

EN BANC

[G.R. No. 182484, June 17, 2008]

DANIEL MASANGKAY TAPUZ, AURORA TAPUZ-MADRIAGA, LIBERTY M. ASUNCION, LADYLYN BAMOS MADRIAGA, EVERLY TAPUZ MADRIAGA, EXCEL TAPUZ, IVAN TAPUZ AND MARIAN TIMBAS, PETITIONERS, VS. HONORABLE JUDGE ELMO DEL ROSARIO, IN HIS CAPACITY AS PRESIDING JUDGE OF RTC BR. 5 KALIBO, SHERIFF NELSON DELA CRUZ, IN HIS CAPACITY AS SHERIFF OF THE RTC, THE PHILIPPINE NATIONAL POLICE STATIONED IN BORACAY ISLAND, REPRESENTED BY THE PNP STATION COMMANDER, THE HONORABLE COURT OF APPEALS IN CEBU 18TH DIVISION, SPOUSES GREGORIO SANSON MA. LOURDES T. SANSON, RESPONDENTS.

RESOLUTION

BRION, J.:

Before us for the determination of sufficiency of form and substance (*pursuant to Sections 1 and 4 of Rule 65 of the Revised Rules of Court; Sections 1 and 5 of the Rule on the Writ of Amparo*,^[1] and Sections 1 and 6 of the Rule on the Writ of Habeas Data^[2]) is the petition for *certiorari* and for the issuance of the writs of amparo and habeas data filed by the above-named petitioners against the Honorable Judge Elmo del Rosario [in his capacity as presiding judge of RTC Br. 5, Kalibo], Sheriff Nelson de la Cruz [in his capacity as Sheriff of the RTC], the Philippine National Police stationed in Boracay Island, represented by the PNP Station Commander, the Honorable Court of Appeals in Cebu, 18th Division, and the spouses Gregorio Sanson and Ma. Lourdes T. Sanson, respondents.

The petition and its annexes disclose the following material antecedents:

The private respondents spouses Gregorio Sanson and Ma. Lourdes T. Sanson (the "*private respondents*"), filed with the Fifth Municipal Circuit Trial Court of Buruanga-Malay, Aklan (the "*MCTC*") a complaint^[3] dated 24 April 2006 for **forcible entry** and damages with a prayer for the issuance of a writ of preliminary mandatory injunction against the petitioners Daniel Masangkay Tapuz, Aurora Tapuz-Madriaga, Liberty M. Asuncion, Ladylyn Bamos Madriaga, Everly Tapuz Madriaga, Excel Tapuz, Ivan Tapuz and Marian Timbas (the "*petitioners*") and other John Does numbering about 120. The private respondents alleged in their complaint that: (1) they are the registered owners under TCT No. 35813 of a 1.0093-hectare parcel of land located at Sitio Pinaungon, Balabag, Boracay, Malay, Aklan (the "*disputed land*"); (2) they were the disputed land's prior possessors when the petitioners - armed with bolos and carrying suspected firearms and together with unidentified persons numbering 120 - entered the disputed land by force and intimidation, without the private respondents' permission and against the objections of the private respondents'

security men, and built thereon a nipa and bamboo structure.

In their Answer^[4] dated 14 May 2006, the petitioners denied the material allegations of the complaint. They essentially claimed that: (1) they are the actual and prior possessors of the disputed land; (2) on the contrary, the private respondents are the intruders; and (3) the private respondents' certificate of title to the disputed property is spurious. They asked for the dismissal of the complaint and interposed a counterclaim for damages.

The MCTC, after due proceedings, rendered on 2 January 2007 a decision^[5] in the private respondents' favor. It found prior possession - the key issue in forcible entry cases - in the private respondents' favor, thus:

"The key that could unravel the answer to this question lies in the Amended Commissioner's Report and Sketch found on pages 245 to 248 of the records and the evidence the parties have submitted. It is shown in the Amended Commissioner's Report and Sketch that the land in question is enclosed by a concrete and cyclone wire perimeter fence in pink and green highlighter as shown in the Sketch Plan (p. 248). Said perimeter fence was constructed by the plaintiffs 14 years ago. The foregoing findings of the Commissioner in his report and sketch collaborated the claim of the plaintiffs that after they acquired the land in question on May 27, 1993 through a Deed of Sale (Annex `A', Affidavit of Gregorio Sanson, p. 276, rec.), they caused the construction of the perimeter fence sometime in 1993 (Affidavit of Gregorio Sanson, pp. 271-275, rec.).

From the foregoing established facts, it could be safely inferred that the plaintiffs were in actual physical possession of the whole lot in question since 1993 when it was interrupted by the defendants (sic) when on January 4, 2005 claiming to (sic) the Heirs of Antonio Tapuz entered a portion of the land in question with view of inhabiting the same and building structures therein prompting plaintiff Gregorio Sanson to confront them before BSPU, Police Chief Inspector Jack L. Wanky and Barangay Captain Glenn Sacapaño. As a result of their confrontation, the parties signed an Agreement (Annex `D', Complaint p. 20) wherein they agreed to vacate the disputed portion of the land in question and agreed not to build any structures thereon.

The foregoing is the prevailing situation of the parties after the incident of January 4, 2005 when the plaintiff posted security guards, however, sometime on or about 6:30 A.M. of April 19, 2006, the defendants some with bolos and one carrying a sack suspected to contain firearms with other John Does numbering about 120 persons by force and intimidation forcibly entered the premises along the road and built a nipa and bamboo structure (Annex `E', Complaint, p. 11) inside the lot in question which incident was promptly reported to the proper authorities as shown by plaintiffs' Certification (Annex `F', Complaint, p. 12) of the entry in the police blotter and on same date April 19, 2006, the plaintiffs filed a complaint with the Office of the Lupong Tagapamayapa of Barangay Balabag, Boracay Island, Malay, Aklan but no settlement was reached as shown in their Certificate to File Action (Annex `G', Complaint, p. 13);

hence the present action.

Defendants' (sic) contend in their answer that `prior to January 4, 2005, they were already occupants of the property, being indigenous settlers of the same, under claim of ownership by open continuous, adverse possession to the exclusion of other (sic)'. (Paragraph 4, Answer, p. 25).

The contention is untenable. As adverted earlier, the land in question is enclosed by a perimeter fence constructed by the plaintiffs sometime in 1993 as noted by the Commissioner in his Report and reflected in his Sketch, thus, it is safe to conclude that the plaintiffs where (sic) in actual physical possession of the land in question from 1993 up to April 19, 2006 when they were ousted therefrom by the defendants by means of force. Applying by analogy the ruling of the Honorable Supreme Court in the case of *Molina, et al. vs. De Bacud*, 19 SCRA 956, if the land were in the possession of plaintiffs from 1993 to April 19, 2006, defendants' claims to an older possession must be rejected as untenable because possession as a fact cannot be recognized at the same time in two different personalities.

Defendants likewise contend that it was the plaintiffs who forcibly entered the land in question on April 18, 2006 at about 3:00 o'clock in the afternoon as shown in their Certification (Annex `D', Defendants' Position Paper, p. 135, rec.).

The contention is untenable for being inconsistent with their allegations made to the commissioner who constituted (sic) the land in question that they built structures on the land in question only on April 19, 2006 (Par. D.4, Commissioner's Amended Report, pp. 246 to 247), after there (sic) entry thereto on even date.

Likewise, said contention is contradicted by the categorical statements of defendants' witnesses, Rowena Onag, Apolsida Umambong, Ariel Gac, Darwin Alvarez and Edgardo Pinaranda, in their Joint Affidavit (pp. 143-`144, rec.) [sic] categorically stated `that on or about April 19, 2006, a group of armed men entered the property of our said neighbors and built plastic roofed tents. These armed men threatened to drive our said neighbors away from their homes but they refused to leave and resisted the intruding armed men'.

From the foregoing, it could be safely inferred that no incident of forcible entry happened on April 18, 2006 but it was only on April 19, 2006 when the defendants overpowered by their numbers the security guards posted by the plaintiffs prior to the controversy.

Likewise, defendants (sic) alleged burnt and other structures depicted in their pictures attached as annexes to their position paper were not noted and reflected in the amended report and sketch submitted by the Commissioner, hence, it could be safely inferred that these structures are built and (sic) situated outside the premises of the land in question, accordingly, they are irrelevant to the instant case and cannot be

considered as evidence of their actual possession of the land in question prior to April 19, 2006^[6]."

The petitioners appealed the MCTC decision to the Regional Trial Court ("RTC," Branch 6 of Kalibo, Aklan) then presided over by Judge Niovy M. Marin ("Judge Marin").

On appeal, Judge Marin granted the private respondents' motion for the issuance of a *writ of preliminary mandatory injunction* through an Order dated 26 February 2007, with the issuance conditioned on the private respondents' posting of a bond. The writ^[7] - authorizing the immediate implementation of the MCTC decision - was actually issued by respondent Judge Elmo F. del Rosario (the "*respondent Judge*") on 12 March 2007 after the private respondents had complied with the imposed condition. The petitioners moved to reconsider the issuance of the writ; the private respondents, on the other hand, filed a motion for demolition.

The respondent Judge subsequently denied the petitioners' Motion for Reconsideration and to Defer Enforcement of Preliminary Mandatory Injunction in an Order dated 17 May 2007^[8].

Meanwhile, the petitioners opposed the motion for demolition.^[9] The respondent Judge nevertheless issued *via* a Special Order^[10] a writ of demolition to be implemented fifteen (15) days after the Sheriff's written notice to the petitioners to voluntarily demolish their house/s to allow the private respondents to effectively take actual possession of the land.

The petitioners thereafter filed on 2 August 2007 with the Court of Appeals, Cebu City, a Petition for Review^[11] (under Rule 42 of the 1997 Rules of Civil Procedure) of the ***Permanent Mandatory Injunction and Order of Demolition of the RTC of Kalibo, Br. 6 in Civil Case No. 7990***.

Meanwhile, respondent Sheriff Nelson R. dela Cruz issued the Notice to Vacate and for Demolition on 19 March 2008.^[12]

It was against this factual backdrop that the petitioners filed the present petition last 29 April 2008. The petition contains and prays for three remedies, namely: a petition for certiorari under Rule 65 of the Revised Rules of Court; the issuance of a writ of habeas data under the Rule on the Writ of Habeas Data; and finally, the issuance of the writ of amparo under the Rule on the Writ of Amparo.

To support the petition and the remedies prayed for, the petitioners present factual positions diametrically opposed to the MCTC's findings and legal reasons. Most importantly, the petitioners maintain their claims of *prior possession* of the disputed land and of *intrusion* into this land by the private respondents. The material factual allegations of the petition - bases as well of the petition for the issuance of the writ of amparo - read:

"29. On April 29, 2006 at about 9:20 a.m. armed men **sporting 12 gauge shot guns** intruded into the property of the defendants [the land in dispute]. They were not in uniform. They fired their shotguns at the defendants. Later the following day at 2:00 a.m. two houses of the

defendants were burned to ashes.

30. These armed men [without uniforms] removed the barbed wire fence put up by defendants to protect their property from intruders. Two of the armed men trained their shotguns at the defendants who resisted their intrusion. One of them who was identified as SAMUEL LONGNO y GEGANSO, 19 years old, single, and a resident of Binun-an, Batad, Iloilo, fired twice.

31. The armed men torched two houses of the defendants reducing them to ashes. [...]

32. These acts of TERRORISM and (heinous crime) of ARSON were reported by one of the HEIRS OF ANTONIO TAPUZ [...]. The terrorists trained their shotguns and fired at minors namely IVAN GAJISAN and MICHAEL MAGBANUA, who resisted their intrusion. Their act is a blatant violation of the law penalizing Acts of Violence against women and children, which is aggravated by the use of high-powered weapons.

[...]

34. That the threats to the life and security of the poor indigent and unlettered petitioners continue because the private respondents Sansons have under their employ armed men and they are influential with the police authorities owing to their financial and political clout.

35. The actual prior occupancy, as well as the ownership of the lot in dispute by defendants and the atrocities of the terrorists [introduced into the property in dispute by the plaintiffs] are attested by witnesses who are persons not related to the defendants are therefore disinterested witnesses in the case namely: Rowena Onag, Apolsida Umambong, Ariel Gac, Darwin Alvarez and Edgardo Penarada. Likewise, the affidavit of Nemia T. Carmen is submitted to prove that the plaintiffs resorted to atrocious acts through hired men in their bid to unjustly evict the defendants.^[13]"

The petitioners posit as well that the MCTC has no jurisdiction over the complaint for forcible entry that the private respondents filed below. Citing Section 33 of *The Judiciary Reorganization Act of 1980, as amended by Republic Act No. 7691*,^[14] they maintain that the forcible entry case in fact involves issues of title to or possession of real property or an interest therein, with the assessed value of the property involved exceeding P20,000.00; thus, the case should be originally cognizable by the RTC. Accordingly, the petitioners reason out that the RTC - to where the MCTC decision was appealed - equally has no jurisdiction to rule on the case on appeal and could not have validly issued the assailed orders.

OUR RULING

We find the petitions for certiorari and issuance of a writ of habeas data fatally defective, both in substance and in form. The petition for the issuance of the writ of amparo, on the other hand, is fatally defective with