

SECOND DIVISION

[G.R. No. 118328, October 08, 1998]

MARCIANA SERDONCILLO, PETITIONER, VS. SPOUSES FIDEL AND EVELYN BENOLIRAO, MELITON CARISIMA, AND COURT OF APPEALS, RESPONDENTS.

DECISION

MARTINEZ, J.:

This petition for review assails the decision of the Court of Appeals dated July 14, 1994 in CA G.R. CV No. 39251^[1] which affirmed the decision of the Regional Trial Court of Pasay City, (Branch 108) in Civil Case No. 7785, dated June 30, 1992 directing herein petitioner to demolish and remove all illegal structures which she constructed in front of the subject lots, to vacate the said property and right of way, and return possession thereof to the respondents.

The antecedent facts:

The subject premises was formerly part of the estate of H. V. Ongsiako, comprising of 1,806 square meters, more or less, located at the corner of Pilapil and N. Domingo Streets, Pasay City. The legal heirs of H.V. Ongsiako organized the United Complex Realty and Trading Corporation (UCRTC) which subdivided the property into fourteen (14) lots, Lots 555-A to 666-N. The subdivided lots were then offered for sale with first priority to each of the tenants, including the private respondents and petitioner.^[2] Lot 666-H has an area of 248 square meters, consisting of two (2) parts. One part is the residential portion with an area of 112 square meters purchased by private respondents-spouses Benolirao^[3] while the second part is the right of way for Lot 666-I and the aforesaid residential portion.^[4] Private respondent Carisima purchased Lot 666-I. Petitioner, who was occupying the western end and front portions of the aforesaid lots declined the offer to purchase any of the lots offered for sale by UCRTC.^[5]

Petitioner continued paying rentals to H.V. Ongsiako's wife, Mrs. Rosario de Jesus. Thereafter, the collection of rentals was stopped prompting petitioner to file on June 30, 1987, Civil Case No. 5456 before the Metropolitan Trial Court of Pasay City for consignation of rentals against UCRTC, Rosario de Jesus and the spouses Carisima. The consignation was granted by the trial court and was eventually affirmed on appeal by the Regional Trial Court of Pasay City, Branch 109 on October 25, 1989.^[6]

On May 5, 1989, UCRTC executed a deed of absolute sale in favor of private respondents-spouses Benolirao for Lot 666-H.^[7] This sale was annotated at the back of UCRTC's title on Lot 666-H.^[8]

On June 2, 1989, after unsuccessful oral and written demands were made upon

petitioner, UCRTC instituted an action against her for recovery of possession of the subject premises before the Regional Trial Court of Pasay City, Branch 114 docketed as Civil Case No 6652.^[9] On July 15, 1990, the trial court rendered its decision dismissing the complaint of UCRTC, stating in part, to wit:

"It is clear, therefore, that plaintiff, not having been authorized in writing for the purpose, may not validly bring an action to enforce a perceived easement of right of way pertaining to the owners of Lots 666-H and 666-I or the Benolirao and Carisima families. while Benjamin Ongsiako possessed the authority to institute the case (Exhibit "G"), plaintiff is not the real party in interest. Furthermore, the situation obtaining does not call for the enforcement of an easement of right of way. Defendant Serdoncillo is not the owner of and has never claimed ownership over the portion of Lot 666-H on which her house is erected. A servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner (Article 613, New Civil Code). In the present case, the ejectment of defendant Serdoncillo from the portion of Lot 666-H occupied by the house at the instance of the proper party (Renato Bolinarao's family) would remove the obstruction."

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"WHEREFORE, in view of all the foregoing considerations, the complaint against the defendant Marciana Serdoncillo, as well as defendant's counterclaim, is dismissed for lack of merit. Without pronouncement as to costs.

SO ORDERED."^[10]

UCRTC did not appeal the aforesaid decision of the Regional Trial Court, hence, the same became final.

On November 20, 1989, Serdoncillo instituted Civil Case No. 7749 for the Exercise of Preferential Rights of First Refusal against UCRTC and private respondents-spouses Fidel and Evelyn Benolirao praying for the annulment of sale of a portion of lot 666-H sold to the Benolirao spouses on the ground that said transfer or conveyance is illegal. She claimed that she has the preferred right to buy the said property and that the same was not offered to her under the same terms and conditions, hence, it is null and void. UCRTC and private respondents prevailed and this case was dismissed. On appeal to the Court of Appeals, the same was dismissed on July 9, 1992.^[11]

On November 20, 1990, private respondents made their final demand on petitioner reiterating their previous demands to vacate the property.^[12] On December 13, 1990, private respondents filed their complaint for recovery of possession of the subject premises against petitioner before the Regional Trial Court of Pasay City, Branch 108, docketed as Civil Case No. 7785, which complaint alleges these material facts:

"5. That plaintiffs, being then registered owners of the properties designated as lot 666-H and 666-I, are likewise the owners/grantees of the right of way granted by United Complex Realty and Trading

Corporation which was correspondingly annotated in its title (Annex "B-3") under Entry No. 205154/T-172291 of the Register of Deeds of Pasay City;

6. That since 1982 the defendant has built and constructed a residence and pig pen on the plaintiffs' right of way as well as on the front portions of the latter's properties leaving them virtually obstructed with no ingress or egress from the main road;

"7. That verbal and written demands made upon the defendant by the plaintiffs to remove and demolish her structures had been ignored, the last of which was on November 20, 1990, xerox copy of which is hereto attached as Annex "C" and taken as an integral part hereof, but despite such demands, the defendant failed and refused and still fails and refuses to remove and vacate her illegal structures on the portion of the properties as well as on the right of way of plaintiffs;

"8. That plaintiffs in compliance with the Katarungang Pambarangay Law lodged a complaint before the Barangay Captain, Barangay 84, Zone 10 of Pasay City, which certified filing of the same in court, xerox copy of said certification is hereto attached as Annex "D" and taken as integral part hereof;

"9. That due to the unjustified refusal of the defendant, the plaintiffs are suffering the unnecessary inconvenience of the absence of decent and sufficient ingress and egress on their properties, and will continue to suffer the same unless the illegal structures are finally demolished and/or removed by the defendants;"^[13]

Petitioner, in her Answer, put up the defense that she is the legitimate tenant of said lots in question since 1956, pertinent portions of which are quoted hereunder, thus:

"13. That Lot 666-H and Lot 666-I mentioned in the complaint are formerly portions of a big track(sic) of land consisting of 1,806 square meters then owned by H.V. Ongsiako;

"14. That since 1956 and before the 1,806 square meters of lot owned by H.V. Ongsiako was subdivided into fourteen (14) lots in 1982, defendant is (sic) already a legitimate tenant and occupant family of around 400 square meters of the 1,806 square meters of the said land then owned by H.V. Ongsiako by erecting her residential house thereon at the agreed monthly rental of P15.00 and increased to P100.00;

"15. That upon the death of H. V. Ongsiako his heirs continued collecting the monthly rental of the premises from the defendants;

"16. That the heirs of H. V. Ongsiako formed a corporation known as UNITED COMPLEX REALTY AND TRADING CORPORATION and the big parcel of land consisting of 1,806 square meters was transferred to the said corporation and subdivided in 1982 into fourteen (14) lots, two (2) of which lots are the very same lots leased by the defendant from H.V. Ongsiako and later from his heirs and then from United Complex Realty

and Trading Corporation as alleged in the preceding pars. 13, 14, and 15;
[14]

The issues having been joined, trial on the merits ensued. On June 30, 1992, the trial court rendered its decision in favor of private respondents, the dispositive portion of which reads:

"WHEREFORE, IN VIEW of the foregoing, and finding preponderance of evidence in plaintiffs' favor, judgment is hereby rendered as follows:

"1) Ordering the defendant to demolish and remove all illegal structures she constructed on the front portions of the subject lots and on the right of way of the plaintiffs;

"2) Ordering the defendant to vacate the property and right of way and return possession thereof to the plaintiffs;

"3) Ordering the defendant to pay the cost of suit.

"As to the damages (actual and moral) no award is given. In the absence of proof of fraud and bad faith by defendants, the latter are(sic) not liable for damages (Escritor Jr. vs. IAC, 155 SCRA 577).

"Actual and compensatory damages require substantial proof. In the absence of malice and bad faith, moral damages cannot be awarded (Capco vs. Macasaet, 189 SCRA 561).

"As to the attorney's fees, each party should shoulder his/her expenses.

SO ORDERED." [15]

Aggrieved by the trial court's decision, petitioner appealed to the Court of Appeals alleging that: 1) the lower court should have dismissed the complaint of private respondents considering that based on the letter of demand dated November 20, 1990, the action filed should have been unlawful detainer and not an action for recovery of possession; 2) the action filed by private respondents is barred by **res judicata** considering that the present action is identical with that of Civil Case No. 6652; 3) the lower court erred in not dismissing the complaint for lack of cause of action with respect to enforcement of right of way *vis a vis* defendant; and 4) the lower court erred in ordering that defendants vacate the properties in question since the lease of defendants thereon was still in existence and had not yet been terminated. [16]

On July 14, 1994, the respondent Court of Appeals rendered its decision sustaining the findings of the trial court and dismissed the appeal of petitioner, stating in part as follows:

"The issue as to the proper action has been resolved by the respondent court, to wit:

`The defense that what should have been filed is an ejectment case and not recovery of possession, is not also correct. The filing of this case for recovery of possession, instead of an ejectment case, is not altogether

unjustified. The Benoliraos and Carisima became the owners as early as May, 1989. Verbal and written demands had been ignored. There is an immediate need for plaintiffs to use the right of way, which up to the present time is obstructed,. At most, what surfaced is a technicality which should be abandoned.'

"A plain reading of the complaint shows that plaintiff-appellees cause of action is for recovery of possession of their property which was encroached upon by defendant-appellant."^[17]

A motion for reconsideration of the aforesaid decision filed by petitioner on August 8, 1994^[18] was denied by the respondent on September 23, 1994.^[19]

Hence, this petition.

Petitioner ascribes one single error committed by the respondent court, to wit:

THE RESPONDENT REGIONAL TRIAL COURT AND THE COURT OF APPEALS (Sp. Fifteenth Division) COMMITTED GRAVE ABUSE OF JURISDICTION IN DECIDING AS AN ACCION PUBLICIANA AN EJECTMENT OR UNLAWFUL DETAINER CASE (THE JURISDICTION OF WHICH CLEARLY PERTAINS TO THE INFERIOR COURT), A CASE BASICALLY INVOLVING AN EASEMENT OF RIGHT OF WAY.

Petitioner asserts that the respondent court erred in sustaining the trial court's finding that the complaint filed by private respondents for recovery of possession of the subject premises is an accion publiciana notwithstanding the fact that the action was filed within one (1) year from demand. Petitioner contends that private respondents should have filed an action for unlawful detainer and not an action for recovery of possession against petitioner. Consequently, the trial court is without jurisdiction to hear and determine Civil Case No. 7785. In support of her contention, petitioner cited the cases of ***Bernabe vs. Luna***^[20] and ***Medina vs. Court of Appeals***,^[21] which she states is strikingly similar to the facts of this case. Consequently, the rulings of this Court in these two cases are squarely applicable and controlling in the case at bar.

Private respondents, however, aver that they were merely successors-in-interest of UCRTC and therefore step into the shoes of the latter. They claim that the demand to vacate required by law should at the very least be reckoned from June 2, 1989, the date of the filing of the complaint in Civil Case No. 6652 considering that their demands are simply a reiteration of UCRTC's demands against petitioner. Private respondents further contend that the allegations in the complaint determine the jurisdiction of the court. Thus, the complaint in Civil Case No. 7785 specifically alleged that private respondents are the owners of lots 666-I and 666-H as evidenced by transfer certificates of title and prayed for recovery of possession of a portion thereof including its right of way illegally and unlawfully possessed by petitioner.

Petitioner's position is without merit.

It is an elementary rule of procedural law that jurisdiction of the court over the subject matter is determined by the allegations of the complaint irrespective of