

EIGHTH DIVISION

[CA-G.R. SP NO. 129094, May 26, 2014]

**NENITA AQUINO, RUEL C. AQUINO AND NORBERTO E. MAGNO,
PETITIONERS, VS. SPS. RUPERTO ECRAELA AND JOSIE ECRAELA,
EVELYN RAMOS AND FE BENOZA RESPONDENTS.**

D E C I S I O N

REYES, JR., J.C., J.:

Before the Court is a petition for review filed by Nenita Aquino, Ruel C. Aquino and Norberto E. Magno against Sps. Ruperto and Josie Ecraela, Evelyn Ramos and Fe Benzoza praying that the Decision dated May 8, 2012 of the Regional Trial Court (RTC), Branch 29 of Cabanatuan City and its Joint Resolution dated February 20, 2013, which affirmed *in toto* the Decision dated September 30, 2011 of the Municipal Trial Court (MTC) of Zaragoza, Nueva Ecija and denied their Motion for Reconsideration, respectively, be reversed and set aside.

These are the antecedents:

The Sps. Ruperto and Josie Ecraela, Evelyn Ramos and Fe Benzoza (Ecraelas et al.) filed on May 3, 2011 before the MTC of Zaragoza, Nueva Ecija a complaint for forcible entry against the Sps. Melecio and Nenita, Ruel Aquino and Berting Magno, (Aquinos et al.). The Ecraelas alleged that they are owners of a 40-square meter land located at Purok 4, Concepcion West, Zaragoza, Nueva Ecija which they bought from the Sps. Melecio and Nenita on April 16, 1991 and which they used as a right way, since the Ecraelas' house was located at the back portion of the house of the Aquinos. The Ecraelas claimed that on April 30, 2011, the Aquinos entered the property against their will and constructed a fence with the intention of depriving them of their right of way. The matter was brought to the barangay for possible conciliation, to no avail. (Rollo, p. 12).

The Aquinos meanwhile alleged that the Deed of Absolute Sale being presented by the Ecraelas was entered into only by Nenita's husband. While the Aquinos admit that there is a portion of the lot being used as a right of way, they refute the width and length stated in the complaint. The right of way was originally small and it just gradually widened through the passage of time as the Ecraelas already occupied a portion of the property of the Aquinos. They alleged that if the court will grant the prayer of the Ecraelas, they will be deprived a portion of their own property. (Rollo, p. 13).

On September 30, 2011, the MTC of Zaragoza, Nueva Ecija rendered its Decision:

"WHEREFORE, in view of the foregoing judgment is hereby rendered, in favor of the plaintiffs and against the defendant, ordering the latter to:

1. immediately vacate and surrender possession of the lot subject matter of the dispute located at Barangay Concepcion West,

Zaragoza, Nueva Ecija to herein plaintiffs;

2. to pay the cost of this suit in the amount of Php 3,870.

SO ORDERED.” (Rollo, pp. 16-17).

The MTC found established the existence of the Absolute Deed of Sale over the subject property and the Ecraelas' use of the lot as their right of way since the execution of the deed. The Ecraelas et al. have continuously used the property as their only way towards their houses from the main road for a long period of time. The MTC also found that the Aquinos' act of entering the land and erecting a fence thereon to exclude the prior possessors, constitutes force. While the Aquinos claim that they are merely exercising their right as owners of the land in question, cases have held that whatever may be the character of a party's possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him. (Rollo, pp. 14-16).

The Aquinos filed an appeal with the RTC, which rendered its Decision on May 8, 2012, thus:

“WHEREFORE, premises considered, the appeal is hereby DENIED. The assailed Decision of the Municipal Trial Court of Zaragoza, Nueva Ecija dated September 30, 2011 is AFFIRMED *in toto*.

SO ORDERED.” (Rollo, p. 22).

In resolving the appeal, the RTC held that:

“The lower court is correct in its findings that although the complaint in this case did not specifically contain the phrase 'prior physical possession', the allegations in paragraphs 4 and 5 of said complaint sufficiently met the requirement to vest it with jurisdiction over the subject matter of the case. Jurisdiction of a court over the subject matter is determined by the allegations of the complaint and cannot be made to depend upon the defenses set up in the answer or pleadings filed by the defendant. Examination of paragraphs 4 and 5 of the complaint clearly shows the allegation made pertaining to 'prior physical possession' although such phrase was not specifically written therein.

The defendants-appellants' position that either the Commission on the Settlement of Land Problems (COSLAP) or the Department of Environment and Natural Resources (DENR) which has jurisdiction over this case is likewise bereft of merit. The case of *Lee v. dela Paz* is in point in the matter. The Supreme Court ruled that 'the character of the property involved as to whether it is still public land or not, is also of no moment. Even the public lands can be the subject of forcible entry cases.'

The land in dispute is a two by twenty square meter (2x20sq.m.) portion of the lot owned by the defendants-appellants spouses Melecio and Nenita Aquino. This land was sold by the latter to the plaintiffs-appellees et al, on April 16, 1991 as evidenced by a Deed of Absolute Sale executed between them. After establishing their residence in the area in 1984, plaintiffs-appellees used this land as their right of way in going to

and from their respective residences from the main road. Such kind of use is considered prior physical possession within the meaning of the law. When the defendants-appellants caused the fencing of plaintiffs-appellees' right of way, thereby prohibiting them from enjoying the same, such action strongly indicates the use of force. 'The act of going on the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property and this is all that is necessary'.

x x x

Although the land in dispute is, indeed, included in the title of the defendant-appellant Nenita Cinense-Aquino, the fact remains that she has already sold this land to spouses Ecraela et al in 1991. Hence, it is unfair to say that the members of the family of Nenita Cinense-Aquino were the ones deprived of the land because she is no longer the owner of the land as she has long sold it to the spouses Ecraela, et al. Furthermore, it is beyond question that the plaintiffs-appellees have been in possession of this land as their right of way since putting up their residence in the area. This fact is not unknown to the members of the family of Nenita Cinense-Aquino. Fencing this land is a deprivation of the plaintiffs-appellees' possession and enjoyment of the property.

x x x

Finally, with respect to the contention that the assailed Decision is vague as to the dispositive portion of which refers merely to a 'defendant' without specifically referring who among the defendants the Decision is being directed to, the same is unmeritorious. All throughout the body of the decision, the lower court specified and identified the defendants as the ones being referred to therein. Obviously, the word 'defendant' in the dispositive portion is merely a typographical error, for actually, it refers to all the defendants." (Rollo, pp.19-22).

The Aquinos filed a Motion for Reconsideration, while the Ecraelas filed a Motion for Execution Pending Appeal, which motions were both denied by the RTC on February 20, 2013. (Rollo, p. 25).

Hence the present petition where the Aquinos raise the following assignment of errors. They claim that:

"The Honorable Court a quo, with all due respect, erred in:

1. taking cognizance of the case because it has no jurisdiction over the same;
2. considering that appellees were in prior physical possession of the lot despite their failure to allege and prove prior physical possession as contemplated and required by law;
3. ruling that appellants entered the land through force despite the absence of proof to that effect and notwithstanding that the averment by appellees in their Complaint is that the entry into the lot and fencing thereof was by means of force, intimidation, stealth,