

SECOND DIVISION

[G.R. No. 164110, February 12, 2008]

**LEONOR B. CRUZ, Petitioner, vs. TEOFILA M. CATAPANG,
Respondent.**

DECISION

QUISUMBING, J.:

This petition for review seeks the reversal of the Decision^[1] dated September 16, 2003 and the Resolution^[2] dated June 11, 2004 of the Court of Appeals in CA-G.R. SP No. 69250. The Court of Appeals reversed the Decision^[3] dated October 22, 2001 of the Regional Trial Court (RTC), Branch 86, Taal, Batangas, which had earlier affirmed the Decision^[4] dated September 20, 1999 of the 7th Municipal Circuit Trial Court (MCTC) of Taal, Batangas ordering respondent to vacate and deliver possession of a portion of the lot co-owned by petitioner, Luz Cruz and Norma Maligaya.

The antecedent facts of the case are as follows.

Petitioner Leonor B. Cruz, Luz Cruz and Norma Maligaya are the co-owners of a parcel of land covering an area of 1,435 square meters located at Barangay Mahabang Ludlod, Taal, Batangas.^[5] With the consent of Norma Maligaya, one of the aforementioned co-owners, respondent Teofila M. Catapang built a house on a lot adjacent to the abovementioned parcel of land sometime in 1992. The house intruded, however, on a portion of the co-owned property.^[6]

In the first week of September 1995, petitioner Leonor B. Cruz visited the property and was surprised to see a part of respondent's house intruding unto a portion of the co-owned property. She then made several demands upon respondent to demolish the intruding structure and to vacate the portion encroaching on their property. The respondent, however, refused and disregarded her demands.^[7]

On January 25, 1996, the petitioner filed a complaint^[8] for forcible entry against respondent before the 7th MCTC of Taal, Batangas. The MCTC decided in favor of petitioner, ruling that consent of only one of the co-owners is not sufficient to justify defendant's construction of the house and possession of the portion of the lot in question.^[9] The dispositive portion of the MCTC decision reads:

WHEREFORE, judgment is hereby rendered ordering the defendant or any person acting in her behalf to vacate and deliver the possession of the area illegally occupied to the plaintiff; ordering the defendant to pay plaintiff reasonable attorney's fees of P10,000.00, plus costs of suit.

SO ORDERED.^[10]

On appeal, the RTC, Branch 86, Taal, Batangas, affirmed the MCTC's ruling in a Decision dated October 22, 2001, the dispositive portion of which states:

Wherefore, premises considered, the decision [appealed] from is hereby affirmed in toto.

SO ORDERED.^[11]

After her motion for reconsideration was denied by the RTC, respondent filed a petition for review with the Court of Appeals, which reversed the RTC's decision. The Court of Appeals held that there is no cause of action for forcible entry in this case because respondent's entry into the property, considering the consent given by co-owner Norma Maligaya, cannot be characterized as one made through strategy or stealth which gives rise to a cause of action for forcible entry.^[12] The Court of Appeals' decision further held that petitioner's remedy is not an action for ejectment but an entirely different recourse with the appropriate forum. The Court of Appeals disposed, thus:

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED**. The challenged Decision dated 22 October 2001 as well as the Order dated 07 January 2002 of the Regional Trial Court of Taal, Batangas, Branch 86, are hereby **REVERSED** and **SET ASIDE** and, in lieu thereof, another is entered **DISMISSING** the complaint for forcible entry docketed as Civil Case No. 71-T.

SO ORDERED.^[13]

After petitioner's motion for reconsideration was denied by the Court of Appeals in a Resolution dated June 11, 2004, she filed the instant petition.

Raised before us for consideration are the following issues:

I.

WHETHER OR NOT THE KNOWLEDGE AND CONSENT OF CO-OWNER NORMA MALIGAYA IS A VALID LICENSE FOR THE RESPONDENT TO ERECT THE BUNGALOW HOUSE ON THE PREMISES OWNED PRO-INDIVISO SANS CONSENT FROM THE PETITIONER AND OTHE[R] CO-OWNER[.]

II.

WHETHER OR NOT RESPONDENT, BY HER ACTS, HAS ACQUIRED EXCLUSIVE OWNERSHIP OVER THE PORTION OF THE LOT SUBJECT OF THE PREMISES PURSUANT TO THE CONSENT GRANTED UNTO HER BY CO-OWNER NORMA MALIGAYA TO THE EXCLUSION OF THE PETITIONER AND THE OTHER CO-OWNER.^[14]

III.

. . . WHETHER OR NOT RESPONDENT IN FACT OBTAINED POSSESSION
OF THE PROPERTY IN QUESTION BY MEANS OF SIMPLE STRATEGY.^[15]

Petitioner prays in her petition that we effectively reverse the Court of Appeals' decision.

Simply put, the main issue before us is whether consent given by a co-owner of a parcel of land to a person to construct a house on the co-owned property warrants the dismissal of a forcible entry case filed by another co-owner against that person.

In her memorandum,^[16] petitioner contends that the consent and knowledge of co-owner Norma Maligaya cannot defeat the action for forcible entry since it is a basic principle in the law of co-ownership that no individual co-owner can claim title to any definite portion of the land or thing owned in common until partition.

On the other hand, respondent in her memorandum^[17] counters that the complaint for forcible entry cannot prosper because her entry into the property was not through strategy or stealth due to the consent of one of the co-owners. She further argues that since Norma Maligaya is residing in the house she built, the issue is not just *possession de facto* but also one of *possession de jure* since it involves rights of co-owners to enjoy the property.

As to the issue of whether or not the consent of one co-owner will warrant the dismissal of a forcible entry case filed by another co-owner against the person who was given the consent to construct a house on the co-owned property, we have held that a co-owner cannot devote common property to his or her exclusive use to the prejudice of the co-ownership.^[18] In our view, a co-owner cannot give valid consent to another to build a house on the co-owned property, which is an act tantamount to devoting the property to his or her exclusive use.

Furthermore, Articles 486 and 491 of the Civil Code provide:

Art. 486. Each co-owner may use the thing owned in common, provided he does so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights. The purpose of the co-ownership may be changed by agreement, express or implied.

Art. 491. None of the co-owners shall, without the consent of the others, make alterations in the thing owned in common, even though benefits for all would result therefrom. However, if the withholding of the consent by one or more of the co-owners is clearly prejudicial to the common interest, the courts may afford adequate relief.

Article 486 states each co-owner may use the thing owned in common provided he does so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights. Giving consent to a third person to construct a house on the co-owned property will injure the interest of the co-ownership and prevent other co-owners from using the property in accordance with their rights.