

## **EIGHTH DIVISION**

**[ CA-G.R. CV NO. 85744, August 31, 2006 ]**

**EDGARDO AND ANA MARIE CO, REPRESENTED BY FLORANTE SAN DIEGO, PLAINTIFFS-APPELLEES, VS. ARTURO CEA, RENATO TOMAGAN AND MERLY MORALES, DEFENDANTS-APPELLANTS.**

### **D E C I S I O N**

**DACUDAO, J.:**

Appeal from the Decision of the Regional Trial Court of Quezon City (or RTC), Branch 226, in Civil Case No. Q01-43361,<sup>[1]</sup> the decretal portion whereof states –

“WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the plaintiffs Edgardo and Ana Marie Co and against defendants Arturo Cea, Renato Tomagan and Merly Morales and all persons claiming rights under them. All the defendants are ordered:

“1. to relinquish and surrender peacefully the possession of the land in question, covered by TCT No. 100676 (165165) of the Register of Deeds of Quezon City to the Plaintiffs and to vacate the premises immediately hereafter;

“2. to pay a monthly rental of Three Hundred Pesos (P300.00), starting from March 1, 2000 up to the time that each defendant shall have actually vacated the permises;

“3. To pay costs of suit.

“SO ORDERED.

“May 11, 2005, Quezon City, Philippines.

“LEAH S. DOMINGO REGALA  
“Presiding Judge”

On February 13, 2001, there was filed before the RTC of Quezon City a complaint for recovery of possession.<sup>[2]</sup> Captioned “EDGARDO/ANA MARIE CO, represented by Florante C. San Diego, Plaintiffs vs. ARTURO CEA, RENATO TOMAGAN and MERLY MORALES, Defendants” it was docketed thereat as Civil Case No. Q01-43361.

In said complaint, it is alleged that plaintiff (referring to Ana Marie Co) is of legal age, “married/widowed/separated” and a resident of 25 Mt. Clemente Street, Filinvest I, Batasan Hills, Quezon City, represented by her attorney-in-fact Florante San Diego, of legal age, married and a resident of 45 P. Bautista Street, Pansol, Quezon City; while the defendants are also of legal ages, married and with common residence at Sitio Lunduyan, Talanay Area, Batasan Hills, Quezon City; that plaintiff is the registered owner of a parcel of land situated in Sitio Lunduyan, Talanay Area,

Batasan Hills, Quezon City with an area of 1,000 square meters, and covered by TCT No. 100676(165165),<sup>[3]</sup> a copy of which was thereto attached as Annex B; that, sometime in March 2000, it was discovered that the defendants were or had been occupying the property without plaintiff's consent; that the defendants were thus requested to vacate the premises, but they refused to do so, compelling plaintiff to refer the matter to the barangay authorities; that, when conciliation efforts at the barangay lupong tagapayapa failed, plaintiff filed with the Metropolitan Trial Court of Quezon City (MeTC, for short) an ejectment case against the defendants, along with the other illegal occupants; but the case was dismissed by the MeTC on the ground of lack of jurisdiction; and that plaintiff was advised to institute instead an *accion publiciana* before the RTC, hence, the instant suit.

In traverse, the defendants averred in their answer<sup>[4]</sup> that the present action did not state a valid and subsisting cause or causes of action against them; that the instant case is dismissible, not having been referred to the barangay lupon for conciliation; that they had been occupying the premises for more than twenty (20) years; that the property is categorized as an "unclassified public forest" per LC Map No. 639, certified on March 11, 1927, as shown by a certification to that effect, a copy of which was appended to the answer as Annex 1 (referring to the one dated November 6, 2000 coming from the Department of Environment & Natural Resources, or DENR); that, nonetheless, the property was included in the proposed alienable and disposable block under Project No. 17 of Quezon City per LC Map No. 3967, as evidenced by a copy thereof, attached as Annex 2, of the memorandum of the DENR, the subject of the petition of the Katipunan ng Malayang Paninirahan ng mga Pilipino (KMPP, for brevity) for the lifting of the moratorium and the suspension of the issuance of residential use permits; that they were occupying the property by virtue of their 1985 application for residential use permit with the then Bureau of Forest Development (or BFD) pursuant to Section 57 of Presidential Decree No. 705, and Section 1838 of the Revised Administrative Code; that, in 1986, however, the BFD issued a moratorium on the issuance of residential use permits indefinitely, which subsisted up to this time, a copy of which was thereto appended as Annex 3; that they are bonafide members of Area 3 Neighborhood Association, Incorporated, and were duly affiliated with the KMPP; that, aside from the plaintiff, there are other claimants to the property, and one of these is Carlos Payawal; that the present action is barred by a prior judgment, for the reason that the ejectment case that the plaintiff had earlier filed against them had been dismissed; that moreover, plaintiff's failure to state in the certification against forum shopping about the ejectment case warrants the dismissal of the instant suit; and that the present complaint amounts to a deprivation of property without due process.

On April 16, 2001, the plaintiff filed an amended complaint accompanied by a motion to admit the same.<sup>[5]</sup> The amendment consisted of the inclusion of a statement in the certification of non-forum shopping to the effect that there was an earlier ejectment case that was filed, which case was dismissed, however.

The defendants did not file an answer to the amended complaint, opting instead to stand upon their original answer.

On May 3, 2001, plaintiff tendered a reply<sup>[6]</sup> to the answer, thereunder alleging that defendants' contentions that the property was forest land, and that the latter had in their favor an application for residential use permit, are inconsequential, because, as

indicated in the certification dated November 6, 2000 cited by the defendants themselves, the property had already been subdivided under (LRC) Psd-11684. Plaintiff further asserted that the claim by the defendants that they are members of the Area 3 Neighborhood Association, Inc. is likewise immaterial because, before the filing of the case, the negotiation between the registered owner and the Lunduyan Homeowners Association, Incorporated (LHOA, for short) relative to the sale of the property for purposes of socialized housing, had long been completed; that, besides, the defendants refused to join the LHOA, or even to recognize the genuineness of plaintiff's title; that, indeed, defendants are considered professional squatters or deforciants in the disputed premises.

On July 24, 2001, defendants filed a motion to dismiss,<sup>[7]</sup> this time arguing that plaintiff's cause of action is barred by prior judgment, on the basis of the dismissal of the ejectment case (Civil Case No. 24794 of Branch 39 of the Metropolitan Trial Court of Quezon City) that she had previously filed against them; and that plaintiff had not complied with a condition precedent, as there was no allegation in the complaint that the case had earlier been referred for conciliation to the barangay authorities, nor was a certification to file action attached to the complaint.

On July 30, 2001, plaintiff submitted an opposition thereto,<sup>[8]</sup> thereunder contending that the plea of res judicata is unavailing, because one of the requisites thereof is absent, namely, that the previous judgment must have been rendered by the court having jurisdiction over the subject matter and over the parties; and that precisely the Metropolitan Trial Court of Quezon City dismissed the ejectment case because it believed that the appropriate action should be an *accion publiciana*.

As to defendants' claim that there was no prior resort to barangay conciliation, plaintiff attached a copy of the certification to file action issued by the barangay authorities.

In their reply,<sup>[9]</sup> the defendants asserted:

"1) That the Certification to File Action attached by the plaintiffs in their Opposition is dated June 15, 2000, which was attached to plaintiffs' complaint in the Metropolitan Trial Court, resulting in the Decision of said Court dated January 2, 2001;

"2) That a review of the present complaint, which was filed sometime on February 13, 2001, clearly shows that there is no allegation that this present complaint was referred to the barangay authorities and said Complaint does not even show any Certification to File Action, which is clearly in gross violation of the requirements of the Local Government Code and Administrative Circular No. 14-93 and this being so, we respectfully submit that this case should be DISMISSED."

But in its resolution of September 25, 2001,<sup>[10]</sup> the RTC denied the motion to dismiss.

Trial thereafter ensued, in the course of which Florante San Diego, as well as the defendant Merly Morales testified. The RTC synthesized the testimonies of these two as follows:

"FLORANTE C. SAN DIEGO testified on 21 February 2002 & 21 April 2003 as follows:

"He is the Attorney-In-Fact of Edgardo and Ana Marie Co. the plaintiffs in this case. He has a Special Power of Attorney dated 14 January 2000 to attest to this (Exh. 'A'). Edgardo and Ana Marie Co are the owners of a property covered by Transfer Certificate of Title (TCT) No. RT-100676 (Exh. 'B'). The property was declared for taxation purposes. He has a copy of a Declaration of Real Property No. B-023-02158 issued by the Assessor's Office of Quezon City (Exh. 'F'). Taxes concerning the subject property were duly paid as proven by a Certification dated 20 January 2000 (Exh. 'G'). The defendants in this case are illegally occupying the subject property and he sent these defendants a Notice to Vacate dated 08 May 2000, (Exhs. 'C' & 'D'). The defendants failed to vacate the premises despite receipt of the Notice to Vacate. After this, he referred the matter to the Barangay of Batasan Hills but still, no settlement was reached. He then asked the Barangay for the issuance of a Certification to File Action which was issued on 15 June 2000 by Godofredo L. Ramos (Exh. 'E'). After which, he asked their lawyer to file the necessary ejectment case against defendants Cea, Tomagan and Morales. He has a contract with their lawyer in the amount of SIXTY THOUSAND PESOS (P60,000.00) for the three (3) defendants. He prays for FIFTY THOUSAND PESOS (P50,000.00) as and for moral damages against the three (3) defendants; and THIRTY THOUSAND PESOS (P30,000.00) as and for exemplary damages. He likewise prays that the defendants pay plaintiffs THREE HUNDRED PESOS (P300.00) per month from 01 March 2000 up to the time that the defendants finally vacate the premises. Up to the present the property is being occupied by, Merly Morales, Arturo Cea and Renato Tomagan, among others. (TSN 21 February 2002, pp. 4-13).

"He is Florante San Diego, the Attorney-in-Fact of Ana Marie Co as evidenced by a Special Power of Attorney (Exh. 'A'). He met Mercy Morales when he visited the property, which is registered in the name of Edgardo and Ana Marie Co (Exh.'B'). He did not consent to the occupation of Mercy Morales of the subject property. He sent a Notice to Vacate to Morales dated 08 May 2000, which was duly served upon the said defendant by Fred Palabrica even as Morales refused to sign the same (Exhs. 'H' & 'H-1'). He also sent Notices to Vacate to defendants Cea and Tomagan and like Morales, both refused to sign the receiving copy and so, Fred Palabrica made a notation of the same of the receiving copies (Exhs. 'C' & 'D'). He was the one who signed the certification of non-forum shopping contained in the Complaint he filed as attorney-in-fact of the registered owners. Edgardo and Ana Marie Co did not appear at the proceedings in the Barangay. He appeared in their behalf. The Certification to File Action issued by the Barangay Batasan Hills was used to file a case before the Metropolitan Trial Court of Quezon City, Branch 39, (TSN 21 April 2003, pp. 3-11).

"Thereafter, the defendants presented a witness whose testimony is summarized, thus:

"MERLY MORALES testified on 07 October 2003 as follows:

"She has been occupying the premises subject matter of this case for about fifteen (15) years now. The land subject matter of this case is classified as a forestland and she has a Certification to this claim (Exh. 'I'). They have settled in the land subject matter of this case because it was their knowledge that nobody is occupying the said land that is why they have settled there. There are a lot of people claiming the land aside from the plaintiffs. (TSN 07 October 2003, pp. 3-5).<sup>[11]</sup>"

Juxtaposing the foregoing with the documentary evidence adduced during the trial, the RTC postulated this wise:

"After going over the allegations in the complaint as well as the evidence, both documentary and testimonial presented by the plaintiffs, this Court finds that the plaintiffs have proven their case through a preponderance of evidence, and they are entitled to the relief prayed for.

"At the outset, let it be stressed that plaintiffs have a TCT No. 100676 (165165) of the Registry of Deeds of Quezon City issued in their names, even as defendants simply claim to have been occupying the land in question for a period of more than twenty years. The possession of defendants is not even characterized as open, continuous, adverse, uninterrupted and in concept of owners which could ripen into ownership should plaintiffs not have a title in other (sic) favor. Instead defendants themselves advance that the land is "unclassified Public Forest as per LC Map No. 639 certified on March 11, 1927 x x x" meaning, defendants admit they have not title over the property much less do they pretend to be owners of the property.

"Further, defendants continue to aver on their answer thus: 'x x x however, said parcel of land is included in the proposed Alienable LC Map No. 3967, x x x"

"As admitted by defendants this is a mere proposal as far as they are concerned. On the other hand, plaintiffs have in their favor a Transfer Certificate of Title which is incontrovertible and indefeasible. It is well settled that a certificate of title, once registered, should not thereafter be impugned, altered, changed, modified, enlarged, or diminished, except in a direct proceeding permitted by law (Seville v. NDC, 351 SCRA 112). A title once registered under the Torrens System cannot be defeated even by adverse, open and notorious possession, neither can it be defeated by prescription (Cervantes v. CA, 352 SCRA 47).

"The parcel of land in question with the correspondent TCT having been issued, had ceased to be alienable and disposable and therefore, could not be acquired by continues, open, and public possession under a concept of an owner within the contemplation of Sec. 14 (1) of PD No. 1529.

"Last, a certificate of title cannot be subject to collateral attack, it cannot be altered, modified or cancelled except in a direct proceeding (Vda. De