

## THIRD DIVISION

[ G.R. No. 163053, November 25, 2009 ]

**AGRIFINA PANGANIBAN, PETITIONER, VS. SPOUSES ROMEO ROLDAN AND ELIZABETH ROLDAN, RESPONDENTS.**

### DECISION

**NACHURA, J.:**

This is a petition for review on *certiorari* of the decision<sup>[1]</sup> of the Court of Appeals (CA) dated March 31, 2004 in CA-G.R. SP No. 67696 and its resolution denying the motion for reconsideration thereof.

The facts are as follows:

On April 7, 1998, petitioner Agrifina Panganiban filed a complaint against herein respondents, spouses Romeo Roldan and Elizabeth Roldan, for recovery of possession and damages in the Municipal Trial Court

(MTC), Third Judicial Region, Subic, Zambales. She alleged that she was the registered owner of a parcel of land with an area of 271 square meters, covered by Original Certificate of Title (OCT) No. P-12388, located in Ilwas, Subic, Zambales; that sometime in 1984, respondents entered the land and built a small hut on a portion thereof without her knowledge and consent; that respondents asked permission if they could temporarily reside thereat, since they came from Bicol and had no place to stay in Zambales; that she took pity on them and agreed on the condition that they would vacate upon demand; that in 1997, petitioner asked respondents to vacate the land, as she would be putting up a fence thereon; that respondents, who were occupying an area measuring about 103 sq m, refused to vacate; that because of their obstinate refusal to vacate, she suffered mental anxiety; and that for being deprived of the use and enjoyment of the land, respondents should be required to pay a rental of P500.00 per month from December 1997 until they vacate.

In their defense, respondents denied that they entered into an agreement with petitioner allowing them to stay on the land. They claimed that they had been occupying the lot as caretakers of the heirs of Concepcion dela Paz-Lesaca since 1973, as evidenced by a *Kasunduan*. They alleged that the lot was part of the land covered by Transfer Certificate of Title (TCT) No. 14884 issued in 1972, registered in the name of Concepcion dela Paz-Lesaca; and that in December 1997, two (2) men who were *barangay* officials went to the premises in order to survey the lot for purposes of putting up a fence. Respondents thus objected to the intrusion knowing that petitioner had no right or personality to eject them from the land. Respondents averred that petitioner was merely a neighbor and that they were surprised to find out that she was able to secure a new title over their portion of the land.

On March 23, 2001, the MTC rendered judgment<sup>[2]</sup> in favor of petitioner. The MTC did not admit respondents' evidence presented during the trial consisting of: (1) the TCT of the subject property registered under the name of Concepcion dela Paz-Lesaca; and (2) the *Kasunduan* purportedly executed by Concepcion dela Paz-Lesaca allowing Spouses Roldan to stay on the land on the ground that these matters were not raised in their Answer or in their Pre-trial Brief. The MTC discerned a "variance of the allegation and proof," and thus considered the evidence as no proof at all.<sup>[3]</sup> The MTC stated that in such situation, the remedy was to amend the Answer to conform to the evidence, and this, respondents failed to do. The dispositive portion of the decision, as amended on June 1, 2001 to include payment of rentals, reads as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants:

1. For the defendants to vacate the premises;
2. For the defendants to pay the plaintiff the amount of P20,000.00 as rental from the date of the filing of the complaint until March 2001 and to pay the additional amount of P500.00 every month thereafter until the defendants vacate and surrender the premises to the plaintiff;
3. To pay attorney's fees in the amount of P10,000.00; and
4. To pay the costs of the proceedings.

SO ORDERED.<sup>[4]</sup>

On appeal, the Regional Trial Court of Olongapo City affirmed the MTC Decision *in toto*. It, likewise, disregarded the *Kasunduan* and the TCT, since they were not raised as a defense in respondents' answer, and the same could not be raised for the first time on appeal.<sup>[5]</sup>

Aggrieved, respondents went up to the CA.

On March 31, 2004, the CA reversed the decision and found for respondents. It admitted the document denominated as *Kasunduan*, which provided that respondents were allowed to stay on the subject land by its owners, heirs of Concepcion dela Paz-Lesaca, as well as TCT No. T-14882 issued in 1972 in the name of Concepcion dela Paz-Lesaca. The CA found that the title from which respondents derived their right of possession was an earlier title, thus, superior to petitioner's OCT P-12388, which was only issued on June 22, 1994<sup>[6]</sup> by virtue of a free patent application. Accordingly, the appellate court ruled that respondents' right of possession must prevail. The dispositive portion of the assailed decision reads as follows:

**WHEREFORE**, the Petition is hereby **GRANTED**. The Decision of the Regional Trial Court of Olongapo City, Branch 72, is hereby **ANNULED AND SET ASIDE**. Appellants['] right to possess the disputed land is hereby recognized.

**SO ORDERED.**<sup>[7]</sup>

Thus, the instant petition where petitioner raises the following assignment of errors:

1. THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE ALLEGED TITLE OF A CERTAIN CONCEPCION DELA PAZ LESACA, NAMELY TCT NO. T-14882, AND THE DOCUMENT DENOMINATED "KASUNDUAN" SHOULD HAVE BEEN ADMITTED BY THE COURT A QUO.
2. THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE SAID EXCLUDED DOCUMENTS ARE FAVORABLE TO THE CAUSE OF THE RESPONDENTS AND GAVE THEM RIGHTS TO THE POSSESSION OF THE PROPERTY IN LITIGATION.
3. THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT TCT NO. T-14882 OF CONCEPCION DELA PAZ LESACA ALSO COVERS THE PROPERTY IN LITIGATION.

[4.] THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT RESPONDENTS MAY NOT BE DISTURBED IN THEIR POSSESSION AND THAT ANOTHER PROCEEDING FOR QUIETING OF TITLE IS NECESSARY IN ORDER TO PROVE THAT PETITIONER'S TITLE IS SUPERIOR TO THAT OF CONCEPCION DELA PAZ LESACA.<sup>[8]</sup>

The petition is denied.

The Court finds no reversible error in the ruling of the appellate court, admitting as evidence the *Kasunduan* and TCT No. T-14882. We agree with the following justification of the CA:

Section 5, Rule 10 of the Rules of Court provides that issues not raised by the pleadings may be tried by express or implied consent of the parties, as if they had been raised in the pleadings and the court can validly resolve them. There is express consent to the evidence on an issue not raised in the pleading when the adverse party agrees to its presentation by the other party. There is implied consent when the adverse party fails to object thereto.

The general rule is that a judgment must conform to the pleading and the theory of the action under which the case is tried. But court may also rule and render judgment on the basis of the evidence before it, even though the relevant pleading has not been previously amended, so long