

SECOND DIVISION

[G.R. No. 177847, July 31, 2009]

**LAURENCE M. SISON, PETITIONER, VS. EUSEBIA CARIAGA,
RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

In issue in the present petition for review on certiorari is whether petitioner availed of the proper remedy of filing a complaint for unlawful detainer and, if in the affirmative, whether he, by preponderance of evidence, should prevail.

On October 12, 1999, Teofilo Sison and his son Nelson purchased from the Land Bank of the Philippines a parcel of land situated in Barangay Cabuaan, Bautista, Pangasinan, denominated as Lot 23-B and covered by TCT No. 243937.

On December 14, 1999, Teofilo and Nelson donated, via a Deed of Donation, the 11 lots into which Lot 23-B was subdivided in favor of Laurence Sison (petitioner) and his therein named siblings. On even date, the donors also executed an Affidavit of Confirmation of Subdivision terminating their co-ownership and describing and apportioning the 11 lots to the donees. Lot 23-B-11 (the subject lot) measuring around 799 sq. m., which was later to be covered by Transfer Certificate of Title (TCT) No. 245861 issued on April 13, 2000 in petitioner's and his co-donees' name, was designated as the ROAD LOT of "the parties."

After a relocation/verification survey of the subject lot, it was found out that the house of Eusebia Cariaga (respondent) was erected thereon, hence, petitioner, as co-owner, repeatedly demanded the vacation thereof by respondent, the last of which was by a September 15, 2003 letter informing her that her occupation of the subject lot was illegal and merely tolerated. The demands were, however, unheeded.

Petitioner as co-owner of the subject lot thus filed on January 19, 2004 a complaint^[1] for unlawful detainer against respondent before the Municipal Circuit Trial Court (MCTC), Alcala, Pangasinan.

In her Answer with Counterclaim,^[2] respondent claimed that, *inter alia*, her house stands on Lot 23-D, covered by TCT No. 10949 (Emancipation Patent No. A-351476) issued on August 17, 1989 (not December 15, 1989 as alleged in the pleadings) in the name of her deceased father Juan Cariaga; that her siblings' houses are also constructed on the same lot of which her father and they have been in peaceful, continuous, public and adverse possession since 1940; and that she never sought permission from petitioner when she reconstructed her house in 1993.

By Decision of September 7, 2004, the MCTC rendered judgment in favor of

petitioner, disposing as follows:

WHEREFORE, IN VIEW OF THE FOREGOING, PLAINTIFF BY PREPONDERANCE OF EVIDENCE HAS ESTABLISHED HIS OWNERSHIP OVER THE LAND IN QUESTION HENCE, HIS RIGHT OF POSSESSION FOLLOWS TOO SOON. In consonance therewith, the Court renders judgment in favor of plaintiff Laurence M. Sison as against defendant Eusebia Cariaga. As prayed for, defendant and all persons claiming right are ordered to vacate the said property. But as to the demand of civil liabilities the Court so orders:

1. Prayer No. 2-A for the demand of P112,500.00 as unpaid rental is not granted. There is no proof on record that plaintiff had demanded payment of rental since April 2000, when he came to know that defendant's possession of the lot is illegal, hence, her stay is by tolerance. Defendant was not informed of his rent prior to the filing of this case;
2. As to prayer No. 2-B, defendant shall pay the amount of P2,500.00 per month beginning January, 2004 as rental until defendant shall have vacated the lot she now unlawfully withheld possession;
3. As to the twelve percent (12%) interest per annum is granted until defendant shall have fully paid her rental;
4. As to moral damage, defendant is to pay plaintiff the amount of P25,000.00;
5. As to the attorney's fee and appearance fee the defendant be ordered to pay P25,000.00 as attorney's fee and P4,000.00 as appearance fee; and
6. To pay the cost of suit.

No other fees are ordered for the defendant to pay.^[3]

The MCTC took respondent's statement in her Position Paper^[4] that "it may be true that [petitioner et al.'s] TCT No. 245861 issued on April 13, 2003 supposedly covering [respondent's] lot where her house is constructed exist[s]]" as respondent's conceding that her house is constructed on the subject lot.

And the MCTC took note of respondent's claim that her house is constructed on Lot 23-D, which claim contradicts her earlier averment in "a former [*sic*] Civil Case 794" that it is her sister Virginia Cariaga who occupies said lot.^[5]

The MCTC thus concluded that given respondent's virtual admission of occupancy of the subject lot and of her failure to substantiate her claim of ownership, the nature of her possession is possession without title, while petitioner has the title but without possession.

On appeal by respondent, the RTC reversed the MCTC decision and dismissed petitioner's complaint by Decision dated February 9, 2005. The RTC held that petitioner failed to substantiate his allegation that respondent's occupation of the

subject lot was merely tolerated, hence, the complaint did not satisfy the jurisdictional requirement to constitute a valid cause of action for unlawful detainer. Petitioner's motion for reconsideration having been denied by Order dated April 8, 2005, petitioner elevated the case to the Court of Appeals.

By the assailed Decision dated October 3, 2006,^[6] the appellate court affirmed the RTC decision, holding that the tolerance which petitioner claimed was not present from the inception of respondent's possession of the subject lot, for prior to petitioner and his co-owner's acquisition thereof via donation in 1999, respondent, who constructed her house in "1972," was already in peaceful and prior possession thereof.

The appellate court further held that the alleged tolerance merely started after it was discovered that respondent's house is erected on the subject lot following the conduct of the relocation/verification survey, not the tolerance which is contemplated by law in unlawful detainer cases.^[7]

Furthermore, the appellate court held that the filing of the complaint for unlawful detainer was not the proper remedy, as what is principally involved is not merely possession *de facto*, but possession *de jure* as both parties are claiming ownership of the subject lot. It added that the summary nature of an unlawful detainer case is not adequate to fully thresh out the issue of ownership.

Finally, the appellate court held that what is involved is a boundary dispute, not a simple case of who has the better right of possession, hence, the proper remedy was for petitioner to institute before the RTC an *accion publiciana* or an *accion reivindicatoria*.

Petitioner's motion for reconsideration having been denied by the appellate court by Resolution of May 8, 2007, he filed the present petition.

Petitioner assails the appellate court's finding that respondent erected her house in the lot as early as "1972," for nowhere in the pleadings is the same reflected. It assails too the appellate court's failure to consider that the title of the Land Bank of the Philippines, from which his predecessors-in-interest acquired Lot 23-B of which the subject lot forms part, was issued on July 28, 1988 - more than a year before the purported issuance of respondent's father's TCT No. 10949 on August 17, 1989.

Petitioner also maintains that, contrary to the appellate court's finding the issue is not one of ownership or boundary dispute, it being one of possession, a proper subject of a suit for unlawful detainer. For, so petitioner avers, respondent's father's title TCT No. 10949 covers Lot 23-D, with an area of around 383 sq. m., whereas his and his co-owner's title covers Lot 23-B-11 with an area of more or less 799 sq.m., clearly showing that their respective titles cover different properties.

Petitioner goes on to fault the appellate court for not taking judicial notice that respondent and her siblings filed on March 13, 2000 a petition, DARAB Case No. 01-1898 EP'00, "*Alejandro Inciso, and Virginia, Conchita, Eusebia, Nina and Jose, all Cariaga versus Nelson M. Sison, Teofilo O. Sison, and the Land Bank of the Philippines,*" to annul the sale between his predecessors-in-interest Teofilo and Nestor Sison and the Land Bank on the ground that their (respondent and her