

## THIRD DIVISION

[ G.R. No. 207266, June 25, 2014 ]

**HEIRS OF PACIANO YABAO, REPRESENTED BY REMEDIOS CHAN,  
PETITIONERS, VS. PAZ LENTEJAS VAN DER KOLK, RESPONDENT.**

### DECISION

**MENDOZA, J.:**

This is a petition for review on *certiorari* seeking to reverse and set aside the May 28, 2012 Decision<sup>[1]</sup> and the May 2, 2013 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 04532, essentially dismissing the complaint of petitioners for ownership and possession for failure to prove it by the required quantum of evidence, though without prejudice.

The case traces its roots to the complaint<sup>[3]</sup> for *ownership and possession* filed on March 8, 2001 by the Heirs of the late Paciano Yabao (*Heirs of Yabao*), represented by Remedios Chan, before the Municipal Trial Court in Cities of Calbayog City (MTCC), against Paz Lentejas Van der Kolk (*Van der Kolk*), docketed as Civil Case No. 1184. The salient averments in the complaint are hereunder quoted:

X X X X

2. That plaintiffs herein are the sole surviving heirs of the late spouses Paciano Yabao and Mercedes Cano;

3. That they are the absolute co-owners of the parcel of land more particularly described and bounded as follows:

“A parcel of rice land designated as Lot 2473, situated at Brgy. Capoocan, Calbayog City, bounded on the North by 03-005(1472)04-001(2474); on the East by 04-031(2774); on the South by 05-009(2462), 008(2461), 004-2458, 003(2457), and on the West by 03-005(2472), 001(2463), containing an area of 6,433 square meters more or less, declared in Declaration of Real Property ARP No. 96-01015-00398 in the name of the late Paciano Yabao, with an assessed value of P2,760.00”

4. That sometime in 1996, defendant herein asserted claim of ownership and allowed a person to possess the above-described property, notwithstanding vehement opposition thereto by plaintiffs herein;

5. That notwithstanding demands for the defendant to vacate the premises usurped and occupied by her, she refused and still continue to refuse, to leave the said premises;

6. That, aside from taking possession of the premises in question, defendant also applied for free patent for the property in question with the DENR Office of Samar, to which plaintiffs herein have filed a timely opposition; x x x<sup>[4]</sup>

The Heirs of Yabao prayed that they be declared the co-owners and possessors of a parcel of land designated as Lot 2473 located in Brgy. Capoocan, Calbayog City (*subject lot*); that possession thereof be restored to them; and that Van der Kolk be ordered to pay them attorney's fees, litigation expenses as well as reasonable rental of P2,000.00 per month.

Copies of the summons and the complaint were served upon the attorney-in-fact of Van der Kolk, Ma. Narcisa Fabregaras-Ventures (*Ventures*), whom she authorized, among others, to institute and defend all actions for the protection of her rights and interests over her properties, including the subject lot, by virtue of a special power of attorney<sup>[5]</sup> executed on August 22, 1999. It was noted in the Sheriff's Return of Service<sup>[6]</sup> that Van der Kolk was in the Netherlands at the time of the service.

On April 2, 2001, Van der Kolk filed a Motion to Dismiss<sup>[7]</sup> the complaint anchored on the following grounds: 1] lack of jurisdiction by the MTCC over her person due to defective service of summons; and 2] lack of cause of action. Van der Kolk alleged that the service of summons should have been made in accordance with Section 15, Rule 14 of the Rules of Court because she was not actually residing in the Philippines. She contended that the predecessors-in-interest of the Heirs of Yabao had executed a joint affidavit on July 16, 1980, wherein they renounced their hereditary rights over the subject lot and declared that Faustina Yabao, mother of Van der Kolk, as its true owner.

The Heirs of Yabao filed their opposition to the said motion and moved to declare Van der Kolk in default contending that the motion to dismiss was filed beyond the 15-day reglementary period and no answer had been filed.<sup>[8]</sup>

On July 27, 2004, the MTCC issued a Resolution<sup>[9]</sup> denying the motion to dismiss and holding that there was proper service of summons. It also denied the motion to declare defendant in default, stating that the motion to dismiss was seasonably filed. The MTCC further directed Van der Kolk to file an answer within 10 days from receipt of the aforesaid resolution.

On September 6, 2004, Van Der Kolk's counsel, Atty. Felidito Dacut, filed a Manifestation with Motion<sup>[10]</sup> praying that he be relieved as her counsel because she never contacted him about the case after he was informed that she had revoked the authority of Ventures and, thereafter, asked for the documents in his possession.

The Heirs of Yabao still reiterated their motion to declare Van der Kolk in default during the December 20, 2004 hearing because no answer had yet been filed.

On March 7, 2005, Van der Kolk, through her new counsel, Atty. Eduardo Tibo (*Atty. Tibo*), filed her Answer<sup>[11]</sup> to the complaint which was appended to the Motion for

Allowance<sup>[12]</sup> To Belatedly File Defendant's Answer.

On December 4, 2006, the MTCC rendered its Decision,<sup>[13]</sup> declaring Van der Kolk in default giving the reason that her non-filing of an answer within the fresh 10-day period was deliberately calculated to delay the early termination of the case and resolving the case on the merits taking into account only the allegations of the complaint. The pertinent portions of the decision, including the dispositive portion, read:

Finding the Motion to Declare Defendant in Default for her failure to file her answer or any responsive pleading within the fresh period of ten (10) days given her in the Resolution of July 27, 2004, tenable, the Court hereby declares the said defendant in default, and considering the allegations of the complaint to contain clear allegations warranting the relief and claims prayed for therein, renders its judgment, declaring and ordering as follows:

1. That the plaintiffs are the lawful co-owners and possessors of the parcel of land designated as Lot 2473, situated at Brgy. Capoocan, Calbayog City, more particularly described in paragraph 3 of the complaint; and
2. The defendant and all persons claiming and/or acting under her and her command shall immediately vacate the premises in question mentioned in No. 1 hereof and restore the same to the plaintiffs;
3. To pay plaintiffs the amount of Php30,000.00 as attorney's fees; and
4. To pay the costs of suit.

SO ORDERED.<sup>[14]</sup>

Aggrieved, Van der Kolk appealed the MTCC decision before the Regional Trial Court, Branch 32, Calbayog City (RTC). On October 22, 2007, counsel for Van der Kolk received the notice of the RTC Clerk of Court requiring her to file a memorandum on appeal within 15 days from such receipt or until November 6, 2007. On November 5, 2007, Atty. Tibo moved for additional time of 30 days from November 6, 2007 alleging that he could not seasonably file the said pleading due to heavy pressures of work. The appeal memorandum was filed only on November 21, 2007.<sup>[15]</sup> On October 27, 2008, the Heirs of Yabao filed a Motion to Dismiss the appeal,<sup>[16]</sup> citing the failure of Van der Kolk to file the appeal memorandum within the 15-day reglementary period fixed under Section 7(b), Rule 40 of the Rules of Court.

On May 6, 2009, the RTC issued the Order<sup>[17]</sup> dismissing the appeal for failure of Van de Kolk to file the memorandum on appeal within the period mandated by the Rules of Court. The RTC considered the reasons advanced by her counsel in the motion for extension of time as not compelling enough to warrant a relaxation or suspension of the requirements of Section 7(b) of Rule 40. It added that the right to appeal is a statutory privilege and one who seeks to avail the same must comply

with the requirements of the statute or rules. The *fallo* of which reads:

WHEREFORE, for the foregoing reasons, defendant-appellant's appeal is hereby ordered DISMISSED.

No pronouncement as to costs.

SO ORDERED.<sup>[18]</sup>

Van der Kolk's motion for reconsideration of the above order was denied by the RTC for lack of merit in its Order,<sup>[19]</sup> dated August 24, 2009.

Unfazed, Van der Kolk filed a petition for review<sup>[20]</sup> under Rule 42 before the CA on the following grounds: 1] the MTCC did not acquire jurisdiction over her person because the summons was served upon Ventures, a non-party to the case; 2] Remedios Chan was not authorized to institute Civil Case No. 1184 in representation of the Heirs of Yabao; 3] the MTCC gravely abused its discretion in declaring her in default and in granting the execution of the December 4, 2006 Decision pending its appeal; and 4] the RTC erred in dismissing her appeal.

On May 28, 2012, the CA rendered the assailed decision granting the petition "*on grounds not raised herein but disclosed by the records.*"<sup>[21]</sup> It stated that the MTCC erred in granting the reliefs prayed for by the Heirs of Yabao because they were not warranted by their complaint. According to the CA, the MTCC should have required the Heirs of Yabao to present evidence *ex parte*, after it had declared Van der Kolk in default, to prove the allegations in the complaint. The CA adjudged as follows:

Hence, We find merit in this petition albeit not on the grounds relied on by petitioner. We rule that the respondents were not able to sufficiently prove by competent evidence their entitlement over the lot in issue and, therefore, the judgments of the lower courts should be reversed.

WHEREFORE, premises considered, the August 29, 2008 Decision of the Regional Trial Court, Branch 10 in Civil Case No. CEB-30866 is REVERSED and SET ASIDE. Likewise, the Resolution/Decision of the MTCC dated December 4, 2006 and Order dated July 30, 2007 are REVERSED and SET ASIDE. All other issuances relative to this case, including the writ of execution delivering possession to the plaintiffs-respondents are NULLIFIED. Civil Case No. 1184 is ordered DISMISSED for respondent's FAILURE to prove by the required quantum of evidence their entitlement to Lot No. 2473, without prejudice to the refiling of another case involving the same parties and property.

No pronouncement as to costs.

SO ORDERED.<sup>[22]</sup>

The motion for reconsideration filed by the Heirs of Yabao was denied by the CA in

its Resolution, dated May 2, 2013.

Hence, this petition.

#### **ISSUES:**

**IN REVERSING AND SETTING ASIDE THE 29 AUGUST 2008 DECISION OF THE REGIONAL TRIAL COURT RENDERED IN EXERCISE OF ITS APPELLATE JURISDICTION AND THE 04 DECEMBER 2006 RESOLUTION/DECISION OF THE MUNICIPAL TRIAL COURT IN CITIES, THE COURT OF APPEALS RENDERED ITS DECISION IN THE PETITION FOR REVIEW NOT IN ACCORDANCE WITH LAW AND APPLICABLE JURISPRUDENCE, IN THAT:**

**A. THE COURT OF APPEALS GRANTED THE RESPONDENT'S PETITION FOR REVIEW NOT BY PASSING UPON THE ISSUES RAISED IN THE SAID PETITION, BUT, BY RESOLVING TO GIVE DUE COURSE TO THE SAME ON THE BASIS OF GROUNDS PURPORTEDLY DISCLOSED BY THE RECORDS WHICH ARE EVEN INCONCLUSIVE AND HEARSAY.**

**B. THE HONORABLE COURT OF APPEALS FAILED TO RECOGNIZE THAT THE REGIONAL TRIAL COURT, IN THE EXERCISE OF ITS APPELLATE JURISDICTION, DID NOT COMMIT ANY ERROR, OR ACTED WITHOUT OR IN EXCESS OF JURISDICTION, NOR GRAVELY ABUSED ITS DISCRETION WHEN IT DISMISSED THE ORDINARY APPEAL FOR RESPONDENT'S FAILURE TO FILE HER MEMORANDUM ON APPEAL WITHIN THE REGLEMENTARY PERIOD, BUT, WAS ACTING IN ACCORDANCE WITH SECTION 7(b), RULE 40 OF THE RULES OF COURT.**

**C. THE COURT OF APPEALS GRAVELY ERRED IN SETTING ASIDE THE RESOLUTION DECREERING RESPONDENTS (AS PLAINTIFFS) AS THE LAWFUL CO-OWNERS AND POSSESSORS OF THE PROPERTY SUBJECT MATTER OF THE PRESENT CASE.**

**D. THE COURT OF APPEALS GRAVELY ERRED IN SETTING ASIDE THE RESOLUTION/DECISION RENDERED BY THE MTCC OR COURT A QUO OVER WHICH IT HAS NO APPELLATE JURISDICTION.<sup>[23]</sup>**

It is the stance of the petitioners, Heirs of Yabao, that the findings and conclusions of the CA are not in accord with law and applicable jurisprudence. They aver that the CA erred in holding that the MTCC should have required them to present evidence *ex parte* to substantiate their claims because under Section 3 of Rule 9, when a defendant is declared in default, the court has the option to either proceed to render judgment granting the claimant such relief as his pleading may warrant or require the claimant to adduce his evidence *ex parte*. In this case, the petitioners contend that the MTCC, in the exercise of its discretion, selected the first option. They stress that the CA erred when it set aside the December 4, 2006 MTCC decision because the CA had no appellate jurisdiction over the MTCC and could not