

## SECOND DIVISION

[ G.R. No. 163495, May 08, 2009 ]

**SAMUEL MALABANAN, PETITIONERS, RURAL BANK OF CABUYAO,  
INC., RESPONDENT.**

### DECISION

**TINGA, J.:**

This petition for review on certiorari<sup>[1]</sup> seeks to set aside the decision<sup>[2]</sup> of the Court of Appeals dated 7 May 2004 in CA-G.R. SP No. 82223 which sustained the judgment<sup>[3]</sup> of the Regional Trial Court (RTC), Branch 55, Calamba City. The RTC, in the exercise of its appellate jurisdiction, reversed an earlier decision of the Municipal Trial Court in Cities<sup>[4]</sup> (MTCC) and ordered the ejectment of herein petitioner.

The following facts are uncontroverted.

Samuel Malabanan (petitioner) was indebted to the Rural Bank of Cabuyao (respondent) in the amount of P5,000,000.00. To secure the payment of said loan, petitioner executed a Real Estate Mortgage<sup>[5]</sup> (REM) on 18 April 1996 in favor of respondent over a parcel of land in Calamba, Laguna, with an area of 1,021 square meters, covered by Transfer Certificate of Title (TCT) No. 255916.<sup>[6]</sup>

When petitioner failed to settle his loan, he executed a *dacion en pago* over the mortgaged property in favor of respondent on 12 November 2001.<sup>[7]</sup> By virtue thereof, the transfer of registration of said property was effected and TCT No. T-493506<sup>[8]</sup> was subsequently issued in respondent's name. For refusal of petitioner to surrender possession of subject property despite repeated demands, respondent filed a complaint for unlawful detainer before the MTCC.<sup>[9]</sup> It also prayed for the award of reasonable rental amounting to P100,000.00; another P100,000.00 as exemplary damages, and P300,000.00 as attorney's fees.<sup>[10]</sup>

In his Answer,<sup>[11]</sup> petitioner denied having executed a *dacion en pago*, stated that he never appeared before the Notary Public, and that its Executive Vice-President/General Manager, Renato Delfino, who purportedly represented respondent, was no longer officially connected with the latter since 1999. He also made a counterclaim for damages.<sup>[12]</sup>

Prior to the filing of the ejectment case, however, petitioner had already filed an action for an Annulment of the *dacion en pago* and TCT No. T-493506 and reconveyance before Branch 35, RTC-Calamba.<sup>[13]</sup>

In the preliminary conference held on 18 July 2003, the parties agreed and stipulated on the following facts:

1. The execution of the real estate mortgage in favor of herein plaintiff executed by defendant Samuel Malabanan.

2. That prior to the institution of this instant case, Civil Case No. 3316-2002 for the Annulment of *Dacion En Pago* and Transfer Certificate of Title No. T-493506 and Reconveyance with Damages and Temporary Restraining Order and/or Injunction entitled Samuel [Malabanan] v. Rural Bank of Cabuyao Inc., Renato Delfino, Notary Public Ruben Avenido and The Register of Deeds for Calamba City, Laguna was filed on September 25, 2002.

3. That the alleged *Dacion en Pago* refers to TCT-T-255916.

4. The existence and receipt of the demand letter dated August 12, 2002.

[14]

On 8 September 2003, the MTCC dismissed the complaint, as well as the counterclaim, for lack of merit.<sup>[15]</sup> The lower court noted that respondent was not able to prove that petitioner's continued occupancy of the subject premises was by mere tolerance in order to sustain a cause of action for unlawful detainer.<sup>[16]</sup>

On appeal, the RTC reversed the MTCC decision and ordered petitioner to vacate the subject property and to pay respondent P100,000.00 for rentals and P20,000.00 as attorney's fees.<sup>[17]</sup>

Petitioner elevated the case to the Court of Appeals by way of Petition for Review with Urgent Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.<sup>[18]</sup> Petitioner imputed error on the part of the trial court in not dismissing the complaint for unlawful detainer on the ground of *litis pendencia*. He also faulted the RTC for not simultaneously resolving the ejectment case and the annulment of *dacion en pago*.

On 7 May 2004, the Fifth Division of the Court of Appeals promulgated the assailed decision affirming *in toto* the RTC ruling.<sup>[19]</sup>

In the present petition, petitioner raises substantially the same issues brought before the Court of Appeals, which can be summarized into two: (1) whether the complaint for unlawful detainer can be dismissed on ground of *litis pendencia* and forum shopping; and (2) whether the allegations in the complaint make out a case of unlawful detainer.<sup>[20]</sup>

Petitioner asserts that there is a pending case for annulment of *dacion en pago* and TCT No. T-493506 before the RTC in which the issue to be resolved also involves possession as in this case. The allegations and the evidence to be presented in both complaints are identical. Hence, the instant complaint for unlawful detainer must be dismissed on grounds of *litis pendencia* and forum shopping.<sup>[21]</sup> Assuming without conceding that the complaint cannot be dismissed, petitioner urges at least the suspension of the ejectment proceedings pending resolution of the annulment case.

The Court of Appeals squarely addressed this issue, *viz*:

It is established that in ejectment cases, the only issue for resolution is who is entitled to the physical possession or material possession of the property involved, independent of any claim of ownership set forth by any of the party-litigants.

While it is true that both parties raised the issue of ownership over the subject property, yet it is emphasized that in ejectment cases, even if the question of ownership is raised in the pleadings, the court may pass upon such issue but only to determine the question of possession especially if the former is inseparably linked with the latter, but such determination of ownership is not clothed with finality and neither will it affect ownership of the property nor constitute a binding and conclusive adjudication on the merits with respect to the issue of ownership. Therefore, the judgment in the present case would not amount to *res judicata* in the other case which is the pending Annulment of *Dacion En Pago*.<sup>[22]</sup>

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.<sup>[23]</sup>

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.<sup>[24]</sup>

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*.<sup>[25]</sup> 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>[26]</sup>

The crux of the controversy centers on the propriety of the unlawful detainer suit. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied.

[27] In such case, the possession was originally lawful but became unlawful by the expiration or termination of the right to possess; hence, the issue of rightful possession is decisive for, in such action, the defendant is in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.[28]

The pertinent allegations in the complaint read:

4. That on various occasion, defendant Samuel Malabanan obtained loans from plaintiff in the total principal amount of FIVE MILLION PESOS (P5,000,000.00) Philippine currency using as collateral that parcel of land located in Bo. Parian, Calamba, Laguna consisting of 1,021 sq. m. including all the improvements found therein and covered by TCT No. T-265916 of the Registry of Deeds of Calamba, Laguna (hereinafter referred to as "subject property" for brevity). x x x

5. Unfortunately, however, defendant Malabanan failed to pay his loans with the plaintiff;

6. On November [12, 2001], to settle his loans with plaintiff, defendant Samuel Malabanan executed a *dacion en pago* (deed of assignment in payment of debt). x x x

7. Through the said *dacion en pago*, plaintiff was able to effect [the] transfer of registration of the subject property in its name on [February 14, 2002] as evidenced by TCT No. T-493506 issued by the Registry of Deeds of Calamba, Laguna in its name. x x x

8. Under the circumstances, plaintiff is entitled to the immediate possession of the subject property;

9. But through tolerance, plaintiff allowed defendant Malabanan to remain in the subject property without requiring him to pay any rentals;

10. However, when the need of the plaintiff for the subject property arose, plaintiff has demanded unto defendant Malabanan to peacefully surrender the possession of the subject property, the last of which was received by defendant on September [1, 2002] sent by [the] undersigned counsel which was received by defendant on September 16, 2002. x x x

x x x

12. Defendant Malabanan has been unlawfully detaining the subject property from plaintiff and defendant Malabanan and all persons acting his authority should be ejected therefrom and possession thereof surrendered to plaintiff;