

## **TWENTY-THIRD DIVISION**

**[ CA-G.R. SP NO. 04644-MIN, February 27, 2015 ]**

**NATIVIDAD VALLAR NAPONE, PETITIONER, VS. EVELYN DE LA CRUZ, FOR AND IN BEHALF OF HER PRINCIPAL SUSAN DE LA CRUZ, RESPONDENT.**

### **D E C I S I O N**

**CONTRERAS, J.:**

Before this Court is a Petition for Review, under Rule 42 of the 1997 Rules of Civil Procedure, seeking to set aside and/or reverse the Decision<sup>[1]</sup> dated November 29, 2011 of the Regional Trial Court (RTC) of Mambajao, Camiguin, Branch 28 in Civil Case No. 804 which affirmed the Decision<sup>[2]</sup> dated March 30, 2011 of the 2<sup>nd</sup> Municipal Circuit Trial Court (MCTC) of Catarman and Sagay, Camiguin in Civil Case No. 275.

#### ***The Facts***

The facts of the present controversy borne by the records are: The subject property of this case is a parcel of land (Lot No. 2029) with a total area of seven hundred eighty one (781) square meters, located in Poblacion Sagay, Camiguin, covered by Tax Declaration No. G-001700, registered in the name of Remegio Vallar, the grandfather of Natividad Vallar Napone (petitioner for brevity).

Spouses Remegio and Vicenta Vallar, during their lifetime, executed a general power of attorney and letters of administration in favor of one of their children, Francisco Vallar (Francisco for brevity), to administer all their properties, including the subject property. After the death of Remegio and Vicenta, Francisco continued to administer all the properties of his parents in representation of his siblings namely: Zosimo D. Vallar, Anastacio D. Vallar, Victoria V. Dadulo, Hospecia V. Jaquilmac, Rosa V. Campeon, Erlinda V. Gomez and Timoteo Vallar, the father of petitioner.

On September 19, 2008, upon the death of Francisco, his brother, Anastacio Vallar (Anastacio for brevity), was constituted by the heirs of Remegio and Vicenta to administer Lot No. 2029. He was also authorized to sell the same, including the warehouse/bodega erected thereon.

On July 22, 2009, Anastacio, in his own capacity and as an attorney-in-fact of the other co-owners, namely: Zosimo Vallar, Heirs of Francisco Vallar, Arnold Jaquilmac, Adelfa Campeon and Erlinda Gomez, sold to Susan de la Cruz, through her agent and attorney-in-fact, Evelyn de la Cruz (Evelyn, for brevity), a two hundred fifty-two (252)-square-meter portion of Lot No. 2029 for Two Hundred Seventy-Four Thousand pesos (PHP 274,000.00). The said sale included the warehouse, but it did not include the share of the heirs of Timoteo Vallar, Sr.

On September 7, 2009, with the intervention and approval of the municipal mayor, Gaudencio de la Cruz (Gaudencio for brevity), Evelyn's father, together with four carpenters, entered the uninhabited and unoccupied warehouse and demolished the dilapidated portions of it which were in danger of falling and leaning towards the house of Anastacio Vallar. Since they were not able to finish their work that day, Gaudencio and the four carpenters decided to return the next day.

However, on September 8, 2009, upon their arrival in the area to finish the demolish work, Gaudencio and the carpenters were prevented by petitioner from entering the warehouse. Petitioner, who was inside the warehouse holding a scythe, was accompanied by men armed with bolos, *picos*, *bara de cabra* and other weapons. Petitioner also threatened Gaudencio and the carpenters that if they will enter the warehouse, something bad will happen to them. Because of this, Gaudencio immediately reported the incident to Evelyn who then went to the Sagay Police Station to report the incident and seek assistance.

Without any delay and assisted by two police officers, Evelyn went to the warehouse. They asked petitioner to open the door and settle their problem but petitioner refused. Instead, she continued to withhold possession of the property and threaten the life and personal safety of Evelyn and her family. This prompted Evelyn to refer their dispute to the Katarungang Pambarangay of Bonbon, Sagay, Camiguin for mediation and conciliation. But petitioner refused to obey the summons and appear on the date set for the meeting. Consequently, on September 17, 2009, the Punong Barangay issued a Certification to File Action.<sup>[3]</sup>

On May 20, 2010, Atty. Marciano Aparte, Jr., the counsel for Susan de la Cruz, sent a Notice to Vacate<sup>[4]</sup> ordering petitioner and her brother Ramon S. Vallar to vacate the premises within fifteen days from receipt of such demand. But petitioner and her brother did not heed the demand.

Thus, on September 2, 2010, Evelyn filed a case, for and in behalf of her principal Susan, before the MCTC for forcible entry and unlawful detainer against petitioner and her brother Ramon, docketed as Civil Case No. 275.

On March 30, 2011, after the submission of the parties of their respective position papers, the MCTC rendered a Decision,<sup>[5]</sup> the dispositive portion of which reads as follows:

WHEREFORE, in view of the foregoing disquisitions and pursuant to applicable laws and jurisprudence on the matter and evidence at hand, judgment is hereby rendered in favour of the plaintiff and against defendant NATIVIDAD VALLAR NAPONE. Accordingly, defendant Natividad Vallar Napone is ordered:

- 1) To IMMEDIATELY vacate the warehouse and lot where the warehouse is erected and to return possession thereof to EVELYN DE LA CRUZ, attorney-in-fact of plaintiff SUSAN DE LA CRUZ;
- 2) To pay plaintiff in the amount of THIRTY THOUSAND PESOS (PHP 30,000.00) representing attorney's fees; and

3) To pay the cost of this suit.

As to defendant Ramon Vallar, the case against him is DISMISSED for lack of merit.

SO ORDERED.

Aggrieved, petitioner filed an Appeal before the RTC, Branch 28, Mambajao, Camiguin, assailing the MCTC Decision.

On November 29, 2011, the RTC rendered a Decision<sup>[6]</sup> in Civil Case No. 804 affirming the Decision of the MCTC, the dispositive portion of which reads:

Therefore, the Lower Court did not commit any error when it declared that plaintiff had prior physical possession of the lot and bodega in question and not defendant. Likewise, the Court sustains the findings of the Court a quo to award damages to Plaintiff because Article 2208 of the Civil Code entitles a person attorney's fees and expenses when he is forced to litigate due to the act or omission of another or incur expenses to protect his interest.

In view of all the foregoing, this Court dismisses the appeal of defendant-appellant for lack of merit.

SO ORDERED.

Hence, this petition.

### **Issues**

Petitioner contends that the court a quo ERRED:

- (1) In holding that respondent had prior physical possession of the lot and warehouse in question; and
- (2) In holding that respondent is entitled to an award of attorney's fees and expenses.

Simply put, the crux of the controversy revolves on who has prior possession of the subject property.

### **The Court's Ruling**

Petitioner contends that the court *a quo* committed reversible error in the appreciation of facts when it declared that respondent has prior physical possession of the subject property. She asserts that she has been occupying the subject property as early as the late part of 2004 or the early part of 2005 when she operated therein a KTV bar, a sari-sari store and a vulcanizing shop. She claims that she never abandoned the said property from the moment she commenced operating her business until September 7, 2009, when respondent allegedly entered the property. Accordingly, since respondent has no prior physical possession of the land in question, then the forcible entry case must fail.