

THIRD DIVISION

[G.R. NO. 149118, February 16, 2006]

**FLAVIANA LIM CAJAYON AND CARMELITA LIM CONSTANTINO,
PETITIONERS, VS. SPOUSES SANTIAGO AND FORTUNATA
BATUYONG, RESPONDENTS.**

D E C I S I O N

TINGA, J.:

This petition for review on certiorari challenges the two rulings of the Court of Appeals in CA G.R. SP. No. 50952. The first decision dated 27 November 2000^[1] upheld the ruling of the Regional Trial Court (RTC) affirming the Metropolitan Trial Court (MeTC) order for ejectment, while the Resolution dated 5 July 2001^[2] denied the motion for reconsideration.

First, the factual background of the case.

Flaviana Lim Cajayon and Carmelita Lim Constantino (petitioners) and Isagani P. Candelaria (Candelaria) were co-owners of a 260-square meter lot, then covered by Transfer Certificate of Title (TCT) No. C-10870. On 1 February 1995, a partition agreement^[3] was entered into by petitioners and Candelaria, wherein Lot 6-A, Psd 00-034294, containing an area of 100 square meters, more or less, was adjudicated to Candelaria, while Lot 6-B, Psd 00-034294, containing an area of 160 square meters, more or less, was given to petitioners. TCT No. C-10870 was cancelled and TCT No. 288500 was issued in the name of petitioners.

On 30 May 1995, Candelaria sold his property, including the improvements thereon, to Spouses Santiago and Fortunata Batuyong (respondents). TCT No. 294743 was issued in their names over the said parcel of land.^[4]

On 21 May 1996, petitioners started the construction of a seven (7)-door bungalow-type building that allegedly intruded into the lot of respondents. At the instance of respondents, petitioners were summoned by barangay officials to a meeting on the matter. It was then agreed upon that petitioners would defer the construction work pending the result of a relocation survey to be conducted by a government surveyor.

A verification survey was conducted by Geodetic Engineer Florentina C. Valencia. She submitted a report dated 12 November 1996 which yielded the findings that Lot 6-A (Candelaria's) and Lot 6-B (petitioners') were not correctly positioned geographically on the ground with respect to TCT No. 294743. Thus, as per survey, sub-lot B with an area of 10.43 square meters serves as right of way of Lot 6-B (petitioners' lot) while sub-lot C with an area of 10.18 square meters was the portion of Lot 6-A (respondents' lot) presently occupied by petitioners.^[5]

Despite the delineation of said boundaries, petitioners proceeded with the forestalled construction, allegedly occupying at least 20.61 square meters of respondents' lot, including the portion being used as right of way for petitioners' tenants.

After respondents secured a permit from the barangay and the Caloocan City Building Official to fence their lot, they made demands to petitioners to vacate the encroached portion but to no avail. Respondents brought the matter to the barangay but no amicable settlement was reached. A Certificate to File Action was issued to them by the Barangay Lupon Tagapayapa. A final demand was made through a letter dated 20 May 1997 upon petitioners to vacate the encroached premises. Petitioners, however, vehemently refused to vacate and surrender the premises.

On 14 April 1997, respondents filed an ejectment case against petitioners before the Metropolitan Trial Court^[6] (MeTC) of Caloocan City, docketed as Civil Case No. 23359. In a Decision^[7] dated 2 July 1998, the MeTC ordered petitioners to vacate and surrender possession of a portion of respondents' lot and to pay P500.00 per month as fair rental value from May 1996 until the premises is finally vacated, plus P5,000.00 as attorney's fees and costs of the suit.^[8]

On appeal, the RTC^[9] affirmed the judgment of the MeTC.^[10] In doing so, the RTC debunked the three (3) arguments posed by petitioners. First, contrary to petitioners' submission, the RTC ruled that the MeTC had jurisdiction over the instant complaint. The RTC noted that the issue of jurisdiction was never raised in the court *a quo* while on the other hand, petitioners actively participated in the proceedings therein by filing their Answer and Position Paper. Evidently, petitioners raised the question of jurisdiction as a mere afterthought as he did so only after he obtained an adverse judgment. Second, the allegations of the complaint sufficiently averred a case for ejectment which the RTC found to be within the jurisdiction of the court *a quo*. Third, the trial court ruled that petitioners categorically recognized the validity of the verification survey done by Engineer Valencia, as shown by the presence of petitioner Flaviana Cajayon during the verification survey and setting of monuments per survey report.^[11]

Petitioners filed a motion for new trial and/or reconsideration but it was denied in an Order^[12] dated 12 January 1999 of the RTC. They elevated the case to the Court of Appeals by way of petition for review under Rule 42 of the Rules of Court. On 27 November 2000, the appellate court rendered a Decision^[13] dismissing the petition. Holding that the exclusive jurisdiction to try unlawful detainer cases is vested with the MeTC, the appellate court ratiocinated, thus:

The complaint in the instant case establishes jurisdictional facts necessary to sustain the action for unlawful detainer and the remedy it seeks is merely to obtain possession of the controverted lot from respondents. Specifically, it alleges that sometime on May 21, 1996, petitioners started construction works in the area which intruded into a portion of respondents' property; that the parties eventually agreed to stop the construction subject to the result of a survey to be conducted thereon; that a survey was conducted in the presence of the parties and

a report was submitted by Engr. Valencia on November 12, 1996, showing an encroachment of about 20.61 square meters of respondents' lot including that portion being used as a right of way for petitioners' tenants; that even after the boundaries had been verified, petitioners resumed the construction on the area; that despite verbal and written demands, the last of which was made on March 20, 1999, petitioners refused to vacate and surrender the encroached area. Surely, respondents' resort to unlawful detainer when petitioners failed to leave the controverted premises upon demand is in order.^[14]

The appellate court also held that the fact that petitioners' houses already stood on the controverted lot long before the purchase of the land by respondents failed to negate the case for ejectment.^[15] The appellate court emphasized that prior physical possession is not a condition *sine qua non* in unlawful detainer cases. The court likewise sustained the RTC findings on the validity of the verification survey conducted by Engineer Valencia that petitioners have encroached on a 20.61 square meter portion of respondents' lot.

On 5 July 2001, the Court of Appeals issued a Resolution^[16] denying petitioners' Motion for Reconsideration

Petitioners now come to us via the present petition, submitting as issues the question of jurisdiction and the weight to be accorded to the verification survey results.^[17]

Petitioners anchor their petition on the court a *quo's* lack of jurisdiction over the instant suit. The averments in the complaint do not make out a case for ejectment, they claim, as their entry into the disputed lot was not made by force, intimidation, threat, strategy or stealth. Neither was their possession of the disputed property by virtue of the tolerance of respondents or the latter's predecessor-in-interest.

Respondents counter that the jurisdictional elements necessary to maintain an action for unlawful detainer clearly obtain in the case at bar, namely: (a) after the parties agreed to the conduct of a survey by a government surveyor and after the survey, it was determined that the structures introduced by herein petitioners have encroached a portion of herein respondents' lot; (b) notices to vacate and surrender of possession of the encroached portion were made to petitioners, the last being on March 20, 1997; and (c) the suit was instituted on April 11, 1997 or within one (1) year from date of last demand.^[18]

Respondents also stress that possession of the premises by petitioners took place more than one year before the filing of the complaint and the absence of an allegation in the complaint that such possession of the disputed portion was merely by virtue of respondents' tolerance does not deprive the lower court of its original and exclusive jurisdiction nor will it negate respondents' action for unlawful detainer.^[19]

It is settled that jurisdiction of the court in ejectment cases is determined by the allegations of the complaint and the character of the relief sought.^[20]

The Complaint^[21] filed by respondents (plaintiffs therein) alleged these material facts:

2. That defendants and Isagani P. Candelaria were the former co-owners of a certain piece of land located in Maypajo, Caloocan City containing an area of 260 square meters, more or less, under TCT No. C-10870 issued by the Register of Deeds of Caloocan City;

3. That on February 1, 1995, said co-owners subdivided this parcel of land by virtue of a Partition Agreement wherein Lot 6-A, Psd 00-034294, containing an area of 100 square meters, more or less, was given to Isagani P. Candelaria, while Lot 6-B, Psd 00-034294, containing an area of 160 square meters, more or less, was given to defendants. A copy of said Partition Agreement is hereto attached as Annex "A";

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5. That on May 30, 1995, Isagani P. Candelaria sold his share to the herein plaintiffs, including the improvements thereon, in the sum of P100,000.00, under a Deed of Absolute Sale x x x;

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7. That sometime in May 21, 1996, defendants started construction works in the area and intruded into the lot owned by the plaintiffs causing the latter to protest and report the matter to the barangay authorities;

8. That on the same day, the parties were summoned to appear before the Barangay Chairman wherein defendants agreed to stop the construction works, and in a subsequent conference on June 7, 1996, they agreed to defer the matter pending the result of a survey to be conducted by a government surveyor;

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11. That the following day, September 5, 1996, Geodetic Engineer Florentina C. Valencia conducted a survey of the aforesaid property and placed the concrete monuments thereon in the presence of plaintiffs and defendants;

12. That on November 12, 1996, a verification survey report was submitted by Geodetic Engineer Florentina C. Valencia together with the survey verification plan xxx;

13. That despite defendants' knowledge of the property boundary, and despite repeated serious objections from plaintiffs, defendants proceeded to construct a seven-door bungalow-type semi-concrete building, occupying at least 10.18 square meters and another 10.43 square meters for the right of way, thus encroaching upon at least 20.61 square meters of plaintiffs' lot,