

SECOND DIVISION

[G.R. NO. 152809, August 03, 2006]

**MERCEDES MORALIDAD, PETITIONER, VS. SPS. DIOSDADO
PERNES AND ARLENE PERNES, RESPONDENTS.**

DECISION

GARCIA, J.:

Under consideration is this petition for review on certiorari under Rule 45 of the Rules of Court to nullify and set aside the following issuances of the Court of Appeals (CA) in *CA-G.R. SP No. 61610*, to wit:

1. Decision dated September 27, 2001,^[1] affirming an earlier decision of the Regional Trial Court (RTC) of Davao City which reversed that of the Municipal Trial Court in Cities (MTCC), Davao City, Branch 1, in an action for unlawful detainer thereat commenced by the petitioner against the herein respondents; and
2. Resolution dated February 28, 2002,^[2] denying petitioner's motion for reconsideration.

At the heart of this controversy is a parcel of land located in Davao City and registered in the name of petitioner Mercedes Moralidad under Transfer Certificate of Title (TCT) No. T-123125 of the Registry of Deeds of Davao City.

In her younger days, petitioner taught in Davao City, Quezon City and Manila. While teaching in Manila, she had the good fortune of furthering her studies at the University of Pennsylvania, U.S.A. While schooling, she was offered to teach at the Philadelphia Catholic Archdiocese, which she did for seven (7) years. Thereafter, she worked at the Mental Health Department of said University for the next seventeen (17) years.

During those years, she would come home to the Philippines to spend her two-month summer vacation in her hometown in Davao City. Being single, she would usually stay in Mandug, Davao City, in the house of her niece, respondent Arlene Pernes, a daughter of her younger sister, Rosario.

Back in the U.S.A. sometime in 1986, she received news from Arlene that Mandug at the outskirts of Davao City was infested by NPA rebels and many women and children were victims of crossfire between government troops and the insurgents. Shocked and saddened about this development, she immediately sent money to Araceli, Arlene's older sister, with instructions to look for a lot in Davao City where Arlene and her family could transfer and settle down. This was why she bought the parcel of land covered by TCT No. T-123125.

Petitioner acquired the lot property initially for the purpose of letting Arlene move from Mandug to Davao City proper but later she wanted the property to be also available to any of her kins wishing to live and settle in Davao City. Petitioner made known this intention in a document she executed on July 21, 1986.^[3] The document reads:

I, MERCEDES VIÑA MORALIDAD, of legal age, single, having been born on the 29th day of January, 1923, now actually residing at 8021 Lindbergh Boulevard, Philadelphia, Pennsylvania, U.S.A., wishes to convey my honest intention regarding my properties situated at Palm Village Subdivision, Bajada, Davao City, 9501, ... and hereby declare:

1. That it is my desire that Mr. and Mrs. Diosdado M. Pernes may build their house therein and stay as long as they like;
2. That anybody of my kins who wishes to stay on the aforementioned real property should maintain an atmosphere of cooperation, live in harmony and must avoid bickering with one another;
3. That anyone of my kins may enjoy the privilege to stay therein and may avail the use thereof. Provided, however, that the same is not inimical to the purpose thereof;
4. That anyone of my kins who cannot conform with the wishes of the undersigned may exercise the freedom to look for his own;
5. That any proceeds or income derived from the aforementioned properties shall be allotted to my nearest kins who have less in life in greater percentage and lesser percentage to those who are better of in standing.

xxx xxx xxx

Following her retirement in 1993, petitioner came back to the Philippines to stay with the respondents' on the house they build on the subject property. In the course of time, their relations turned sour because members of the Pernes family were impervious to her suggestions and attempts to change certain practices concerning matters of health and sanitation within their compound. For instance, Arlene's eldest son, Myco Pernes, then a fourth year veterinary medicine student, would answer petitioner back with clenched fist and at one time hurled profanities when she corrected him. Later, Arlene herself followed suit. Petitioner brought the matter to the local *barangay lupon* where she lodged a complaint for slander, harassment, threat and defamation against the Pernes Family. Deciding for petitioner, the *lupon* apparently ordered the Pernes family to vacate petitioner's property but not after they are reimbursed for the value of the house they built thereon. Unfortunately, the parties could not agree on the amount, thus prolonging the impasse between them.

Other ugly incidents interspersed with violent confrontations meanwhile transpired, with the petitioner narrating that, at one occasion in July 1998, she sustained cuts and wounds when Arlene pulled her hair, hit her on the face, neck and back, while her husband Diosdado held her, twisting her arms in the process.

Relations having deteriorated from worse to worst, petitioner, on July 29, 1998,

lodged a formal complaint before the Regional Office of the Ombudsman for Mindanao, charging the respondent spouses, who were both government employees, with conduct unbecoming of public servants. This administrative case, however, did not prosper.

Then, on August 3, 1998, petitioner filed with the MTCC of Davao City an unlawful detainer suit against the respondent spouses. Petitioner alleged that she is the registered owner of the land on which the respondents built their house; that through her counsel, she sent the respondent spouses a letter demanding them to vacate the premises and to pay rentals therefor, which the respondents refused to heed.

In their defense, the respondents alleged having entered the property in question, building their house thereon and maintaining the same as their residence with petitioner's full knowledge and express consent. To prove their point, they invited attention to her written declaration of July 21, 1986, *supra*, wherein she expressly signified her desire for the spouses to build their house on her property and stay thereat for as long as they like.

The MTCC, resolving the ejectment suit in petitioner's favor, declared that the respondent spouses, although builders in good faith *vis-à-vis* the house they built on her property, cannot invoke their bona fides as a valid excuse for not complying with the demand to vacate. To the MTCC, respondents' continued possession of the premises turned unlawful upon their receipt of the demand to vacate, such possession being merely at petitioner's tolerance, and *sans* any rental. Accordingly, in its decision dated November 17, 1999,^[4] the MTCC rendered judgment for the petitioner, as plaintiff therein, to wit:

WHEREFORE, judgment is hereby rendered in favor of herein plaintiff and against the defendants, as follows:

- a. Directing the defendants, their agents and other persons acting on their behalf to vacate the premises and to yield peaceful possession thereof to plaintiff;
- b. Ordering defendants to pay P2,000.00 a month from the filing of this complaint until they vacate premises;
- c. Sentencing defendants to pay the sum of P120,000.^[5] as attorney's fees and to pay the cost of suit.

Defendants counterclaim are hereby dismissed except with respect to the claim for reimbursement of necessary and useful expenses which should be litigated in an ordinary civil actions. (*sic*)

Dissatisfied, the respondent spouses appealed to the RTC of Davao City.

In the meantime, petitioner filed a *Motion for Execution Pending Appeal*. The motion was initially granted by the RTC in its Order of February 29, 2000, but the Order was later withdrawn and vacated by its subsequent Order dated May 9, 2000^[6] on the ground that immediate execution of the appealed decision was not the prudent course of action to take, considering that the house the respondents constructed on the subject property might even be more valuable than the land site.