

SECOND DIVISION

[G.R. No. 122720, December 16, 2002]

C&S FISHFARM CORPORATION, PETITIONER, VS. COURT OF APPEALS, PAULSEN AGRI-INDUSTRIAL CORPORATION AND PABLO G. SEN, JR., RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari of the November 27, 1995 Decision of the Court of Appeals in CA-G.R. SP No. 36401^[1] reversing the January 11, 1995 Decision of the Regional Trial Court (RTC for brevity) of Pasig (Branch 67) in SCA No. 603. The RTC affirmed the February 2, 1994 Decision of the Metropolitan Trial Court (MTC for brevity) of Taguig (Branch 74) in Civil Case No. 888 which ordered Paulsen Agri-Industrial Corporation (Paulsen for brevity) and Pablo Sen, Jr. (Sen for brevity) to vacate and relinquish possession of a fish pen located at Taguig, Bicutan, Laguna Lake to C & S Fishfarm Corporation (C & S for brevity).

The petition stems from an ejectment suit instituted on May 10, 1993 by C & S, thru its General Manager, Pedro Siochi, Jr., (Siochi for brevity) against Paulsen and Sen for the recovery of a fifty (50) hectare fish pen located at Taguig, Bicutan, Laguna Lake.

C & S alleged in its complaint that it is the holder, grantee, licensee or permittee of a right, grant, license or permit to operate a fish pen within the said area; that sometime in 1992, Sen proposed to C & S through its manager, Siochi, that they enter into a joint venture agreement with respect to the subject fish pen, the principal condition of which is that the net profits of the sale of the cultivated and/or cultured fishes derived from said fish pen shall be divided between the parties with Paulsen getting eighty percent (80%) while C & S twenty percent (20%); that while negotiations were going on between Siochi and Sen the latter was able to convince C & S to allow Paulsen to take possession of the subject fish pen under the assurance that pending execution of a formal contract under their joint venture agreement, the 80%-20% sharing agreement shall be respected by Paulsen; that the parties failed to consummate their proposed joint venture but Paulsen continued to be in possession of the fish pen and was able to harvest cultured fish, appropriating to itself the entire proceeds in violation of the condition by reason of which Paulsen was able to gain possession of said fish pen; that C & S demanded for Paulsen to vacate the subject fish pen and pay the share of C & S in the cultured fish harvested by Paulsen, conservatively estimated at Four Million Pesos (P4,000,000.00) worth of fish, twenty percent (20%) of which C & S is entitled to receive; that when Paulsen refused to comply with the written demand, C & S filed the complaint for ejectment.^[2]

In their Amended Answer, Paulsen and Sen denied the allegations of the complaint and raised as defense that the complaint states no cause of action; that during the

period from 1987 to February 1992, C & S had no permit to operate the subject fish pen for it failed to pay the Laguna Lake Development Authority (LLDA) the required yearly license fee for operating; that it was Siochi who approached Sen for the construction, development and financing of a fish pen in Taguig, Bicutan, Laguna Lake, of which C & S is alleged to be the holder of a right or permit to operate from the LLDA; that Siochi and Sen verbally agreed for a transfer of rights of C & S in favor of Sen, subject to four (4) conditions, to wit: (a) Sen will pay the unpaid license fees from 1987 to February 1992 of C & S due with the LLDA; (b) Sen will also construct, develop and finance said fish pen, without expenses on the part of C & S; (c) Sen will undertake the stoking of the fish pen area with fingerlings; and (d) C & S will receive twenty percent (20%) and Sen will receive eighty percent (80%) of the net profit after accounting of expenses; that Sen complied with the foregoing terms and conditions, but Siochi failed and refused to make the transfer of rights and execute the necessary documents; that they deny that the proposed joint venture agreement was a failure because they performed their part as agreed upon though Siochi did not sign anymore the agreement.^[3]

Furthermore, defendants contend that sometime in October to December 1992, Siochi committed acts inimical and obstructive to the operation of the business venture; that on February 27, 1993, Siochi went to the fish pen with armed persons who turned out to be policemen from Taguig Police Station and barred the workers of Sen from entering the fish pen, and even brought four of the workers to the police station; that verification revealed that Siochi is not the president of C & S, but a certain Alfredo Cruz; that another agreement was entered into by Paulsen with C & S on March 17, 1993.^[4]

On February 2, 1994, the MTC of Taguig (Branch 74) rendered its decision in favor of plaintiff C & S and against defendants Paulsen and Sen, the dispositive portion of which reads:

"WHEREFORE, premised on the foregoing judgment is hereby rendered in favor of the plaintiff and against the defendants ordering:

"1. defendants to vacate the fish pen mentioned in the complaint and relinquished (sic) complete possession thereof to the plaintiff;

"2. defendants to pay the plaintiffs the sum equivalent to 20% of the P4,871,980.60 as compensation or rental of the use and occupation of said fish pen from February 1992 to December 1993, and thereafter, P50,000.00 per harvest season every four (4) months until the defendant fully vacated (sic) said fish pen;

"3. defendants to pay the plaintiff the sum of P10,000.00 as attorney's fees plus the cost of suit.

"SO ORDERED."^[5]

Dissatisfied, Paulsen and Sen appealed to the RTC of Pasig (Branch 67) which affirmed *in toto* the decision of the MTC of Taguig.

Undaunted, on February 9, 1995, Paulsen and Sen filed before the Court of Appeals a petition for review with prayer for a temporary restraining order.^[6]

On November 27, 1995, the appellate court rendered its decision reversing the decisions of the lower courts and ordered the dismissal of the complaint for ejectment. It likewise ordered the possession and operation of the subject fish pen restored to Paulsen and Sen without prejudice to the pursuit of other legal remedies as may properly be available to the parties in pursuance of their joint venture agreement.^[7]

Hence, herein petition anchored on the following assignment of errors:

"THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS(SIC) ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF JURISDICTION WHEN IT HELD THAT PETITIONER CORPORATION HAS NO POSSESSORY RIGHT OVER THE SUBJECT PREMISES;

"THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF JURISDICTION WHEN IT HELD THAT PETITIONER HAS NOT SHOWN ANY ENTITLEMENT TO THE SUMMARY REMEDY OF EJECTMENT;

"THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF JURISDICTION WHEN IT HELD THAT THE SUPPOSED JOINT VENTURE AGREEMENT BETWEEN PETITIONER AND PRIVATE RESPONDENTS IS A PERFECTED CONTRACT; AND

"THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF JURISDICTION WHEN IT HELD THAT PETITIONER IS NOT ENTITLED TO RECOVER JUST COMPENSATION FOR THE PRIVATE RESPONDENTS' USE AND OCCUPATION OF THE SUBJECT PREMISES."^[8]

Petitioner ascribes grave error upon the Court of Appeals in ruling that C & S is not the holder, grantee, licensee or permittee of a right, grant, license or permit to operate the subject fish pen. Petitioner emphatically claims that the private respondents are estopped from questioning the lawful right of the petitioner as a grantee, licensee or permittee to operate the subject fish pen inasmuch as private respondents have admitted that petitioner is the lawful licensee, grantee and/or permittee of the subject fish pen in the March 17, 1993 document private respondents rely upon to show existence of their right to possession, although said document was denounced by the Board of Directors as an ultra vires act of Alfredo Cruz, President of C & S.

Petitioner staunchly contends that there is no binding, legal and perfected contract of joint venture with private respondents, notwithstanding the joint venture agreement was signed on its last page by Siochi for and in behalf of the petitioner, inasmuch as Paulsen is not a privy or party to the contract. The second party referred to in the contract or the assignee of the right referred to Reliable Fishfarm Corporation, not Paulsen, although both companies have a common president in the name of private respondent Pablo G. Sen, Jr..

Petitioner submits that it has sufficiently established how the private respondents, through fraudulent scheme and machinations, were able to gain possession of the subject property, and therefore, it is entitled to the summary remedy of ejectment.

It is settled that in the exercise of the Supreme Court's power of review, the findings of facts of the Court of Appeals are conclusive and binding on the Supreme Court.^[9] The exceptions to this rule are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.^[10]

Petitioner failed to show that its case falls under any of these exceptions.

Actori incumbit onus probandi.^[11] This is a well-known postulate echoed by Section 1 of Rule 131 of the Revised Rules of Court. In civil cases the burden of proof to be established by preponderance of evidence^[12] is on the plaintiff who is the party asserting the affirmative of an issue. He has the burden of presenting evidence required to obtain a favorable judgment,^[13] and he, having the burden of proof, will be defeated if no evidence were given on either side.^[14]

Petitioner failed to comply with the foregoing elementary precept has apparently escaped petitioner's recollection. Inasmuch as petitioner is the proponent of the view that it is entitled to the summary remedy of ejectment, it had the burden of showing that the private respondents entered the fish pen by force, intimidation, threat, strategy or stealth, or that it is the landlord, vendor, vendee or other person whose possession of the property has been unlawfully withheld by private respondents. As revealed by the extant evidence, petitioner failed to discharge this burden.

Since ejectment is a possessory action, the plaintiff must show a right of possession that is present or immediate in the property sought to be recovered. Unless established, the defendant will prevail.^[15] Plaintiffs in ejectment must show their right to possession at the time the suit was instituted.^[16] Ejectment can be maintained only by one having a present exclusive right to possession.^[17] Petitioner failed to show that such allegation is an existent fact at the time of the filing of the complaint for ejectment. It offered no evidence on the current state of its alleged right, grant, license or permit to operate. Thus, we are convinced that no reversible error was committed by the Court of Appeals in finding that petitioner is not the holder, grantee, licensee or permittee of a right, grant, license or permit to operate the subject fish pen. Petitioner failed to establish this material allegation in its complaint.

On the other hand, private respondents presented uncontradicted evidence of their payment of petitioner's overdue license fees, penalties and other charges for the renewal, reactivation and reissuance of petitioner's permit or license to operate the