

NINETEENTH DIVISION

[CA-G.R. SP NO. 06800, January 26, 2015]

**LORNA ALFON NACION, PETITIONER, VS. RAUL T. TAN,
RESPONDENTS.**

D E C I S I O N

LOPEZ, J.:

This is a Petition for Review under Rule 42 of the Rules of Court where petitioners seek the reversal of the Omnibus Resolution^[1] of the Regional Trial Court (RTC), Branch 4, Dolores, Eastern Samar, which granted respondent's Motion for Reconsideration of the RTC Decision^[2] and remanded the case to the Municipal Circuit Trial Court (MCTC) of Dolores-Maslog for further proceedings.

THE FACTS

Petitioner filed a complaint for ejectment against respondent, alleging that she is the owner and possessor of a parcel of land with a warehouse situated in Barangay 2, Poblacion, Dolores, Eastern Samar. The property was previously leased by one Helen Espeso at a monthly rental of P8,000.00. Sometime in the last quarter of 2004, respondent offered to occupy a portion of the property for a monthly rental of P4,000.00, which offer was accepted by petitioner. It was understood that respondent would be occupying on a temporary basis. On May 21, 2010, petitioner notified respondent of the termination of his lease and asked him to vacate after a period of one (1) month. However, respondent did not vacate the premises and continues to occupy the same.

Respondent contended that since February of 2008, he has been in peaceful occupation of the subject property. It was in December 2007 when he approached petitioner and asked if he could occupy the whole lot for a monthly rental of P4,000.00, to which the petitioner agreed. His occupation of the lot was not on a temporary and tolerance basis as he paid rental obligations from February 2008 until March 2009. No rentals were paid beginning April 2009 after petitioner executed a private document acknowledging that she is indebted to respondent in the amount of P250,000.00. Petitioner indicated in the said document that no interest shall be charged on the loan because she will not be charging respondent for rental payments. Petitioner even made the warehouse as collateral for her loan. Respondent refused to vacate the premises as petitioner had not yet paid her monetary obligation to him.

On September 2, 2010, the MCTC Dolores-Maslog rendered its Decision, the dispositive portion of which states:

"WHEREFORE, judgment is rendered in favor of defendant and against the plaintiff, declaring defendant Raul T. Tan entitled to the possession of

the property in dispute until he is fully paid by plaintiff of her debt.

SO ORDERED."

Petitioner appealed to the RTC, Branch 4, Dolores, Eastern Samar which, at first, rendered a Decision reversing that of the MCTC. On respondent's Omnibus Motion, [3] the RTC issued its Omnibus Resolution now subject of this Petition for Review before this Court.

The Petition is anchored on the following:

I

THAT THE HONORABLE COURT GRAVELY ERRED IN SUSTAINING RESPONDENT'S OMNIBUS MOTION;

II

THAT THE HONORABLE COURT GRAVELY ERRED IN REFUSING TO RECONSIDER ITS OMNIBUS RESOLUTION CONSIDERING THAT, CONTRARY TO RESPONDENT'S CONTENTION, HIS COUNSEL WAS PROPERLY NOTIFIED OF THE SCHEDULED PRELIMINARY CONFERENCE;

III

THAT THE HONORABLE COURT GRAVELY ERRED IN HOLDING THAT THE REMEDIES OF NEW TRIAL/RELIEF FROM JUDGMENT ARE AVAILABLE TO RESPONDENT;

IV

THAT THE HONORABLE COURT GRAVELY ERRED IN ORDERING THE REMAND OF THE CASE TO THE TRIAL COURT; and

V

THAT THE HONORABLE COURT GRAVELY ERRED IN TAKING COGNIZANCE OF RESPONDENT'S OMNIBUS MOTION DESPITE LACK OF AN AFFIDAVIT OF MERIT.

OUR RULING

Petitioner asserts in the main that the RTC should not have given credence to respondent's claim that he was not properly notified of the scheduled preliminary conference and should not have ordered the remand of the case to the MCTC for further proceedings.

The petition is without merit.

Contrary to petitioner's contention, the RTC correctly passed upon the issue of whether or not respondent was duly notified of the scheduled preliminary conference despite the fact that respondent did not raise it in an appeal