

THIRD DIVISION

[G.R. No. 143173, March 28, 2001]

**SPS. PEDRO ONG AND VERONICA ONG, PETITIONERS, VS.
SOCORRO PAREL AND HON. COURT OF APPEALS, RESPONDENTS.**

DECISION

GONZAGA-REYES, J.:

The instant petition for review on certiorari seeks the annulment of the decision of the respondent Court of Appeals^[1] dated December 14, 1999 affirming the decision of the Regional Trial Court which reversed and set aside the judgment of the Metropolitan Trial Court of Manila, Branch 15, for forcible entry, as well as the resolution dated May 4, 2000 denying petitioners' motion for reconsideration.^[2]

Spouses Pedro and Veronica Ong are the registered owners of Lot No.18, Block 2 of the subdivision plan II of Rizal Park subdivision, situated in Sta Cruz, Manila covered by TCT No. 218597, having purchased the property from the spouses Emilio Magbag and Norma B. Pascual in 1994. Adjacent to Lot No. 18 is Lot No.17 consisting of about 109 sq. meters covered by TCT No. 125063 registered under the name of Visitacion Beltran, grandmother of respondent Socorro Parel.

On May 25, 1995, the Ong spouses filed an action for forcible entry against defendant Parel before the Metropolitan Trial Court of Manila, Branch 15, docketed as Civil Case No. 148332, alleging among other things that defendant Parel through strategy and stealth constructed an overhang and hollow block wall along the common boundary of the parties' adjoining lot, i.e., beyond Lot No. 17 owned by Parel and inside Lot No.18 owned by plaintiffs spouses Ong, thereby illegally depriving plaintiffs of possession of the said portion of their lot; that plaintiffs discovered respondent's illegal possession of their lot on August 23, 1994 when they had the boundaries of their lot resurveyed; that plaintiffs made various demands from the defendants to remove the constructions they introduced in the said lot of the plaintiffs and vacate the same, the last of which demands having been made on December 19, 1994.

Defendant Parel denied the material allegations of the complaint and alleged that the overhang and hollow block wall had already been in existence since 1956 and that these structures are within the boundary of lot 17 owned by him.

The parties moved for an ocular inspection of the subject lot which was granted by the trial court. The trial court designated the Branch Clerk of Court as Commissioner while defendant Parel employed the services of Geodetic Engr. Mariano V. Flotildes who made the relocation survey on November 28, 1995 in the presence of both parties. Thereafter, the Commissioner reported that defendant's wall protrudes 1½ meters into plaintiffs' property and a window sill overhangs by about ½ meter deep into plaintiffs premises and the eaves of the main residential building extends into

the plaintiffs premises. The Geodetic Engineer's Report, confirmed that the house of the defendant encroached plaintiffs' property by an area of 2.7 sq. m., and the adobe and hollow block wall by an area of 1.59 sq. m., respectively, resulting to a total encroachment of 4.29 sq. m., more or less into the plaintiffs' property.

On April 12, 1996, the Metropolitan Trial Court rendered judgment in favor of the plaintiffs spouses Ong; the dispositive portion reads:^[3]

"WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against the defendants ordering: (a) the defendants and all persons claiming rights under her to remove the overhang constructions measuring 2.70 sq. m. and the adobe block wall measuring 1.59 sq.m. respectively on lot 18 of the plaintiffs and to peacefully surrender its possession to the plaintiffs; (b) ordering the defendants to pay the plaintiffs the sum of Ten Thousand Pesos (P10,000.00) as and by way of attorney's fees; plus the costs of suit.

SO ORDERED."

Respondent Parel filed an appeal with the Regional Trial Court, docketed as Civil Case No. 96-78666. On October 3, 1996, the regional trial court^[4] dismissed the case for failure of the Ong spouses to prove prior physical possession of the subject lot, the dispositive portion reads:^[5]

"WHEREFORE, premises considered, the decision appealed from is hereby REVERSED and SET ASIDE. This case is hereby DISMISSED, without prejudice to the filing of the appropriate actions, without costs.

SO ORDERED."

Spouses Ong moved for a reconsideration which was also denied in a resolution dated August 1, 1997.^[6]

Aggrieved by the above decision, petitioners spouses Ong elevated the matter to the Court of Appeals by way of a petition for review. The respondent Court of Appeals in a decision dated December 14, 1999 denied the petition. The appellate court adopted the lower court's findings that the alleged encroachments were made by the late Visitacion Beltran at a time when she still owned both lots or when she had all the right and the power to introduce the improvements; thus the introduction of the said construction could not be equated with strategy and stealth giving rise to forcible entry. It added that what is involved in a forcible entry case is merely the issue of material possession or possession de facto which the petitioner miserably proved in their favor. It further pointed out that it was admitted by the petitioners in their petition that this case involves a boundary dispute and not lot 18 in its entirety, and the encroachment was discovered only upon a relocation survey of the property; such controversy could not be threshed out in an ejectment suit in view of the summary nature of the action, and the MTC, accordingly, is without jurisdiction to entertain the same. Petitioners moved for a reconsideration which was also denied in a resolution dated May 4, 2000. Hence, this petition.

Petitioners assign the following issues for consideration:^[7]

1. WHETHER OR NOT GAINING ENTRY WITHOUT THE KNOWLEDGE OR CONSENT OF THE OWNER OR REMAINING RESIDENT OF ANOTHER WITHOUT PERMISSION IS DISPOSSESSION BY STEALTH;
2. WHETHER OR NOT ENTRY SECURED BY STRATEGY OR STEALTH BECOMES UNLAWFUL AND DE FACTO POSSESSION COMMENCES ONLY UPON DEMAND;
3. WHETHER OR NOT THERE IS A DISTINCTION BETWEEN FORCIBLE ENTRY BY MEANS OF STEALTH AND FORCIBLE ENTRY BY MEANS OF FORCE, INTIMIDATION OR THREAT;
4. WHETHER OR NOT PETITIONER CAN INVOKE SUPREME COURT RULINGS IN UNLAWFUL DETAINER CASES;
5. WHETHER OR NOT THE PRIVATE RESPONDENT IS THE AUTHORIZED PARTY IN THE CASE OF CO-OWNERSHIP AS OBTAINED IN THIS CASE;
6. WHETHER OR NOT THE CHARACTER OF THE POSSESSION ACQUIRED IN BAD FAITH WAS INHERITED BY THE PRIVATE RESPONDENT AND DID NOT CHANGE;
7. WHETHER OR NOT THE DECISION OF THE RESPONDENT COURT OF APPEALS IS BASED ON SPECULATION SURMISE OR CONJECTURE OR MISAPPREHENSION OF FACTS.

Petitioners essentially allege that the act of entering and trespassing upon a parcel of land, or of constructing improvements upon a parcel of land without the knowledge or permission of the person who owns or administers it is an act of dispossession and usurpation of real property by means of strategy or stealth; that private respondent is a usurper or encroacher who constructed a portion of her house and adobe and hollow block wall on the land of the petitioners with no bona fide claim and without the consent of the owner.

The petition has no merit.

Section 1, Rule 70 of the Rules of Court requires that in actions for forcible entry the plaintiff is allegedly deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth and that the action is filed any time within one year from the time of such unlawful deprivation of possession. This requirement implies that in such cases, the possession of the land by the defendant is unlawful from the beginning as he acquires possession thereof by unlawful means. The plaintiff must allege and prove that he was in prior physical possession of the property in litigation until he was deprived thereof by the defendant. The one year period within which to bring an action for forcible entry is generally counted from the date of actual entry on the land,^[8] except that when entry was made through stealth, the one year period is counted from the time the plaintiff learned thereof.^[9] If the alleged dispossession did not occur by any of the means stated in section 1, Rule 70, the proper recourse is to file a plenary action to recover possession with the regional trial court.^[10]