

## FIRST DIVISION

[ G.R. No. 149912, January 29, 2004 ]

**JACINTO V. CO, PETITIONER, VS. RIZAL MILITAR AND LILIA SONES, RESPONDENTS.**

### DECISION

**YNARES-SATIAGO, J.:**

This is a petition for review under Rule 45 of the 1997 Rules of Civil Procedure, assailing the decision dated June 30, 2000<sup>[1]</sup> of the Court of Appeals which dismissed the petition for review in CA-G.R. SP No. 51344, and its Resolution dated September 10, 2001<sup>[2]</sup> which denied the motion for reconsideration.

Petitioner Jacinto V. Co claims to be the owner of a parcel of land measuring 396 square meters covered by a Transfer Certificate of Title No. 81792.<sup>[3]</sup> The land was formerly owned by Rolando Dalida, in whose name it was registered under TCT No. 192224.<sup>[4]</sup>

Dalida mortgaged<sup>[5]</sup> the land to petitioner to secure payment of a loan. After Dalida defaulted in the payment of his obligation, petitioner caused the foreclosure of the mortgage. Subsequently, petitioner acquired the land at the foreclosure sale held sometime in 1982.

On June 19, 1997, petitioner filed a complaint for unlawful detainer before the Metropolitan Trial Court of Marikina City, Branch 75, against respondents Rizal Militar and Lilia Sones, who were in possession of the land.

Petitioner alleged that he is the registered owner of the land; that as owner, he declared<sup>[6]</sup> the same for tax purposes and has been up to date in the payments of real property taxes; and that respondents' occupancy of the property was by his mere tolerance but their continued stay became unlawful after he demanded that they vacate the premises.

In their answer, respondents claimed that they are the owners of 198 square meters each of the disputed land, having bought the same from Burgos L. Pangilinan and Reynaldo Pangilinan who were the owners-developers of a residential subdivision project called "Immaculate Conception Village", and whose ownership was covered by TCT No. 13774.

Respondent Militar further claimed that his occupancy of the property could not be by tolerance of petitioner for the following reasons: one, he constructed his house way back in June 1966, long before petitioner acquired title thereto on October 10, 1983; two, he bought the one-half portion of the property, consisting of 198 square meters, on April 20, 1966 from B.L. Pangilinan & Sons, Inc. and paid for the same in

full on October 3, 1973, or 10 years before petitioner claimed ownership of said property.<sup>[7]</sup> He also assailed the jurisdiction of the Metropolitan Trial Court, claiming that it had no jurisdiction over the case as the proper action should have been an *accion reivindicatoria* filed before the Regional Trial Court.<sup>[8]</sup>

Respondent Sones, on the other hand, alleged that she bought the other half of the property from the Spouses Burgos and Juanita Pangilinan on April 6, 1966, and paid for the same in full on October 6, 1973. She also argued that the Metropolitan Trial Court had no jurisdiction over the nature of the action considering that the same is founded on a property right. She also averred that petitioner registered the subject property in bad faith inasmuch as he knew that she was in actual, peaceful, exclusive, adverse and continuous possession of the same and was exercising dominion and ownership over it when petitioner proceeded with his registration.

After trial, the Metropolitan Trial Court rendered a decision in favor of petitioner, thus:

Wherefore, premises considered, judgment is hereby rendered in favor of plaintiff Jacinto Velasco Co and against defendants, Rizal Militar and Lilia Sones, as follows:

- a. ordering the defendants and/or all persons claiming rights under them to vacate the subject premises and peacefully surrender possession thereof to plaintiff;
- b. ordering the defendants to pay plaintiff reasonable compensation for the use of the premises in question in the amount of P500.00 for each defendant per month from June 19, 1997 the date of filing of the complaint until the premises are vacated;
- c. ordering the defendants to pay plaintiff the sum of P 2,000.00 as and for attorney's fees;
- d. to pay the costs of this suit.

SO ORDERED.<sup>[9]</sup>

Respondents appealed the decision to the Regional Trial Court, which reversed and set aside the same.<sup>[10]</sup> Petitioner filed a petition for review before the Court of Appeals, which denied due course and ordered the dismissal of the petition.

Petitioner filed a Motion for Reconsideration which was denied by the Court of Appeals.<sup>[11]</sup> Hence, the instant petition raising the following errors:

#### I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN CONCURRING WITH THE FINDING OF THE LOWER COURT THAT THE DOCTRINE OF OCCUPANCY BY TOLERANCE, IN AN UNLAWFUL DETAINER CASE, CANNOT BE VALIDLY INVOKED BY PETITIONER WHO HAD NO PRIOR PHYSICAL POSSESSION OF THE PROPERTY AS HE HAD BOUGHT THE