

## THIRTEENTH DIVISION

[ C.A.-G.R. SP No. 121760, February 28, 2014 ]

**REYNALDO CARCEDO AND ALL PERSONS CLAIMING RIGHTS UNDER HIM, PETITIONER, VS. MAGTANGGOL T. GUNIGUNDO, REPRESENTED BY HIS ATTORNEY-IN-FACT MARCELO M. NAVARETTE, RESPONDENT.**

### D E C I S I O N

**YBAÑEZ, J.:**

This is a Petition for Review<sup>[1]</sup> of the Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 11, of Malolos City in Civil Case No. 244-M-2011 reversing the decision of the Municipal Trial Court (MTC) of San Miguel, Bulacan, in Civil Case No. 2769, with prayer for issuance of temporary restraining order and/or writ of preliminary injunction.

#### **The Antecedent Facts**

A Complaint<sup>[3]</sup> was filed by respondent Magtanggol Gunigundo (Gunigundo) through his attorney-in-fact Marcelo Navarette (Navarette) against petitioner Reynaldo Carcedo (Carcedo) on 20 October 2010 in the MTC of San Miguel, Bulacan for Ejectment docketed as Civil Case No. 2769.

After the parties filed their respective position papers,<sup>[4]</sup> the MTC rendered its decision<sup>[5]</sup> on 14 March 2011, viz:

WHEREFORE, judgment is hereby rendered DISMISSING the complaint for failure of the plaintiff to allege and prove prior physical possession to make out a case for forcible entry; and, likewise to prove that tolerance was present at the start of defendant's occupancy to make out a case for unlawful detainer, tantamount to lack of cause of action for both kinds of ejectment against the defendant; with costs against plaintiff.

SO ORDERED.<sup>[6]</sup>

Aggrieved, respondent appealed<sup>[7]</sup> to the RTC which reversed the MTC in its decision dated 3 October 2011,<sup>[8]</sup> viz:

"WHEREFORE, judgment is hereby rendered **REVERSING** and **SETTING ASIDE** the appealed decision and ordering the defendant and all persons claiming rights under him, as follow:

(1) To vacate the lot in question and remove all buildings built thereon;

(2) To return the possession of the subject lot to the plaintiff;

(3) To pay plaintiff the sum of P10,000.00 a month for the use and occupancy of the lot from date of demand until the possession of the lot to the plaintiff is fully restored.

SO ORDERED.”<sup>[9]</sup>

### **The Antecedents**

From his position paper, it was gathered that respondent Gunigundo, through his attorney-in-fact Navarette, claims ownership of a parcel of residential land located at Poblacion, San Miguel, Bulacan with an area of 464 square meters and covered by Transfer Certificate of Title No. T-69168 of the Registry of Deeds of Bulacan.<sup>[10]</sup> He alleged that petitioner, through stealth, strategy and misrepresentation and without the knowledge, consent and authority of the respondent, entered and built his residential house in the subject property. Respondent learned of petitioner’s acts only in 2010.<sup>[11]</sup>

When respondent demanded that petitioner leave, vacate and remove his house and other structures he had built on the land as he needed the same, the latter refused and ignored the former’s verbal and written demands. Even the intercession and mediation of the Lupon/Pangkat ng Barangay Poblacion, San Miguel, Bulacan between the parties proved futile.<sup>[12]</sup>

On the other hand, petitioner Carcedo claims to be the lawful and possessor in good faith of the disputed property. The original lawful owner of the subject residential land covered by Original Certificate of Title Nos. 10350 and 10351 was Maria Esguerra. When Esguerra died, the subject land was inherited by her heir Miguel Siojo, Jr. The property in question was then transferred and conveyed by Siojo, Jr. in favor of Emanuel Castro as borne by OCT No. 10351.<sup>[13]</sup>

According to petitioner, he and his parents came into actual possession of the land when they were contracted by Castro in 1960. That same year his parents constructed their house on the land. By virtue of the agreement between the petitioner’s parents and Castro, they introduced improvements thereon upon occupation.<sup>[14]</sup>

In dismissing the case, the MTCC held that there is no allegation in either the complaint or in respondent's position paper to categorically show that he had prior physical possession of the lot in question when he was dispossessed thereof by petitioner. Neither was there any evidence adduced by respondent to prove his prior physical possession at the time of the alleged forcible entry by petitioner. On the contrary, it was petitioner who claims continuous physical possession of the property since forty (40) years ago through his parents which respondent did not rebut. Since petitioner's possession of the property antedates that of respondent's, an action for forcible entry against the petitioner will not succeed.<sup>[15]</sup>

Another point against the respondent is the allegation in his position paper of tolerated occupancy which is an element to make out a case for unlawful detainer. The MTC held that to justify an action for unlawful detainer based on tolerance, the permission must have been present at the beginning of the possession; otherwise, if the possession was unlawful at the start, an action for unlawful detainer would be an improper remedy.<sup>[16]</sup>

However, on appeal, the RTC reversed the MTCC and ruled that the action for ejectment for forcible entry was validly filed. In sustaining the private respondent's complaint, the RTC held that possession can be acquired by material occupation or by the execution of proper acts or legal formalities to make the acquisition of such right feasible. The owner is not required to actually or physically occupy the property before he can be considered in possession. Following this ruling, any occupancy of a real property without the consent or permission of the owner comes within the purview of unlawful entry as envisioned in Section 1, Rule 70 of the Rules of Court. Simply stated, respondent was well within his rights as registered owner to seek the eviction of the petitioner from the property after he learned of the intrusion into his land and after his verbal and written demands to vacate the same went unheeded by the petitioner.<sup>[17]</sup>

Moreover, the RTC stated that, viz:

Unlawful detainer also lies in the case. From the defendant's own admission, his parents came to occupy the property in question with the permission of Emmanuel Castro, the supposed owner which (sic) possession he appeared to have carried on up to the present time. Clearly then, since defendant's possession of the land is by mere tolerance, such carries the implied promise or commitment to vacate upon demand which obligation, as the Court sees it, holds true, even in the event of changes in the ownership thereof takes place. Corollary to this, inasmuch as plaintiff as the present registered owner merely stepped into the shoes, so to speak, of his predecessor-in-interest, be it Castro or any other person, the concept of tolerance attributable to the former owner by which defendant claimed to have entered the disputed lot, from the legal viewpoint, is still applicable with regard to former's relationship vis-a vis the latter over said property for which plaintiff could rightfully file an action for ejectment anchored on unlawful detainer. To hold otherwise would necessarily result in withholding from the owner the most expeditious way in recovering possession of his property from a deforciant charged, in the first place, under the law with the responsibility of turning possession of said lot over to the owner, once

demand to vacate is made and from which time, his possession or detainer becomes illegal. (Go, Jr. vs Court of Appeals, 362 SCRA 755). To hold otherwise is to unduly encumber plaintiff's right as the owner to exercise or avail of the attributes of ownership, specifically, the right to enjoy his lot.<sup>[18]</sup>

Hence, the instant petition for review.

#### Issue

The sole issue submitted to this Court for resolution is:<sup>[19]</sup>

WHETHER OR NOT THE REGIONAL TRIAL COURT GRAVELY ERRED IN REVERSING THE DECISION OF THE MUNICIPAL TRIAL COURT AND IN NOT FINDING THAT THE RESPONDENT HAS NO CAUSE OF ACTION AGAINST THE PETITIONER FOR EJECTMENT

On 19 March 2012, the Court resolved to deny the injunctive relief prayed for by petitioner after finding that there is no actual and existing right in his favor that would require these reliefs.<sup>[20]</sup> The consequent motion for reconsideration<sup>[21]</sup> was likewise denied.<sup>[22]</sup>

#### **The Ruling of This Court**

The petition has no merit.

The case filed by respondent against the petitioner and subject of this petition is one for ejectment. Unlawful detainer and forcible entry suits under Rule 70 are designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings. These actions are intended to avoid disruption of public order by those who might take the law in their hands purportedly to enforce their claimed right of possession.<sup>[23]</sup>

Forcible entry and unlawful detainer cases are two distinct actions defined in Section 1, Rule 70 of the Rules of Court. In forcible entry, one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy, or stealth. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. In forcible entry, the possession is illegal from the beginning and the basic inquiry centers on who has the prior possession de facto. In unlawful detainer, the possession was originally lawful but became unlawful by the expiration or termination of the right to possess, hence the issue of rightful possession is decisive for, in such action, the defendant is in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.<sup>[24]</sup> Plainly stated, the only issue to be resolved in ejectment cases is the question as to who is entitled to the physical or material possession of the premises or possession de facto.<sup>[25]</sup>

What determines the cause of action is the nature of defendant's entry into the land. If the entry is illegal, then the action which may be filed against the intruder within