

## SIXTH DIVISION

[ CA-G.R. CV NO. 98773, June 27, 2014 ]

**ARNOLD J. DIAZ THRU HIS REPRESENTATIVE, RAFAEL J. DIAZ,  
PLAINTIFF-APPELLEE, VS. SOLEDAD NAMBAYAN AND ALL  
PERSONS CLAIMING UNDER THEM, DEFENDANTS-APPELLANTS.**

### DECISION

**CRUZ, R.A., J.:**

#### THE CASE

This is an appeal under Rule 41 of the Rules of Court seeking to reverse and set aside the Decision dated January 20, 2012<sup>[1]</sup> of the Regional Trial Court (RTC) of Cavite City, Branch 16 in Civil Case N-7914, the dispositive portion of which reads as follows:

“ xxx xxx xxx

**WHEREFORE**, premises considered, judgment is hereby rendered in favor of Plaintiff Arnold J. Diaz, ordering the defendant Soledad Nambayan and all persons claiming rights under her to (*sic*):

1. To vacate the subject premises and surrender physical possession thereof to the plaintiff;
2. To pay jointly and severally, the amount of Three Thousand Pesos (P3,000.00) per month to plaintiff for the use and occupation of the property from the time of the filing of the instant complaint until the subject premises is actually vacated; and
3. To pay jointly and severally, the amount of Fifteen Thousand Pesos (P15,000.00) as attorney's fees and One Thousand Five Hundred Pesos (P1,500.00) per court appearance, with costs.

**SO ORDERED.**

xxx xxx xxx ”

#### THE ANTECEDENTS

On March 6, 2008, Arnold J. Diaz thru his representative Rafael J. Diaz, as plaintiff, filed a complaint for recovery of possession against Soledad Nambayan, as defendant, before the Regional Trial Court (RTC) of Cavite City, Branch 16, docketed as Civil Case No. N-7914.<sup>[2]</sup>

On April 10, 2008, plaintiff filed a motion for leave to amend complaint and for admission of the Amended Complaint.<sup>[3]</sup> The allegations of the Amended Complaint<sup>[4]</sup> are quoted hereunder, *viz*:

2. That the plaintiff is true, lawful, registered and absolute owner in fee simple of that parcel of land containing an area of TWO HUNDRED (200) SQ. METERS as described and embraced in TCT No. T-22979 of the Register of Deeds of Cavite City;

3. That the plaintiff has declared the said property under Tax Declaration No. 99-00204 of the City Assessor's Office of Cavite xxx and he has been (sic) likewise been paying continuously without fail the real property tax on the said property and latest of which the payment made for the year 2008 under Real Property Tax Official Receipt No. 9105633 dated December 26, 2007, xxx

4. That sometime in the month of December 2005, the plaintiff thru his representative Rafael J. Diaz, discovered, through information from the Barangay officials of Brgy. 10-B and other persons from said barangay that the defendants occupied the registered properties of the plaintiff without any permission whatsoever from the owners of said parcel of land, making them illegal occupants, interlopers, and squatters of said parcel of land now owned by the plaintiff;

5. That defendant and/or their predecessors in interest never bothered and deliberately refused to check the land, either by clarifying or verifying with the City Register of Deeds, the City Assessor of Cavite or by a private land surveyor or a licensed Geodetic Engineer if the land they possessed and occupying is a registered and titled land or not;

6. That after a relocation survey of the property latest of which was conducted by Geodetic Engineer Rommel T. Bautista, on November 8, 2007, it was definitely verified and established that the defendant and her family have possessed, occupied, trespassed the property of the plaintiff and his predecessors-in-interest and put up or erected a residential building on the portion of the aforesaid property without the consent of the plaintiff or his predecessors who is the registered owner of the property, and that the defendant have physically dispossessed the plaintiff and its previous owners illegally, alleging and pretending and falsely claiming that the land is of public domain. xxx xxx

7. That the plaintiff failing to secure the voluntary removal of the structures thereon erected by the defendant, to vacate and surrender voluntarily the premises, brought cases for ejectment against the defendant before the Lupon of Barangay 10B and for failure to reach settlement the Lupon of Barangay 10B issued a Certificate to File Action in court xxx xxx

8. That in view of the obstinate refusal of the defendant to vacate the premises, formal written demand dated February 24, 2006 was sent to the defendant herein thru registered mail on February 28, 2006 and the written demand was duly received by the defendant xxx

9. That inspite also of the written demand for her to vacate the premises and remover her residential structures and surrender possession of the said portion of land the defendant still obstinately refuse to vacate the

said premises and to dismantle the structures thereon erected up to the present;

10. That in view of the lack of verbal or written lease agreement or verbal or written consent to occupy the said parcels of land from the present owners and his predecessors in interest, it is therefore evident that she occupied and built her house on the said parcel of land illegally;

11. That at present, the defendant has been illegally occupying said parcel of land for MORE THAN ONE YEAR to be counted from December 2005 or the date when the plaintiff discovered the illegal occupation up to March 3, 2008 or the time of the filing of this complaint. xxx xxx

xxx xxx xxx "

By Order dated April 15, 2008,<sup>[5]</sup> the RTC granted the motion and admitted the Amended Complaint.

In her Answer,<sup>[6]</sup> defendant denied taking possession of any portion of the subject land. She argued that she had lawful possession of the subject land since 1984 by virtue of an Agreement dated August 22, 1984 executed in her favor by A. Sison & Sons, Inc., the former owner of the subject land.

In a Decision dated January 20, 2012,<sup>[7]</sup> the RTC found that there was no valid transfer of the subject land from A. Sison & Sons, Inc. to defendant. It also held that the plaintiff, as the registered owner, has the right to enjoy and dispose the subject property without other limitations than those established by law, hence, it decreed that:

" xxx xxx xxx

**WHEREFORE**, premises considered, judgment is hereby rendered in favor of Plaintiff Arnold J. Diaz, ordering the defendant Soledad Nambayan and all persons claiming rights under her to (*sic*):

1. To vacate the subject premises and surrender physical possession thereof to the plaintiff;
2. To pay jointly and severally, the amount of Three Thousand Pesos (P3,000.00) per month to plaintiff for the use and occupation of the property from the time of the filing of the instant complaint until the subject premises is actually vacated; and
3. To pay jointly and severally, the amount of Fifteen Thousand Pesos (P15,000.00) as attorney's fees and One Thousand Five Hundred Pesos (P1,500.00) per court appearance, with costs.

**SO ORDERED.**

xxx xxx xxx "

Aggrieved, defendant filed a Notice of Appeal<sup>[8]</sup> which the RTC gave due course in its Order dated February 29, 2012.<sup>[9]</sup>

## **THE ASSIGNED ERRORS**

Defendant, as appellant, raises the following arguments, that:

I. THE COURT A *QUO* COMMITTED SERIOUS REVERSIBLE AND PALPABLE ERROR WHEN IT DECLARED THAT PLAINTIFF-APPELLEE HAS THE ABSOLUTE RIGHT TO TAKE AND ENJOY FULL POSSESSION OF THE SUBJECT PROPERTY;

1. THE COURT A *QUO* COMMITTED SERIOUS REVERSIBLE AND PALPABLE ERROR WHEN IT DECLARED THAT THE INDEFEASIBILITY OF A CERTIFICATE OF TITLE APPLIES TO THE SUBJECT PROPERTY OBTAINED BY PLAINTIFF-APPELLEE.

Defendant-appellant, in her brief,<sup>[10]</sup> asserts that the only issue in an action for recovery of possession or *accion publiciana* is possession *de facto* and not title. Since she immediately took lawful possession of the subject land since August 22, 1984 and introduced improvements thereon, she is entitled to remain thereon.

She adds that the rule on indefeasibility of title is inapplicable because plaintiff-appellee knows that she and her family have been occupying the subject property. The latter cannot therefore be considered an innocent purchaser in good faith.

On the other hand, plaintiff-appellee maintains that he has legal title and ownership over the subject land. And, as the registered owner, he has a right to recover possession of the same from the defendant-appellant who is unlawfully occupying the property.

He also claims that the arguments raised by defendant-appellant are collateral attacks to the certificate of title which is prohibited under Section 48, P. D. No. 1529. A certificate of title is not subject to collateral attack and any issue as to the validity thereof can only be raised in an action instituted for that purpose and not in an *accion publiciana*.

### **OUR RULING**

*Accion publiciana*, also known as *accion plenaria de posesion*, is an ordinary civil proceeding to determine the better right of possession of realty independently of title. It refers to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty.<sup>[11]</sup> Otherwise stated, if at the time of the filing of the complaint more than one year had elapsed since defendant had turned plaintiff out of possession or defendant's possession had become illegal, the action will be, not one of the forcible entry or illegal detainer, but an *accion publiciana*.<sup>[12]</sup> The issue involved is not possession *de facto* but possession *de jure*.<sup>[13]</sup> However, where the parties raise the issue of ownership, the courts may pass upon the issue to determine who between the parties has the right to possess the property. This adjudication, however, is not a final and binding determination of the issue of ownership; it is only for the purpose of resolving the issue of possession, where the issue of ownership is inseparably linked to the issue of possession.<sup>[14]</sup>

The complaint recites that plaintiff-appellee is the registered owner of the land containing an area of two hundred square meters (200 sq. m.) covered by Transfer Certificate of Title No. 22979 (TCT No. T-22979) of the Registry of Deeds of Cavite City. Sometime December 2005, plaintiff-appellee discovered that defendant-

appellant was occupying the subject land and introduced improvements thereon without his consent. Thus, a Letter dated February 24, 2006 was sent demanding the latter to vacate the premises within thirty (30) days from receipt thereof. When the demand went unheeded, plaintiff-appellee instituted a complaint for recovery of possession on March 6, 2008. In her defense, defendant-appellant also claim ownership over the subject land since she had lawful possession thereof since 1984 by virtue of an agreement dated August 22, 1984 executed in her favor by A. Sison & Sons, Inc., the former owner of the subject land. The fundamental issue for resolution in this case is who has better right to possess the subject property. But before We can settle the same, the matter of ownership must be first passed upon.

In civil cases, the law requires that the party who alleges a fact and substantially asserts the affirmative of the issue has the burden of proving it.<sup>[15]</sup> The party having the burden of proof must produce a preponderance of evidence thereon. The concept of preponderance of evidence refers to evidence which is of greater weight, or more convincing, than that which is offered in opposition to it; at bottom, it means probability of truth.<sup>[16]</sup>

We find that the evidence preponderates in favor of plaintiff-appellee. As established by the records, plaintiff-appellee purchased the subject land from A. Sison & Sons, Inc. as evidenced by a notarized Deed of Absolute Sale dated August 26, 2005.<sup>[17]</sup> A Transfer Certificate of Title No. T-22979 of the Registry of Deeds of Cavite City<sup>[18]</sup> was likewise presented showing that Arnold J. Diaz is the registered owner thereof. He also adduced a copy of Tax Declaration No. 99-00204<sup>[19]</sup> in his name and an Official Receipt evidencing payment of real property tax<sup>[20]</sup> covering the subject land.

Jurisprudence teaches that a torrens title is evidence of indefeasible title to property in favor of the person in whose name the title appears. It is conclusive evidence with respect to the ownership of the land described therein. It is also settled that the titleholder is entitled to all the attributes of ownership of the property, including possession.<sup>[21]</sup> Guided by the foregoing principle, plaintiff-appellee, being the registered owner of the property in question, therefore has the right to enjoy it<sup>[22]</sup> including the right to exclude others from its enjoyment through proper action against its possessor or holder in order to recover it.<sup>[23]</sup> The TCT No. T-22979 of the Registry of Deeds of Cavite issued in plaintiff-appellee's name vested in him the right of possession as a necessary consequence of the right of ownership.

On the other hand, defendant-appellant's allegations are negated by the evidence on record. We examined the unnotarized agreement dated August 22, 1984<sup>[24]</sup> executed in favor of Nonilo Nambayan, the late husband of defendant-appellant, and it provides for the following terms and conditions: (a) that Nonilon Nambayan offered to buy Lot No. 2, Block 3 of the Cavite Sea Breeze Subdivision, located at Cavite City containing an area of 200 sq.m. for an amount of P400.00 per sq.m. or a total of P80,000.00, Philippine Currency; (b) that the downpayment in the amount of P10,000.00 shall be paid together with the offer; (3) but the balance of the purchase price payable in monthly installments including interests were left blank.

A contract of sale is a contract by which one of the contracting parties obligates himself to transfer the ownership and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.<sup>[25]</sup> Although the law does