

SECOND DIVISION

[CA-G.R. SP NO. 129434, June 11, 2014]

**SPS. RICARDO O. CHAVEZ AND ROWENA V. CHAVEZ,
PETITIONERS, VS. SHERWIN TOBIAS AND ROY TOBIAS,
RESPONDENTS.**

D E C I S I O N

SALAZAR-FERNANDO, J.:

Before this Court is a Petition for Review^[1] under Rule 42 of the 1997 Revised Rules of Civil Procedure seeking to reverse and set aside the Decision^[2] dated March 18, 2013 of the Regional Trial Court (RTC), Third Judicial Region, Branch 35, Gapan City, Nueva Ecija in Civil Case No. 4178-12 entitled "*Sps. Ricardo O. Chavez and Rowena V. Chavez, Plaintiffs-Appellants, versus Sherwin Tobias and Roy Tobias, Defendants-Appellees.*", the dispositive portion of which reads:

"IN VIEW THEREOF, the Appeal is **DENIED**. Accordingly, the Decision dated May 28, 2012, rendered by the Municipal Circuit Trial Court Branch 004 Cabiao-San Isidro, Nueva Ecija, is **AFFIRMED**.

SO ORDERED."

The facts are:

On February 9, 2011, petitioners Sps. Ricardo O. Chavez and Rowena V. Chavez (Sps. Chavez for brevity) filed with the Municipal Circuit Trial Court (MCTC), Branch 004 of Cabiao-San Isidro, Nueva Ecija a Complaint^[3] for Unlawful Detainer against respondents Sherwin Tobias and Roy Tobias, docketed as Civil Case No. 2011-04 alleging that: they are the registered owners of an 800-square meter parcel of land covered by Transfer Certificate of Title (TCT) No. 041-2010000147 issued by the Register of Deeds for the Province of Nueva Ecija, situated in Barangay Calaba, San Isidro, Nueva Ecija; they acquired the subject property by virtue of a *dacion en pago* from its previous owners, Sps. Teodoro Tobias and Maria A. Marling, who happen to be the parents of the respondents; after the sale, they acceded to the request of the respondents that they (respondents) be allowed to remain on the subject property in order to give them time to buy it back or to find a new home; the respondents also agreed to vacate the subject property upon demand; since they are now in need of the subject property, they demanded that the respondents vacate the same, but the latter, without justifiable reasons, failed and refused to do so; thus, they lodged a complaint with the Lupong Tagapamayapa of Barangay Calaba, Nueva Ecija against the respondents; since the conciliation proceedings failed, they were issued a Certificate to File Action dated April 7, 2009; and, through counsel, they also sent a demand letter/notice to vacate dated January 3, 2011, but the respondents still failed and refused to heed it.

In their Answer,^[4] the respondents averred that: sometime in January 2010, their parents, Sps. Teodoro Tobias and Maria Marling, obtained from petitioners Sps. Chavez a loan in the amount of P1,000,000.00; to show good faith, their parents agreed to sign a deed of absolute sale; the loan was to be paid on or before December 2010, and as security therefor, their parents delivered the owner's copy of TCT No. NT-244597 to petitioners Sps. Chavez; they, together with the other members of their family, have been in possession of the subject property before, during and after the said loan was obtained from petitioners Sps. Chavez; their parents had been paying their loan, but due to financial difficulty, they were unable to pay the balance in the amount of P400,000.00; the transaction between their parents and petitioners Sps. Chavez was only for the mortgage of the subject property, but due to misrepresentation and falsification of public documents, the latter were able to have the title transferred in their name; their parents did not acknowledge before Atty. Anselmo Glemao the deed of absolute sale of the subject property on October 8, 2010, because they were abroad on said date; their possession of the subject property was not by mere tolerance of petitioners Sps. Chavez, because the premises were their family home where they have been living since childhood; petitioners Sps. Chavez have no cause of action against defendant-appellee Sherwin Tobias because the notice to vacate was only against defendant-appellee Roy Tobias; and, this case should be dismissed insofar as defendant-appellee Roy Tobias is concerned, because the conciliation proceeding in the barangay was only between petitioners Sps. Chavez and defendant-appellee Sherwin Tobias.

After the parties' submission of their respective position papers,^[5] the MCTC Branch 004 of Cabiao-San Isidro, Nueva Ecija rendered a Decision^[6] dated May 28, 2012 with the following disposition:

"WHEREFORE, judgment is hereby rendered in favor of defendants Sherwin Tobias and Roy Tobias. Let this case be dismissed.

SO ORDERED."

Aggrieved, petitioners Sps. Chavez appealed to the RTC of Gapan City, Nueva Ecija, Branch 35 which rendered the assailed decision. Hence, this appeal assigning the following errors:

I.

THE HONORABLE RTC ERRED IN NOT RULING THAT THE INSTANT CASE BEING AN EJECTMENT CASE, THE ONLY ISSUE IS WHO IS ENTITLED TO PHYSICAL POSSESSION REGARDLESS OF THE CLAIM OF OWNERSHIP OF THE PARTY OR INDEPENDENT OF ANY CLAIM OF OWNERSHIP OF THE PARTIES.

II.

THE HONORABLE RTC ERRED IN NOT RULING THAT THE HEREIN PETITIONERS BEING THE TRUE AND REGISTERED OWNERS OF THE PARCEL OF LAND COVERED BY TCT NO. NT-(sic) 041-2010000147 ARE ENTITLED TO EJECT RESPONDENTS FROM THE SAID LAND.

III.

THE RTC ERRED IN NOT RULING THAT THE OCCUPATION OF THE RESPONDENTS OF THE SUBJECT LAND IS BY MERE TOLERANCE OF THE PETITIONERS.

IV.

THE HONORABLE RTC IN AFFIRMING THE DECISION OF THE MCTC ERRED IN NOT RULING THAT SECTION 16 RULE 70 OF THE RULES OF COURT IS NOT APPLICABLE AND CONSEQUENTLY IT ERRED IN NOT RULING THAT THE PARENTS OF THE RESPONDENTS ARE NO LONGER THE TRUE AND LAWFUL OWNERS OF THE SUBJECT PROPERTY AND THAT RESPONDENTS' (sic) AS THE (sic) THEIR CHILDREN HAVE NO RIGHT OF POSSESSION OF THE SAID PROPERTY.

V.

THE HONORABLE RTC ERRED IN NOT RULING THAT THE HONORABLE MCTC HAD COLLATERALLY ATTACKED OR QUESTIONED THE LAND TITLE OF THE HEREIN PETITIONERS OVER THE SUBJECT LAND.

The petition is meritorious.

Petitioners Sps. Chavez argue that: jurisdiction is determined by the allegations in the complaint and cannot be made to depend upon the defenses in the answer; in this case, the material allegations in the complaint make out a case for unlawful detainer where the sole issue to be resolved is who between the parties is entitled to the possession of the subject property, thus the MCTC had jurisdiction over it; being the registered owners of the subject property, they are entitled to the possession thereof and it is immaterial whether the issuance of their title was questionable; the lower court erred in not finding that respondents' possession of the subject property was only upon their tolerance and it became unlawful from the date of the demand; before this case was filed, the respondents were aware that the subject property is now registered in their (petitioners Sps. Chavez) name and they requested that they be allowed to occupy the same to give them time to buy it back or to find a new home; the MCTC and RTC erred in applying the provision of Section 16, Rule 70 of the Rules since the respondents are not even claiming ownership of the subject property, and while it is true that they are the children of its previous owners, it does not follow that they are entitled to the possession thereof; the lower court erred in not ruling that the respondents collaterally attacked the title over the subject property; under Section 48 of Presidential Decree (P.D.) No. 1529, a certificate of title shall not be the subject of collateral attack and may not be altered, modified or canceled except in a direct proceeding in accordance with law; the MCTC of Cabiao-San Isidro, Nueva Ecija erred in holding that, since this case was filed within one (1) year from the issuance of the title, the same may be collaterally attacked; however, Section 32 of P.D. 1529 provides that a petition for the re-opening of the decree of registration obtained by fraud may be filed within one (1) year from the date of its entry; and, in this case, the subject property which was originally covered by OCT No. 17814 and entered on April 27, 1932, the one-year prescriptive period to review or re-open the decree of registration had clearly lapsed.

In a Resolution^[7] dated January 23, 2014, the respondents were deemed to have waived the filing of their comment on the petition, having failed to comply with this

Court's Resolution^[8] dated September 24, 2013. The parties were then required to file their memoranda. After several motions for extension of time to file memorandum which were all granted by this Court, the respondents belatedly filed their Memorandum^[9] on April 11, 2014, albeit accompanied by a Motion for Leave of Court to Admit Memorandum.^[10]

In their Memorandum, the respondents counter that: petitioners Sps. Chavez filed this possessory action on the ground that they are the owners of the subject property, while they resist said claim on the basis of their parents' ownership thereof; the issue of ownership was raised before the MCTC because it was necessary to resolve the question of possession; the RTC correctly affirmed the findings of the MCTC that a) their parents were out of the country when they allegedly executed the deed of sale in favor of petitioners Sps. Chavez, b) the certificate to file action refers to a case of "SANLAAN NG LUPA", and c) the joint-affidavit of Maria Tobias and Teodoro Tobias states that the transaction between them and petitioners Sps. Chavez was only a mortgage; thus, the respondents' defense of ownership is not a collateral attack on the title and the MCTC's ruling on the issue of ownership is merely provisional for purposes of determining possession; in unlawful detainer, the possession of the defendant is originally legal but becomes illegal due to the expiration or termination of the right to possess, but in this case, petitioners Sps. Chavez failed to prove that the respondents' possession of the subject property was by their mere tolerance and generosity; and, they, on the other hand, were able to adduce evidence that their possession was not upon the tolerance of petitioners Sps. Chavez.

Since the issues raised are interrelated, the same shall be simultaneously discussed.

In ejectment cases, the only issue to be resolved is who is entitled to the physical or material possession of the property involved, independent of any claim of ownership set forth by any of the party-litigants.^[11] In an action for unlawful detainer, the real party-in-interest as party-defendant is the person who is in possession of the property without the benefit of any contract of lease and only upon the tolerance and generosity of its owner.^[12] Well settled is the rule that a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is bound by an implied promise that he will vacate the same upon demand, failing which a summary action for ejectment is the proper remedy against him.^[13] His status is analogous to that of a lessee or tenant whose term of lease has expired but whose occupancy continued by tolerance of the owner.^[14]

In this case, the lower court, in affirming the decision of the MCTC, ruled that since the respondents were in possession of the subject property for more than a year, they should not be ejected in a summary proceeding under Rule 70 of the 1997 Revised Rules of Civil Procedure. The evidence and admissions of the parties, however, show otherwise and contrary to the rulings of both the MCTC and the RTC, this case is one for unlawful detainer.

To make out a case of unlawful detainer under Section 1, Rule 70 of the Rules of Court,^[15] the complaint must set forth allegations to the effect that the defendant is unlawfully withholding from the plaintiff the possession of certain real property after the expiration or termination of the former's right to hold possession by virtue of a contract, express or implied, and that the action is being brought within one year from the time the defendant's possession became unlawful. A complaint for recovery