

# FIRST DIVISION

[ G.R. No. 235424, February 03, 2021 ]

**SALLY SARMIENTO, PETITIONER, VS. EDITA\* A. DIZON,  
REPRESENTED BY HER ATTORNEY-IN-FACT ROBERTO TALAUE,  
RESPONDENT.**

## DECISION

**CAGUIOA, J:**

### *The Case*

This is a Petition for Review on *Certiorari*<sup>[1]</sup> (Petition) filed under Rule 45 of the Rules of Court against the Resolution<sup>[2]</sup> dated May 30, 2017 (first assailed Resolution) and Resolution<sup>[3]</sup> dated October 18, 2017 (second assailed Resolution) in CA-G.R. SP No. 149696 rendered by the Court of Appeals<sup>[4]</sup> (CA).

The assailed CA resolutions affirmed the following decisions granting the complaint for unlawful detainer with prayer for preliminary injunction filed by respondent Edita A. Dizon (Dizon) against petitioner Sally Sarmiento (Sarmiento):

1. Decision<sup>[5]</sup> dated August 17, 2016 of the Regional Trial Court (RTC) of Quezon City, Branch 216 in Civil Case No. R-QZN-15-03876-CV; and
2. Decision<sup>[6]</sup> dated February 2, 2001 of the Metropolitan Trial Court of Quezon City (MeTC), Branch 37 in Civil Case No. 37-22145.

### *The Facts*

The CA narrated the facts, as follows:

The dispute involves a parcel of land registered in the name of [Dizon] covered by Transfer Certificate of Title (TCT) No. RT-79553 (249562) located at Lot 25, Block 4, Pasong Tamo, Sunny Ville Subdivision, Luzon Avenue, Quezon City.

On March 17, 1999, [Dizon] x x x through her attorney-in-fact Roberto Samson Talaue [(Talaue)], filed a complaint for unlawful detainer [(Complaint)] against [Sarmiento] x x x and John Doe before the [MeTC], Branch 37 docketed as Civil Case No. 22145.

In her [C]omplaint, [Dizon] alleged that she is the registered owner of a parcel of land known as Lot 25, Block 4 of the [cons-subdivision] Plan (LRC) Pcs-994, being a portion of Lots 939-New, 940 and 942, Piedad Estate LRC (GLRO) Rec. No. 5975 covered by [TCT] No. RT- 79553

[(subject property)], located at Lot 25, Block 4, Pasong Tamo, Sunny Ville Subdivision, Luzon Avenue, Quezon City; that she has been paying the real property taxes thereon up until 1998; that sometime in 1989, [Sarmiento] requested [Dizon's] father, Paquito Ang [(Ang)], that she be allowed to temporarily stay and occupy the subject property; that out of mercy and compassion, [Ang] allowed [Sarmiento] to occupy the subject [property]; that after [Ang's] death in 1993, [Dizon] and/or [Talaue] requested [Sarmiento] to vacate the subject [property]; that a Formal Letter of Demand to Vacate dated January 6, 1999 was sent by [Dizon] and received by [Sarmiento through her representative] on even date; however, despite repeated demands to vacate, [Sarmiento] refused to leave the subject [property].

In her answer with counterclaim, [Sarmiento] vehemently denied [Dizon's] allegation that she possessed the subject [property] by mere tolerance of [Dizon's] father. She claimed that she has been in actual possession of the subject property since 1979. She further denied knowing [Dizon] and/or [Ang], or [Talaue]. She interposed the defense that the subject property described as Lot 25, Block 4 located in Sunny Ville subdivision is different and far from the lot that she owns in her own right.<sup>[7]</sup>

#### *MeTC proceedings*

On February 2, 2001, the MeTC issued a Decision in favor of Dizon, the dispositive portion of which reads:

From the foregoing, this Court finds that [Dizon's] claim has been duly established by satisfactory evidence and therefore hereby renders judgment in favor of [Dizon] and against [Sarmiento] and/or John Doe ordering them and all persons claiming rights under them:

- a) to immediately vacate [the] subject property, and to remove and demolish any structure or structures erected thereon located at Lot 25, Block 4, Pasong Tamo, Sunny Ville Subdivision, Luzon Avenue, Quezon City, and restore peaceful possession thereof to [Dizon];
- b) to pay [Dizon] the sum of TWO THOUSAND FIVE HUNDRED ([P]2,500.00) per month, as reasonable compensation for the use and occupancy of [the] subject [property], with interest thereon at the legal rate per annum, to be computed from November 1998 and every month thereafter, until [the] subject property shall have been finally vacated;
- c) to pay [Dizon] the sum of TWENTY THOUSAND PESOS ([P]20,000.00) for and as attorney's fees; and
- d) to pay the costs of suit.

This Court is constrained not to award any moral and actual damages as the evidence presented does not warrant an award thereof.

SO ORDERED.<sup>[8]</sup>

The MeTC observed that while Sarmiento asserts that the property claimed by Dizon is different from that in her possession, she failed to present any evidence to support such assertion. According to the MeTC, Sarmiento's failure to substantiate her defense leads to no other conclusion that she is occupying the subject property without any color of title and by mere tolerance of Dizon, the registered owner.<sup>[9]</sup>

#### *RTC proceedings*

Aggrieved, Sarmiento filed an appeal before the RTC.

Primarily, Sarmiento questioned Talaue's authority to file the Complaint, as the Special Power of Attorney executed in his favor only covers the filing of an action for forcible entry and not unlawful detainer.<sup>[10]</sup>

Further, Sarmiento argued that an action for unlawful detainer is not the proper remedy in this particular case considering that Dizon failed to prove the jurisdictional facts necessary to sustain a summary action for unlawful detainer particularly, prior physical possession and tolerance.<sup>[11]</sup> Sarmiento emphasized that the only evidence supporting Dizon's theory of tolerance is the testimony of her attorney-in-fact Talaue, who, in turn, claimed that Dizon's father Ang merely allowed Sarmiento to stay in the subject property sometime in 1989. Notably, Talaue has no personal knowledge of the circumstances subject of his testimony.<sup>[12]</sup>

Sarmiento also averred that Dizon cannot merely rely on her reconstituted Torrens title to bolster her cause, as even a registered owner can be made a defendant in an action for unlawful detainer where the issue is merely possession *de facto*.<sup>[13]</sup> Sarmiento argued that in any event, any title issued in the name of Dizon is void since she is a Chinese citizen.<sup>[14]</sup>

As well, Sarmiento alleged that her uncle General Recaredo A. Sarmiento (General Recaredo) has been in possession of the subject property since 1978. Subsequently, General Recaredo fenced the lot and constructed a house thereon. Later still, General Recaredo allowed Sarmiento to stay on the subject property in 1984. Thus, Sarmiento has been in possession thereof ever since.<sup>[15]</sup> Consequently, Sarmiento claimed that the order directing the demolition of the improvements on the subject property is improper since these are owned by General Recaredo — a party *not* impleaded in the Complaint.<sup>[16]</sup> For this reason, Dizon should have resorted to an *accion publiciana* and not a summary action for unlawful detainer.<sup>[17]</sup>

On August 17, 2016 the RTC issued a Decision<sup>[18]</sup> affirming the findings of the MeTC *in toto*.

The RTC held that Dizon sufficiently established her cause of action. The RTC added that Sarmiento is estopped from questioning the alleged lack of authority of Talaue to file the Complaint since she failed to raise this as an issue before the MeTC.

Sarmiento's motion for reconsideration was denied.<sup>[19]</sup>

*CA proceedings*

On February 23, 2017, Sarmiento filed a motion asking for an extension of fifteen (15) days, or until March 10, 2017, to file her petition for review before the CA. The CA granted the motion and gave Sarmiento the extended period asked for.<sup>[20]</sup>

Subsequently, Sarmiento filed another motion asking for another extension of seven (7) days from March 10, 2017, or until March 17, 2017 to file her petition for review.<sup>[21]</sup> **However, it was only on March 31, 2017 when Sarmiento filed a *Motion to Admit Petition for Review with Application for [Temporary Restraining Order (TRO)] and/or Injunction*<sup>[22]</sup> (Motion to Admit), attaching thereto her *Petition for Review with Application for TRO and/or Preliminary Injunction (CA Petition)*.**<sup>[23]</sup>

In addition to the arguments set forth in Sarmiento's appeal before the RTC, Sarmiento further argued that: (i) the imposition of back rentals under the circumstances is without legal and factual basis; and (ii) the RTC's ruling violates the principle of *stare decisis* as it failed to adhere to the Court's ruling in *Padre v. Malaban*<sup>[24]</sup> which stems from an ejectment case involving the lot adjacent to the subject property.<sup>[25]</sup>

On May 30, 2017, the CA issued the first assailed Resolution,<sup>[26]</sup> the dispositive portion of which reads:

**WHEREFORE**, [Sarmiento's] *Motion to Admit Petition for Review with Application for TRO and/or Injunction* is hereby **DENIED**. Consequently, for being filed out of time and for [being] patently without merit, the instant petition for review is hereby **DENIED DUE COURSE** and **DISMISSED** outright.

Let this case be considered **CLOSED** and **TERMINATED**.

**SO ORDERED.**<sup>[27]</sup>

Foremost, the CA held that the CA Petition was out of time since it was filed fourteen (14) days after the expiration of Sarmiento's second extension. Moreover, the docket fees paid by Sarmiento were deficient in the amount of P1,050.00.<sup>[28]</sup>

Procedural defects aside, the CA further held that the CA Petition fails on the merits.

The CA emphasized that in ejectment proceedings, the only question for resolution is who between the parties is entitled to the physical possession of the property subject of the action.<sup>[29]</sup> On this score, the CA found no reason to depart from the uniform findings of the lower courts as the allegations in Dizon's Complaint "sufficiently contain an averment [of] fact that would substantiate [Dizon's] claim that [Sarmiento's] stay on the subject [property] was by mere tolerance or permission of [Dizon's] father; that [Sarmiento] was illegally occupying the premises without [Dizon's] consent and thus unlawfully withholding possession thereof; and, despite receipt of the demand to vacate the premises, [Sarmiento] refused to leave the [subject] property."<sup>[30]</sup>

According to the CA, Dizon's Torrens title and the real property tax receipts covering the subject property carry more weight than Sarmiento's bare and unsubstantiated

claim that she has been in continuous possession thereof since 1979.<sup>[31]</sup>

With respect to Sarmiento's other assigned errors, the CA held that the consideration of alleged facts and arguments belatedly raised would trample upon the basic principles of fair play, justice, and due process.<sup>[32]</sup>

Sarmiento filed a motion for reconsideration which was denied by the CA through the second assailed Resolution for being filed out of time.<sup>[33]</sup>

Sarmiento received a copy of the second assailed Resolution on November 10, 2017.<sup>[34]</sup>

On November 24, 2017, Sarmiento filed her *Motion for Extension of Time to File Petition for Review on Certiorari with an Application for a Writ of Preliminary Injunction*<sup>[35]</sup> praying that she be allowed until December 15, 2017 to file her petition for review.

Sarmiento later prayed for an additional period of ten (10) days from December 15, 2017, or until December 25, 2017 to file her petition for review.<sup>[36]</sup>

The present Petition was filed on December 27, 2017, the next working day following December 25, 2017.<sup>[37]</sup>

The Petition substantially repleads the arguments raised before the CA.

Notably, while the Petition refers to the payment of docket fees required for an application for a writ of preliminary injunction and/or TRO in the statement of material dates, it neither contains an explicit prayer for interim reliefs, nor does it discuss the existence of grounds warranting the same.

#### *The Issues*

The issues presented for the Court's resolution are:

1. Whether the CA erred in affirming the decisions of the lower courts; and
2. Whether the CA erred in failing to pass upon the arguments raised by Sarmiento for the first time on appeal.

#### *The Court's Ruling*

The Court grants the Petition.

*While the CA Petition was filed out of time, the substantial merits of this case warrant review.*

Sarmiento does not dispute that the CA Petition was filed fourteen (14) days after the expiration of the *second* extension she prayed for. Nevertheless, Sarmiento, through counsel, prays for the relaxation of procedural rules and cites several circumstances to justify the same, thus: