

FIRST DIVISION

[G.R. No. 187944, March 12, 2014]

CARMENCITA SUAREZ, PETITIONER, VS. MR. AND MRS. FELIX E. EMBOY, JR. AND MARILOU P. EMBOY-DELANTAR, RESPONDENTS.

D E C I S I O N

REYES, J.:

For review in the instant Petition^[1] is the Decision^[2] rendered on March 19, 2009 and Resolution^[3] issued on May 5, 2009 by the Court of Appeals (CA) in CA-G.R. SP No. 03489. The CA granted the Petition for Review^[4] filed by Mr. and Mrs. Felix Emboy, Jr. (Felix) and Marilou Emboy-Delantar (Marilou) (respondents), seeking to reverse the decisions of the Regional Trial Court (RTC), Branch 12,^[5] and Municipal Trial Court in Cities (MTCC), Branch 3,^[6] of Cebu City, rendered on February 26, 2008 in Civil Case No. CEB-33328,^[7] and on September 25, 2006 in Civil Case No. R-49832, respectively. The RTC affirmed the MTCC in upholding the claims of Carmencita Suarez (Carmencita) in her complaint for unlawful detainer instituted against the respondents.

Antecedents

At the center of the dispute is a 222-square meter parcel of land, designated as Lot No. 1907-A-2 (subject lot) of the subdivision plan Psd-165686, situated in *Barangay Duljo*, Cebu City, and covered by Transfer Certificate of Title (TCT) No. T-174880 issued in the name of Carmencita on February 9, 2005. The subject lot used to be a part of Lot No. 1907-A,^[8] which was partitioned in the following manner among the heirs of Spouses Carlos Padilla (Carlos) and Asuncion Pacres (Asuncion):^[9]

Lot No.	TCT No.	Heirs
1907-A-1	T-54359	Spouses Rogelio and Praxedes Padilla
1907-A-2	T-54360	Heirs of Vicente Padilla (Vicente), namely: (1) Azucena Padilla, married to Felly Carrera; (2) Remedios Padilla (Remedios), married to Oscar Dimay; (3) Veronica Padilla (Veronica); ^[10] and (4) Moreno Padilla (Moreno), married to Teresita Curso (Teresita)
1907-A-3	T-54361	Cresencio Padilla
1907-A-4	T-54362	Fructousa Baricuatro
1907-A-5	T-54363	Claudia Padilla-Emboy (Claudia)

A house, which is occupied by respondents Felix and Marilou, stands in the subject lot. The respondents claim that their mother, Claudia, had occupied the subject lot during her lifetime and it was earmarked to become her share in Lot No. 1907-A. They had thereafter stayed in the subject lot for decades after inheriting the same from Claudia, who had in turn succeeded her own parents, Carlos and Asuncion.^[11]

In 2004, respondents Felix and Marilou were asked by their cousins, who are the Heirs of Vicente, to vacate the subject lot and to transfer to Lot No. 1907-A-5, a landlocked portion *sans* a right of way. They refused to comply insisting that Claudia's inheritance pertained to Lot No. 1907-A-2.^[12]

Not long after, the respondents received from Carmencita's counsel, Atty. Jufelenito R. Pareja (Atty. Pareja), a demand letter, dated February 23, 2004, requiring them to vacate the subject lot. They were informed that Carmencita had already purchased on February 12, 2004 the subject lot from the former's relatives. However, the respondents did not heed the demand. Instead, they examined the records pertaining to the subject lot and uncovered possible anomalies, *i.e.*, forged signatures and alterations, in the execution of a series of deeds of partition relative to Lot No. 1907-A. On August 13, 2004, they filed before the RTC of Cebu City a complaint^[13] for nullification of the partition and for the issuance of new TCTs covering the heirs' respective portions of Lot No. 1907-A.^[14]

On December 8, 2004, Carmencita filed before the MTCC and against the respondents a complaint for unlawful detainer, the origin of the instant petition. She alleged that she bought the subject lot from Remedios, Moreno, Veronica and Dionesia,^[15] the registered owners thereof and the persons who allowed the respondents to occupy the same by mere tolerance. As their successor-in-interest, she claimed her entitlement to possession of the subject lot and the right to demand from the respondents to vacate the same.^[16]

The MTCC upheld Carmencita's claims in its decision rendered on September 25, 2006. The respondents were ordered to vacate the subject lot and remove at their expense all the improvements they had built thereon. They were likewise made solidarily liable to pay Carmencita Php 20,000.00 as attorney's fees.^[17]

In the Decision dated February 26, 2008, the RTC affirmed in its entirety the MTCC ruling.^[18]

The respondents challenged the MTCC and RTC judgments through a Petition for Review^[19] filed before the CA.

The respondents argued that they have been occupying the subject lot in the concept of owners for several decades. Carmencita, on the other hand, was a buyer in bad faith for having purchased the property despite the notice of *lis pendens* clearly annotated on the subject lot's title. Even her complaint for unlawful detainer was filed on December 8, 2004 subsequent to the respondents' institution on August 13, 2004 of a petition for nullification of the partition. Citing *Sarmiento v. CA*,^[20] the respondents emphasized that "even if one is the owner of the property, the

possession thereof cannot be wrested from another who had been in the physical or material possession of the same for more than one year by resorting to a summary action of ejectment.”^[21] The respondents also invoked the doctrine enunciated in *Amagan v. Marayag*^[22] that the pendency of another action anchored on the issue of ownership justifies the suspension of an ejectment suit involving the same real property. The foregoing is especially true in the case at bar where the issue of possession is so interwoven with that of ownership. Besides, the resolution of the question of ownership would necessarily result in the disposition of the issue of possession.

The respondents also stressed that the deed of sale dated April 1, 2004, which was attached to the complaint for unlawful detainer, bore tell-tale signs of being spurious. *First*, Atty. Pareja’s demand letter sent to the respondents instead referred to a deed of sale dated February 12, 2004. *Secondly*, Teresita, who now lives in Luzon and has been estranged from Moreno since the 1980s, was a signatory in the deed of sale. *Thirdly*, a certain Veronida Padilla, a fictitious person, also signed the deed of sale as among the vendors, but she, too, was impleaded as a co-defendant in the ejectment suit. *Fourthly*, the deed was only registered the following year after its supposed execution.

The respondents insisted that the Heirs of Vicente, who had allegedly sold the subject lot to Carmencita, had never physically occupied the same. Hence, there was no basis at all for Carmencita’s claim that the respondents’ possession of the subject lot was by mere tolerance of the alleged owners.

The respondents also presented before the CA a newly discovered evidence, which they found in an old wooden chest in their ancestral home. A duly notarized document captioned as an “Agreement,”^[23] dated February 23, 1957, showed that Vicente and his spouse, Dionesia, had waived their hereditary rights to Lot No. 1907-A. The document stated that Vicente obtained a loan from the Philippine National Bank using Lot No. 1907-A as a collateral. The loan was paid by Carlos and Asuncion and the waiver must have been executed in order to be fair to Vicente’s siblings. Prescinding from the above, the Heirs of Vicente no longer had ownership rights over the subject lot to convey to Carmencita.

The respondents also averred that Carmencita’s complaint lacked a cause of action. The certification to file an action was issued by the officials of *Barangay Duljo* in the name of James Tan Suarez, Carmencita’s brother, who had no real rights or interests over the subject lot. Further, while Carmencita based her claim over the subject lot by virtue of a deed of sale executed on April 1, 2004, no demand to vacate was made upon the respondents after that date. The absence of such demand rendered the complaint fatally defective, as the date of its service should be the reckoning point of the one-year period within which the suit can be filed.

In support of the respondents’ prayer for the issuance of injunctive reliefs, they argued that their loss would be irreparable. Moreover, the resolution of the respondents’ petition for nullification of the partition of Lot No. 1907-A, in which Carmencita was likewise impleaded as a defendant, would be rendered useless in the event that the latter’s complaint for unlawful detainer would be granted and the former’s ancestral house demolished.

The Ruling of the CA

On March 19, 2009, the CA rendered the herein assailed Decision reversing the disquisitions of the courts *a quo* and dismissing Carmencita's complaint for unlawful detainer. The CA explained:

Section 1, Rule 70 of the Rules of Court provides:

Section 1. *Who may institute proceedings, and when.*— Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

The distinction between forcible entry and unlawful detainer was lucidly explained in *Sarmiento vs. Court of Appeals*,:

Forcible entry and unlawful detainer cases are two distinct actions defined in Section 1, Rule 70 of the Rules of Court. [In] forcible entry, one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy, or stealth. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. In forcible entry, the possession is illegal from the beginning and the basic inquiry centers on who has the prior possession *de facto*. In unlawful detainer, the possession was originally lawful but became unlawful by the expiration or termination of the right to possess, hence the issue of rightful possession is decisive for, in such action, the defendant is in actual possession and the plaintiffs cause of action is the termination of the defendant's right to continue in possession.

What determines the cause of action is the nature of defendant's entry into the land. If the entry is illegal, then the action which may be filed against the intruder within one (1) year therefrom is forcible entry. If, on the other hand, the entry is legal but the possession thereafter became illegal, the case is one of unlawful detainer which must be filed within one (1) year from the date of the last demand.

A close perusal of [Carmencita's] complaint *a quo* reveals that the action was neither one of forcible entry nor unlawful detainer but essentially involved an issue of ownership which must be resolved in an *accion reivindicatoria*. It did not characterize [the respondents'] alleged entry into the land: whether the same was legal or illegal. It did not state how [the respondents] entered the land and constructed a house thereon. It was also silent on whether [the respondents'] possession became legal before [Carmencita] demanded from them to vacate the land. The complaint merely averred that their relatives previously owned the lot [the respondents] were occupying and that after [Carmencita] purchased it[,] she, as its new owner, demanded [for the respondents] to vacate the land. Moreover, it is undisputed that [the respondents] and their ancestors have been occupying the land for several decades already. There was no averment as to how or when [Carmencita's] predecessors tolerated [the respondents'] possession of the land. Consequently, there was no contract to speak of, whether express or implied, between [the respondents], on one hand, and [Carmencita] or her predecessors, on the other, as would qualify [the respondents'] possession of the land as a case of unlawful detainer. Neither was it alleged that [the respondents] took possession of the land through force, intimidation, threat, strategy or stealth to make out a case of forcible entry. In any event, [Carmencita] cannot legally assert that [the respondents'] possession of the land was by mere tolerance. This is because [Carmencita's] predecessors-in-interest did not yet own the property when [Claudia] took possession thereof. Take note that [Carmencita's] predecessors-in-interest merely stepped into the shoes of their parents who were also co-heirs of [Claudia]. Finally, to categorize a cause of action as one constitutive of unlawful detainer, plaintiff's supposed acts of tolerance must have been present from the start of the possession which he later seek[s] to recover. This is clearly wanting in the case at bar.

Indeed, when the complaint fails to aver facts constitutive of forcible entry or unlawful detainer, as where it does not state how entry was effected or how and when dispossession started, as in the case at bar, the remedy should either be an *accion publiciana* or an *accion reivindicatoria* in the proper RTC. If [Carmencita] is truly the owner of the subject property and she was unlawfully deprived of the real right of possession or ownership thereof, she should present her claim before the RTC in an *accion publiciana* or an *accion reivindicatoria*, and not before the municipal trial court in a summary proceeding of unlawful detainer or forcible entry.

Munoz vs. Court of Appeals enunciated:

For even if he is the owner, possession of the property cannot be wrested from another who had been in possession thereof for more than twelve (12) years through a summary action for ejectment. Although admittedly[,] petitioner may validly claim ownership based on the muniments of title it presented, such evidence does not responsibly address the issue of prior actual possession raised in a forcible entry case. It must be stated that regardless of actual condition of the title to the