

EIGHTEENTH DIVISION

[CA-G.R. SP. NO. 07803, January 30, 2015]

**MAGDALENA O'DELL REPRESENTED BY HECTOR P. TEODOSIO AS
HER ATTORNEY-IN FACT, PETITIONER, VS. MICHAEL FRENCH,
RESPONDENT.**

D E C I S I O N

INGLES, G. T., J.:

THE CASE

Before this Court is a Petition for Review^[1] filed by petitioner Magdalena O' Dell assailing the Decision^[2] of the Regional Trial Court, Branch 68 of Dumangas, Iloilo which set aside the Decision^[3] of the Municipal Trial Court in Cities, Passi City in Civil Case No. 437 in an action for Ejectment.

THE PARTIES

Petitioner Magdalena F. O' Dell is of legal age, widow, American Citizen^[4] and presently residing in Houston, Texas, U.S.A. She is represented by her Attorney-in-Fact, Hector P. Teodosio, of legal age, married and a resident of Carles, Iloilo.^[5]

Respondent Rene Michael French, on the other hand is of legal age, and a resident of Passi City, Province of Iloilo.^[6]

THE ANTECEDENTS

On September 30, 2008, petitioner filed a Complaint^[7] for ejectment against respondent docketed as Civil Case No. 437.

O'dell avers that she is the owner of a parcel of land located at Passi City with an area of 487,871 square meters more or less covered by Transfer Certificate of Title No. 19522.

Sometime in the 1980's, the father of defendant, Henry French sought permission from the petitioner to cultivate a portion of the subject property, enjoy its produce, free from rentals. In return, he shall be responsible in paying some loans incurred by the former with the Philippine National Bank. Henry swore, if at any time petitioner shall need the property, he shall vacate the same. petitioner verbally consented thereto.

In 1991, Henry French passed away and respondent took possession of the property without permission from her. O'dell insists that respondent's occupation of a portion of the subject property is by mere tolerance. Thus, petitioner sent thru her counsel

a letter of demand dated January 10, 2008 ordering respondent to vacate the property within fifteen (15) days from receipt thereof.^[8] We quote the pertinent portions of the Complaint:

4. Sometime in the 1980's the father of defendant Henry French, asked permission from the plaintiff to cultivate the portion of the above-described parcel of land, enjoy its produce without paying any rentals but will take charge in paying some loans with the Philippine National Bank. Henry French promised that if at anytime the plaintiff needs the property, he will vacate the same. Plaintiff verbally agreed. Xxx

5. In 1991, Henry French died, and defendant took possession of the property without permission from the plaintiff.

6. Defendant therefore by mere tolerance from plaintiff is presently occupying a portion of plaintiff's property as above-described. As the possession of defendant is by mere tolerance, plaintiff has the legal right to eject the defendant: xxx

7. Plaintiff desirous of using her property, sent thru her counsel, a letter of demand dated January 10, 2008 demanding from defendant to vacate the property within fifteen (15) days from receipt of the said letter. xxx

8. Defendant was able to receive said letter, but despite receipt of the said letter of demand, defendant failed to vacate the premises;

Respondent filed his Answer with Affirmative and Special Defenses and Counterclaim^[9] to the complaint and alleged that it was his father Henry French and the close corporation French-Solinap Development Corporation who has been in possession of the property since 1985. Since then, they have acted as owners therein.

After his parents' demise, respondent claims he succeeded as the administrator, owner and president of the close corporation.^[10] In response to the complaint, he puts up the defense of laches and extinctive prescription against petitioner and other persons acting on her behalf. French stresses, petitioner has remained in silence and in inaction over his claimed right for over twenty-three (23) years.^[11]

On January 27, 2008, the Municipal Trial Court in Cities (MCTC) rendered a decision in favor of petitioner. The *fallo* of which states:

WHEREFORE, in the light of the foregoing, judgment is rendered in favor of the plaintiff and against defendants (*sic*) as follows:

1) Ordering the defendant RENE MICHAEL FRENCH and all persons claiming rights under him to vacate Lot 6895 covered by TCT No. T-19522 and to turn over the possession thereof to the plaintiff;

2) Ordering said defendant to pay annually the sum of TWO HUNDRED TEN THOUSAND PESOS (P210,000.00) starting January 10, 2008, until defendant vacates and turn over the premises in question to the plaintiff as reasonable compensation for the use and occupation of lot 6895;

- 3) Ordering the said defendant to pay plaintiff the sum of Twenty Thousand Pesos (P20,000.00) as attorney's fees;
- 4) Ordering said defendant to pay the plaintiff the amount of FIVE THOUSAND PESOS (P5,000.00), as litigation expenses; and
- 5) The cost of the suit.

The counter-claim is dismissed for lack of merit.

SO ORDERED.^[12]

From the above decision, respondent filed an appeal^[13] before the Regional Trial Court. In response to the pleading filed, an Appeal Memorandum was also filed by petitioner.^[14]

On October 12, 2012, the Regional Trial Court, Branch 68 of Dumangas, Iloilo set aside the decision of the MTCC and dismissed the complaint for lack of jurisdiction. It disposed:

WHEREFORE, premises considered, for lack of jurisdiction, the questioned decision subject of the herein appeal is hereby set aside and the instant complaint is hereby DISMISSED.^[15]

Ruling on the issues raised, the RTC held the inapplicability of the dead man's statute considering that respondent is sued in his personal capacity.

It affirmed the finding of the MTCC in ruling that respondent or his predecessor-in-interest were not the owner of the property subject of the litigation. Likewise, it continued to affirm the declaration of the MTCC saying that indeed, respondent's occupation was merely by tolerance.^[16]

However, it declared that the allegations in the complaint failed to confer jurisdiction with the MTCC.^[17] We quote:

xxx The court is now at a loss on how to treat the complaint of the plaintiff. If the same is to be treated as a case for unlawful detainer, the same cannot apply to the defendant as his entry was without the consent of the plaintiff. The one given permission by the plaintiff was the father of the defendant Henry French. Such permission was not accorded to defendant as the allegation itself is very clear and unequivocal: In 1991, Henry French died, and defendant took possession of the property without permission from the plaintiff.

If on the other hand the complaint is to be treated as one for forcible entry, the one year period within which to file the complaint has long ago lapsed and after the one year period expires, jurisdiction is already vested with the Regional Trial Court. Besides, it is doctrinal that a case for forcible party can never ripen into one for unlawful detainer. Xxx^[18]

From the above ruling, the RTC declared the complaint to possess a jurisdictional conflict in the allegations. Consequently, it held:

Verily, the sufficiency, of the allegations in the complaint is vital considering that the reckoning of the one year period from the date possession became illegal is indispensable. This time bar is sine qua non in determining which court has jurisdiction to try the issue of possession.

[19]

Petitioner then filed a Motion for Reconsideration^[20]. The same was however met with an Order^[21] denying said motion. In doing so, it ratiocinated that it found no cogent reason to disturb its challenged decision.^[22]

The disposition of the RTC prompted petitioner to file the instant proceeding. In lodging the present petition, petitioner's main contention is captured in her identified grounds for review:

THE REGIONAL TRIAL COURT ERRED IN SETTING ASIDE THE DECISION OF THE MUNICIPAL TRIAL COURT OF PASSI CITY AND ORDERING THE DISMISSAL OF THE COMPLAINT FOR LACK OF JURISDICTION.^[23]

Specifically, it asserts:

THE REGIONAL TRIAL COURT ERRED IN HOLDING THAT THE COMPLAINT FILED BEFORE THE MUNICIPAL TRIAL COURT PASSI CITY, IS NOT ONE OF UNLAWFUL DETAINER, NOTWITHSTANDING THE ALLEGATION IN PARAGRAPHS 4, AND 6 OF THE COMPLAINT xxx^[24]

Petitioner argues that the Regional Trial Court is mistaken. The complaint filed before the Municipal Trial Court of Passi City is not one of forcible entry for it lacked the two essential requisites. The Complaint dated September 30, 2008 never alleged that respondent took possession of the property by means of force, intimidation, stealth, strategy, or threat. Also, it never alleged that petitioner was in actual physical possession of the property at the time of taking. Hence, the complaint never constituted a case for forcible entry.

On the contrary, the Complaint clearly depicts a case of unlawful detainer. O'dell insists that the complaint clearly alleged respondent's possession of the property as one by tolerance.^[25]

O'dell argues, the Regional Trial Court acknowledged that paragraphs 4 and 6 of the complaint sufficiently satisfy the requirement of tolerance.^[26] Granting *argumenti gratia* that paragraph 5 of the said complaint seemed to depict forcible entry, petitioner poses the question, will the allegation constitute sufficient reason to disregard paragraphs 4 and 6 of the complaint, set aside the decision of the MTCC, and dismiss the complaint in its entirety?^[27]

Petitioner submits, the allegations found in paragraphs 4, 5 and 6 of the Complaint when collectively construed would clearly show tolerance. The possession of the respondent was merely a continuation of that of his father.

The confusion or jurisdictional conflict between paragraphs 4 and 6 of the Complaint

on one hand and paragraph 5 of the same Complaint is not jurisdictional but a matter of interpretation of the paragraphs.^[28] Thus, the jurisdictional problem that the RTC has perceived should not be a basis in reversing the decision of the MTCC and dismissing the complaint.^[29]

Accordingly, petitioner prays for the Decision of the Regional Trial Court to be nullified and to reinstate the Decision of the Municipal Trial Court in Passi City. ^[30]

Acting on the petition filed, We directed respondent to file Comment.^[31] In compliance with this Court's Order, respondent filed his Comment to the Petition for Review.^[32]

In response to petitioner's arguments, French countered saying that petitioner's tolerance existed since she herself said that respondent did not ask permission when he took possession of the subject land.^[33] respondent theorizes that there was neither any "allegation in the complaint nor any supporting evidence on record to show that he entered the property or who granted him permission to enter." Without these allegations and evidence, the bare claim regarding "tolerance" cannot be upheld.^[34]

Respondent adds, paragraphs 4, 5, and 6 of the Complaint contradict an action for unlawful detainer resulting to a jurisdictional conflict in the allegations therein. While paragraphs 4 and 6 of the Complaint mentions tolerance, paragraph 5 thereof speaks of forcible entry because it depicts a situation where entry was without permission of the petitioner. ^[35]

Respondent likewise manifests the existence of a case for quieting of title involving the same parties and the same subject property docketed as Civil Case No. 08-156 pending before the same Regional Trial Court.^[36] French assays, considering that the main issue in the instant case and that in Civil Case No. 08-526 is ultimately for the purpose of determining the issue of ownership, it is only logical and pragmatic for the issue of ownership to be threshed out in Civil Case No. 08-516.^[37]

From the above submissions, respondent prays for this Court to deny the instant petition for review and to affirm the Decision of the RTC.^[38]

ISSUES

This Court shall rule on the following issues:

I

Whether or not the Regional Trial Court correctly dismissed the Complaint for lack of jurisdiction;

II

Whether or not there was tolerance in respondent's possession of the subject property;

THE COURT'S RULING