderantly established, JUDGMENT is hereby rendered in favor of the defendants DECLARING the defendants to have the better rights of (material) possession to the assailed building and deemed as possessors in good faith and are legally entitled to its possession and occupancy.

The plaintiff judicially affirmed as the land owner is enjoined to respect the rights of the defendants pursuant to the provisions of Art. 546, Chapter III, New Civil Code of the Philippines[, w]ithout prejudice to the provisions of Arts. 547 and 548, New Civil Code of the Philippines. No pronouncement as to costs as defendants' predecessors-in-interest are deemed possessors and builders in good faith.

SO ORDERED.^[7]

Petitioner elevated the case to the Regional Trial Court (RTC). On July 12, 2004, the RTC reversed the MTCC decision. The RTC agreed with the MTCC that the land is owned by petitioner. The two courts differed, however, in their conclusion with respect to the building. The RTC placed the burden upon respondents to prove their claim that they built it prior to petitioner's acquisition of the land, which burden, the court found, respondents failed to discharge. The RTC held that, either way--whether the building was constructed before or after petitioner acquired ownership of the land--petitioner, as owner of the land, would have every right to evict respondents from the land. As theorized by the RTC, if the building was erected

before petitioner or his predecessors acquired ownership of the land, then Article 445^[8] of the Civil Code would apply. Thus, petitioner, as owner of the land, would be deemed the owner of the building standing thereon, considering that, when ownership of the land was transferred to him, there was no reservation by the original owner that the building was not included in the transfer. On the other hand, if the building was constructed after petitioner became the owner of the land, it is with more reason that petitioner has the right to evict respondents from the land. The dispositive portion of the RTC decision reads:

WHEREFORE, premises considered, judgment is hereby rendered

1. Reversing the decision of the court a quo;
2. Ordering defendants to immediately vacate the residential house/building subject of this litigation;
3. Ordering defendants to pay attorney's fee in the amount of P30,000.00; and
4. To pay the cost of the suit.

SO ORDERED.^[9]

Respondents then filed a petition for review with the CA. Finding no evidence to prove that respondents' possession of the building was by mere tolerance, the CA reversed the RTC decision and ordered the dismissal of petitioner's complaint. Because of this, the CA, following this Court's ruling in *Ten Forty Realty and Development Corporation v. Cruz*, categorized the complaint as one for forcible entry. It then proceeded to declare that the action had prescribed since the one-year period for filing the forcible entry case had already lapsed. The dispositive portion of the CA Decision dated September 18, 2006 reads:

WHEREFORE, premises considered, the assailed decision promulgated on July 12, 2004 of Branch 25 of the Regional Trial Court (RTC), Maasin City, Southern Leyte in Civil Case No. R-3382 is hereby declared NULL and VOID for failure of the plaintiff (herein respondent) to prove that the case at bar is for unlawful detainer or forcible entry. Accordingly, the instant case is hereby DISMISSED.

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SO ORDERED.^[10]

Petitioner sought reconsideration of the Decision, but the CA denied petitioner's motion for lack of merit.^[11] Hence, petitioner came to this Court through a petition for review on *certiorari*.

On September 3, 2007, respondents' counsel informed this Court that respondent, Maricris Abiera Paredes, died on June 25, 2006 of asphyxia due to hanging, and moved that the latter's heirs be allowed to substitute for the deceased.^[12] In the Resolution^[13] dated November 14, 2007, the Court granted the motion.