

## SECOND DIVISION

[ G.R. NO. 132197, August 16, 2005 ]

**ROSS RICA SALES CENTER, INC. AND JUANITO KING & SONS, INC., PETITIONERS, VS. SPOUSES GERRY ONG AND ELIZABETH ONG, RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

In a *Decision*<sup>[1]</sup> dated 6 January 1998, the Former First Division of the Court of Appeals overturned the decisions of the Municipal Trial Court (MTC) and the Regional Trial Court (RTC) of Mandaue City, ruling instead that the MTC had no jurisdiction, over the subject complaint for unlawful detainer. This petition for review prays for the reversal of the aforesaid Court of Appeals' *Decision*.

The case originated from a complaint for ejectment filed by petitioners against respondents, docketed as Civil Case No. 2376, before the MTC of Mandaue City, Branch I. In the complaint, petitioners alleged the fact of their ownership of three (3) parcels of land covered by Transfer Certificates of Title (TCT) Nos. 36466, 36467 and 36468. Petitioners likewise acknowledged respondent Elizabeth Ong's ownership of the lots previous to theirs. On 26 January 1995, Atty. Joseph M. Baduel, representing Mandaue Prime Estate Realty, wrote respondents informing them of its intent to use the lots and asking them to vacate within thirty (30) days from receipt of the letter. But respondents refused to vacate, thereby unlawfully withholding possession of said lots, so petitioners alleged.

Ross Rica Sales Center, Inc. and Juanito King and Sons, Inc. (petitioners) had acquired the lands from Mandaue Prime Estate Realty through a sale made on 23 March 1995. In turn, it appears that Mandaue Prime Estate Realty had acquired the properties from the respondents through a Deed of Absolute Sale dated 14 July 1994. However, this latter deed of sale and the transfers of title consequential thereto were subsequently sought to be annulled by respondents in a complaint filed on 13 February 1995 before the Mandaue RTC against Mandaue Prime Estate Realty.

<sup>[2]</sup> Per record, this case is still pending resolution.

Meanwhile, the MYC resolved the ejectment case on 24 April 1996, with the decision ordering respondents to vacate the premises in question and to peacefully turn over possession thereof to petitioners.

On appeal, the RTC rendered on 1 March 1997 a judgment affirming the MTC's decision in its entirety.

On 8 May 1997, respondents filed a notice of appeal. However, on the following day, they filed a motion for reconsideration.

On 23 June 1997, the RTC issued an *Order* which concurrently gave due course to respondents' notice of appeal filed on 8 May 1997; denied their motion for reconsideration dated 9 May 1997,<sup>[3]</sup> and granted petitioners' motion for immediate execution pending appeal.

In a *Petition for Certiorari with Injunction* filed with the Court of Appeals and treated as a *Petition for Review*, the appellate court ruled that the MTC had no jurisdiction over said case as there was no contract between the parties, express or implied, as would qualify the same as one for unlawful detainer. Thus, the assailed *Orders* of the MTC and RTC were set aside.

Petitioners then took this recourse via *Petition for Review* under Rule 45 of the Rules of Court. The principal issues raised before this Court are: (i) whether the RTC decision has already become final and executory at the time the petition for review was filed; (ii) whether the allegations in the complaint constitute a case for unlawful detainer properly cognizable by the MTC; and, (iii) whether petitioners, as registered owners, are entitled to the possession of the subject premises.

We resolve the first argument to be without merit.

The following sequence of events is undisputed:

- (1) On 1 March 1997, the RTC rendered the questioned decision affirming the judgment of the MTC.
- (2) On 28 April 1997, respondents received a copy of the aforementioned decision.
- (3) On 8 May 1997, respondents filed a *Notice of Appeal* with the RTC.
- (4) On 9 May 1997, respondents filed likewise with the RTC a *Motion for Reconsideration* of the aforementioned 1 March 1997 decision.
- (5) On 23 June 1997, the RTC of Mandaue issued an *Order* denying respondents' *Motion for Reconsideration*.
- (6) On 9 July 1997, respondents received a copy of the aforementioned 23 June 1997 *Order*.
- (7) On 24 July 1997, respondents filed with the Court of Appeals their motion for an additional period of ten (10) days within which to file their *Petition for Review*.
- (8) On 30 July 1997, respondents filed with the Court of Appeals their *Petition for Review*.

Petitioners assert that the *Petition for Review* was filed beyond the fifteen (15)-day period for appeal. They theorize that the period started running on 28 April 1995, the date of receipt of the RTC decision, and ended on 13 May 1997. According to them, this reglementary period could not have been interrupted by the filing on 9 May 1997 of the *Motion for Reconsideration* because of the filing one day earlier of the *Notice of Appeal*. This *Notice of Appeal* dated 8 May 1997, albeit the wrong mode of appeal, expressly manifested their intention to file a petition for review to

either the Court of Appeals or the Supreme Court.<sup>[4]</sup>

Petitioners further argue that respondents, after having filed the *Notice of Appeal* which was given due course by the RTC, cannot take an inconsistent stand such as filing a *Motion for Reconsideration*. Such filing, therefore, did not toll the fifteen (15)-day period which started running from the date of receipt of the RTC decision on 28 April 1997 and ended on 13 May 1997.

Respondents, in their Comment,<sup>[5]</sup> submit that the filing of the *Notice of Appeal* dated 8 May 1997 was improper, and as such did not produce any legal effect. Therefore, the filing of the *Motion for Reconsideration* immediately on the following day cured this defect. The RTC refused to subscribe respondents' position. It justified the denial of the *Motion for Reconsideration* on the ground that the respondents had already filed a *Notice of Appeal*. The Order dated 23 June 1997 stated:

On record is a Notice of Appeal by Certiorari filed by Defendants on May 8, 1997.

Likewise filed by Defendants on May 9, 1997 is a Motion for Reconsideration.

Considering the Notice of Appeal filed earlier which the court hereby approves, the Motion for Reconsideration is DENIED.

The Motion for Immediate Execution Pending Appeal being meritorious, is GRANTED.<sup>[6]</sup> (Emphasis in the original.)

Strangely enough, the Court of Appeals passed no comment on this point when it took cognizance of respondents' position and reversed the RTC. But does this necessarily mean that the RTC was correct when it declared that the *Motion for Reconsideration* was barred by the filing of the *Notice of Appeal*, no matter how erroneous the latter mode was?

Rule 42 governs the mode of appeal applicable in this case. Sec. 1 provides:

**Section 1.** *How appeal taken; time for filing.* -- A party desiring to appeal from a decision of the RTC rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

Since the unlawful detainer case was filed with the MTC and affirmed by the RTC, petitioners should have filed a *Petition for Review* with the Court of Appeals and not a *Notice of Appeal* with the RTC. However, we consider this to have been remedied by the timely filing of the Motion for Reconsideration on the following day. Section 3, Rule 50 of the Rules of Court allows the withdrawal of appeal at any time, as a matter of right, before the filing of the appellee's brief. Applying this rule contextually, the filing of the *Motion for Reconsideration* may be deemed as an effective withdrawal of the defective *Notice of Appeal*.

Perforce, the period of appeal was tolled by the *Motion for Reconsideration* and started to run again from the receipt of the order denying the *Motion for Reconsideration*. A *Motion for Additional Time to File the Petition* was likewise filed with the Court of Appeals. Counting fifteen (15) days from receipt of the denial of the *Motion for Reconsideration* and the ten (10)-day request for additional period, it is clear that respondents filed their *Petition for Review* on time.

Petitioners invoke to the ruling in *People v. De la Cruz*<sup>[7]</sup> that once a notice of appeal is filed, it cannot be validly withdrawn to give way to a motion for reconsideration. The factual circumstances in the two cases are different.

*De la Cruz* is a criminal case, governed by criminal procedure. Section 3, Rule 122 of the Rules of Court provides that the proper mode of appeal from a decision of the RTC is a notice of appeal and an appeal is deemed perfected upon filing of the notice of appeal.

In the case at bar, a petition for review before the Court of Appeals is the proper mode of appeal from a decision of the RTC. Since the filing of the notice of appeal is erroneous, it is considered as if no appeal was interposed.

Now on the second and more important issue raised by petitioners: whether the *Complaint* satisfies the jurisdictional requirements for a case of unlawful detainer properly cognizable by the MTC.

The MTC considered itself as having jurisdiction over the ejectment complaint and disposed of the same in favor of petitioners. Said ruling was affirmed by the RTC. The Court of Appeals reversed the lower courts and found the complaint to be one not for unlawful detainer based on two (2) grounds, namely: that the allegations fail to show that petitioners were deprived of possession by force, intimidation, threat, strategy or stealth; and that there is no contract, express or implied, between the parties as would qualify the case as one of unlawful detainer.

We disagree with the Court of Appeals.

The complaint for unlawful detainer contained the following material allegations:

. . . .

3. That plaintiffs are the owners of Lot No. 2, which is covered by T.C.T. No. 36466 of the Register of Deeds of Mandaue City, Lot No. 1-A which is covered by T.C.T. No. 36467 of the Register of Deeds of Mandaue City and Lot No. 86-A which is covered by T.C.T. No. 36468 of the Register of Deeds of Mandaue City, all situated in the City of Mandaue. Copies of said

Transfer Certificate of Titles are hereto attached as Annexes "A", "B", and "C" respectively and made an integral part hereof; 4. That defendant Elizabeth Ong is the previous registered owner of said lots; 5. That as the previous registered owner of said lots, defendant Elizabeth Ong and her husband and co-defendant Jerry Ong have been living in the house constructed on said lots; 6. That on May 6, 1995, plaintiffs, through the undersigned counsel, wrote defendants a letter informing them of their intent to use said lots and demanded of them to vacate said lots within 30 days from receipt of said letter. Copy of said letter is hereto attached as Annex "D" and made an integral part thereof; 7. That despite demand to vacate, the defendants have refused and still refuse to vacate said lots, thus, unlawfully withholding possession of said lots from plaintiffs and depriving plaintiffs of the use of their lots; 8. That in unlawfully withholding the possession of said lots from the plaintiffs, plaintiffs have suffered damages in the form of unearned rentals in the amount of P10,000.00 a month

. . . . [8]

Well-settled is the rule that what determines the nature of an action as well as which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought. [9]

Respondents contend that the complaint did not allege that petitioners' possession was originally lawful but had ceased to be so due to the expiration of the right to possess by virtue of any express or implied contract.

The emphasis placed by the Court of Appeals on the presence of a contract as a requisite to qualify the case as one of unlawful detainer contradicts the various jurisprudence dealing on the matter.

In *Javelosa v. Court of the Appeals*, [10] it was held that the allegation in the complaint that there was unlawful withholding of possession is sufficient to make out a case for unlawful detainer. It is equally settled that in an action for unlawful detainer, an allegation that the defendant is unlawfully withholding possession from the plaintiff is deemed sufficient, without necessarily employing the terminology of the law. [11]

Hence, the phrase "unlawful withholding" has been held to imply possession on the part of defendant, which was legal in the beginning, having no other source than a contract, express or implied, and which later expired as a right and is being withheld by defendant. [12] In *Rosanna B. Barba v. Court of Appeals*, [13] we held that a simple allegation that the defendant is unlawfully withholding possession from plaintiff is sufficient.

Based on this premise, the allegation in the Complaint that:

. . . . despite demand to vacate, the defendants have refused and still refuse to vacate said lots, thus, unlawfully withholding possession of said lots from plaintiffs and depriving plaintiffs of the use of their lots; [14]