

SPECIAL EIGHTEENTH DIVISION

[CA-G.R. SP. NO. 07961, December 23, 2014]

**WINSTON JAVELLANA, PETITIONER, VS. ELEANOR J. REGALADO,
RESPONDENT.**

D E C I S I O N

INGLES, G. T., J.:

This is a petition for review of the July 16, 2013 Decision^[1] rendered by Branch 62 of the Regional Trial Court of Bago City, Negros Occidental in Special Civil Case No. 1812, which affirmed the Municipal Trial Court in Cities, Bago City, finding, among others, that Eleanor J. Regalado is entitled to the possession of Lot 3, Pcs 5200 in Civil Case No. M-BGO-11-012-CV.

Factual and Procedural Antecedents

The facts, as established by the trial court are as follows:

The property subject of this case is a sugarcane plantation denominated as Lot 3, Pcs 5200, consisting of an area of Eighty Eight Thousand Eight Hundred Eighty Seven Square Meters, more or less, situated in Barangay Lag-asan, Bago City Negros Occidental.

From the facts obtaining, the contending parties are siblings and they are claiming possessory right over the subject property owned by their sister, the late Milagros L. Javellana, who died single and no issue sometime on 10 October 2011.

Allegations in the complaint would show that plaintiff was the one administering the subject property during the lifetime of the decedent. She cultivated and planted the area to sugarcane and had been in physical possession thereof since 1989 until she was dispossessed by the defendant shortly after the demise of their sister, Milagros L. Javellana.

Plaintiff contends that the acts constitutive of forcible entry transpired on three (3) different occasions particularly on November 9, 10 and 17, 2011. During the inclusive dates, the defendant entered the subject property and by means of force, threat and intimidation he stopped the farm laborers of the plaintiff from harvesting and loading the sugarcane produce in the area. On November 17, 2011, the defendant took control and possession of that portion of the subject property, consisting of four (4) hectares, more or less, by ordering the laborers and "*encargado*" of the plaintiff to leave the premises and warned them not to enter the area anymore. Defendant put up sticks in the area and declared before the laborers that he is taking over the land. Since then up to the present, the

defendant remained in possession of the subject property to the damage and prejudice of the plaintiff who was unlawfully prevented by the defendant from harvesting her sugarcane.

The defendant seasonably filed his answer to the complaint. He denies the acts constitutive of forcible entry. For his part, he claims that he is also an heir to the subject property similarly situated with the plaintiff. Defendant underscores that since their sister, Milagros, died single and no issue, the subject property should be reverted to the collateral heirs, namely:

1. Eleanor J. Regalado (plaintiff)
2. Winston Javellana (defendant)
3. Antonio L. Javellana; and
4. The late Raul Javellana, Jr., represented by Raul Joseph Javellana.

As such, defendant is entitled to occupy, cultivate and harvest one fourth ($\frac{1}{4}$) of the subject property or equivalent to 2.222 hectares. Defendant stressed that plaintiff had already harvested her share and the share of Raul Joseph Javellana, what remains therefore is the share of the defendant and Antonio L. Javellana equivalent to four (4) hectares of the subject property. Further stated, the plaintiff cannot appropriate the entire area of the subject property, measuring about 88,887 square meters, since the same will be distributed to the heirs under the Declaration of Heirship and Extrajudicial Partition of Estate and each heir can claim only one fourth ($\frac{1}{4}$) of the subject property. There being no Will presented in court for probate, it follows that plaintiff cannot claim the entire area of the disputed property.

Ruling of the MTC

On February 26, 2013, the trial court rendered its decision favoring the plaintiff. The trial court rejected the defendant's (now petitioner) argument that as co-heir of the subject property, he was merely exercising his right to possess one fourth ($\frac{1}{4}$) of the subject property and harvest the sugarcane planted thereon. The trial court opined that while there is no question that the parties in this case will be confronted by such legal issues in the future, the defendant's argument cannot be sustained in this ejectment case where the only issue involved is *de facto* possession of the premises.

The trial court further ruled that the defendant's (now petitioner) act of surreptitiously taking over the land and excluding the plaintiff (now respondent) who has prior possession therefrom is the very evil sought to be avoided in this case. Moreover, the defendant took it upon himself to harvest the sugarcane found on the subject property merely on the belief that he is also entitled to that portion of the property without showing that he was the one who planted the sugarcane.

The decretal portion of the trial court's Decision^[2] is hereunder quoted, to wit:

"WHEREFORE, foregoing premises considered, judgment is hereby rendered in favor of plaintiff and against the defendant, as follows:

1. Ordering defendant Winston Javellana and all other persons claiming

rights and interest under him to vacate the premises of Lot No. 3, Pcs 5200, a portion containing an area of 4.4. hectares, more or less, the property subject matter of this case;

2. Ordering defendant to pay plaintiff a reasonable compensation in the form of rental for the use of the portion/ area of the subject property in the amount of PhP10,000.00 per hectare per crop year from December 5, 2011, the date of filing before this court until complete delivery of possession of the said property to the plaintiff; and

3. For defendant to pay the cost of suit.

SO ORDERED.”

Ruling of the RTC

Aggrieved by the trial court's ruling, the defendant (now petitioner) filed an appeal before the Regional Trial Court, Branch 62 of Bago City. However, the RTC did not find fault in the trial court's decision and affirmed the same ruling that the plaintiff (now respondent) clearly established by preponderance of evidence that defendant Winston Javellana exerted force, intimidation, threat, strategy or stealth in entering the premises occupied and possessed by the former.

Thus, the RTC, on July 16, 2013 rendered its Decision^[3], the dispositive portion of which, states:

“WHEREFORE, premises considered, there being no cogent reason to disturb the decision of the Lower Court dated February 26, 2013 which is the subject of this appeal, the same is hereby AFFIRMED IN TOTO.

SO ORDERED.”

The petitioner Javellana timely filed a Motion for Reconsideration^[4], but, in its Order^[5] dated September 9, 2013 the RTC denied the motion for failure of Javellana to comply with Sections 4 and 5, Rule 15 of the Rules of Court, which requires that “*every written motion shall be set for hearing by the applicant*”^[6], and that the motion should be accompanied with a notice of hearing addressed to all parties and that said notice “*shall specify the time and date of the hearing*”^[7].

On September 27, 2013, petitioner filed before this Court a Petition for Review^[8] under Rule 42 of the Rules of Court. On December 19, 2013, the respondents filed her Comment^[9] to the petition. This case was declared submitted for decision in a Resolution dated June 9, 2014^[10].

The case for the petitioner

The petitioner argues that both the MTCC and the RTC erred in holding that private respondent Eleanor J. Regalado and her farm workers were in prior possession of the property of the late Milagros Javellana prior to the petitioner Winston Javellana's takeover of his portion of the property.