

## FIRST DIVISION

[ G.R. No. 164277, October 08, 2014 ]

**FE U. QUIJANO, PETITIONER, VS. ATTY. DARYLL A. AMANTE,  
RESPONDENT.**

### D E C I S I O N

**BERSAMIN, J.:**

Where the plaintiff does not prove her alleged tolerance of the defendant's occupation, the possession is deemed illegal from the beginning. Hence, the action for unlawful detainer is an improper remedy. But the action cannot be considered as one for forcible entry without any allegation in the complaint that the entry of the defendant was by means of force, intimidation, threats, strategy or stealth.

#### **Antecedents**

The petitioner and her siblings, namely: Eliseo, Jose and Gloria, inherited from their father, the late Bibiano Quijano, the parcel of land registered in the latter's name under Original Certificate of Title (OCT) No. 0-188 of the Registry of Deeds in Cebu City with an area of 15,790 square meters, more or less.<sup>[1]</sup> On April 23, 1990, prior to any partition among the heirs, Eliseo sold a portion of his share, measuring 600 square meters, to respondent Atty. Daryll A. Amante (respondent), with the affected portion being described in the deed of absolute sale Eliseo executed in the following manner:

A portion of a parcel of land located at the back of the Pleasant Homes Subdivision and also at the back of Don Bosco Seminary, Punta Princesa, Cebu City, to be taken from my share of the whole lot; the portion sold to Atty. Amante is only 600 square meters which is the area near the boundary facing the Pleasant Homes Subdivision, Cebu City.<sup>[2]</sup>

On July 25, 1991, Eliseo, sickly and in need of money, sold an additional 1/3 portion of his share in the property to the respondent, with their deed of absolute sale stating that the sale was with the approval of Eliseo's siblings, and describing the portion subject of the sale as:

That the portion covered under this transaction is Specifically located right at the back of the seminary facing Japer Memorial School and where the fence and house of Atty. Amante is located.<sup>[3]</sup>

On September 30, 1992, Fe, Eliseo, Jose and Gloria executed a deed of extrajudicial partition to divide their father's estate (consisting of the aforementioned parcel of

land) among themselves.<sup>[4]</sup> Pursuant to the deed extrajudicial partition, OCT No. 0-188 was cancelled, and on July 12, 1994 the Register of Deeds issued Transfer Certificate of Title (TCT) No. 6555, TCT No. 6556, TCT No. 6557 and TCT No. 6558<sup>[5]</sup> to the petitioner, Gloria, Jose, and Eliseo, respectively. The partition resulted in the portions earlier sold by Eliseo to the respondent being adjudicated to the petitioner instead of to Eliseo.<sup>[6]</sup>

Due to the petitioner's needing her portion that was then occupied by the respondent, she demanded that the latter vacate it. Despite several demands, the last of which was by the letter dated November 4, 1994,<sup>[7]</sup> the respondent refused to vacate, prompting her to file against him on February 14, 1995 a complaint for ejectment and damages in the Municipal Trial Court in Cities of Cebu City (MTCC), docketed as Civil Case No. R-34426.<sup>[8]</sup> She alleged therein that she was the registered owner of the parcel of land covered by TCT No. 6555, a portion of which was being occupied by the respondent, who had constructed a residential building thereon by the mere tolerance of Eliseo when the property she and her siblings had inherited from their father had not yet been subdivided, and was thus still co-owned by them; and that the respondent's occupation had become illegal following his refusal to vacate despite repeated demands.

The respondent denied that his possession of the disputed portion had been by mere tolerance of Eliseo. He even asserted that he was in fact the owner and lawful possessor of the property, having bought it from Eliseo; that the petitioner and her siblings could not deny knowing about the sale in his favor because they could plainly see his house from the road; and that the deed of absolute sale itself stated that the sale to him was with their approval, and that they had already known that his house and fence were existing; that before he purchased the property, Eliseo informed him that he and his co-heirs had already orally partitioned the estate of their father, and that the portion being sold to him was Eliseo's share; and that with his having already purchased the property before the petitioner acquired it under the deed of extrajudicial partition, she should respect his ownership and possession of it.<sup>[9]</sup>

### **Judgment of the MTCC**

On February 5, 1996, the MTCC rendered its decision in favor of the petitioner,<sup>[10]</sup> ruling that the deeds of sale executed by Eliseo in favor of the respondent did not have the effect of conveying the disputed property to him inasmuch as at the time of the sale, the parcel of land left by their father, which included the disputed property, had not yet been partitioned, rendering Eliseo a mere co-owner of the undivided estate who had no right to dispose of a definite portion thereof; that as a co-owner, Eliseo effectively conveyed to the respondent only the portion that would ultimately be allotted to him once the property would be subdivided; that because the disputed property was adjudicated to the petitioner under the deed of extrajudicial settlement and partition, she was its owner with the consequent right of possession; and that, as such, she had the right to demand that the respondent vacate the land.

The MTCC disposed as follows:

WHEREFORE, in view of all the foregoing premises, and on the basis thereof, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the defendant; to:

1) vacate from the portion, presently occupied by him and whereon his building stands, of that parcel of land located in Cebu City covered by TCT No. 6555 and registered in the name of the plaintiff; and to remove and/or demolish the building and all the structures that may have been built on said portion;

2) pay the plaintiff the rental of P1,000.00 a month for the portion in litigation from November 21, 1994 until such time that the defendant shall have vacated, and have removed all structures from said portion, and have completely restored possession thereof to the plaintiff; and

3) pay unto the plaintiff the sum of P10,000.00 as attorney's fees; and the sum of P5,000.00 for litigation expenses; and

4) to pay the costs of suit.

SO ORDERED.<sup>[11]</sup>

### **Decision of the RTC**

On appeal, the Regional Trial Court (RTC) reversed the judgment of the MTCC, and dismissed the complaint,<sup>[12]</sup> holding that the summary proceeding for ejectment was not proper because the serious question of ownership of the disputed property was involved, *viz*:

In the case at bar, by virtue of the deed of absolute sale executed by Eliseo Quijano, one of the co-heirs of Fe Quijano, in 1990 and 1991, the defendant Atty. Amante took possession of the portion in question and built his residential house thereat. It was only in 1992 that the heirs of Bibiano Quijano executed the deed of extrajudicial partition, and instead of giving to Eliseo Quijano the portion that he already sold to the defendant, the same was adjudicated to plaintiff, Fe Quijano to the great prejudice of the defendant herein who had been in possession of the portion in question since 1990 and which possession is not possession *de facto* but possession de jure because it is based on 2 deeds of conveyances executed by Eliseo Quijano. There is, therefore, a serious question of ownership involved which cannot be determined in a summary proceeding for ejectment. Since the defendant is in possession of the portion in question where his residential house is built for several years, and before the extrajudicial partition, the possession of the defendant, to repeat, is one of possession de jure and the plaintiff cannot eject the defendant in a summary proceeding for ejectment involving only possession *de facto*. What the plaintiff should have done was to file an action publiciana or action reivindicatoria before the appropriate court for recovery of possession and ownership. However, since there is a pending complaint for quieting of title filed by the defendant against the

plaintiff herein before the Regional Trial Court, the matter of ownership should be finally resolved in said proceedings.<sup>[13]</sup>

Undaunted, the petitioner moved for reconsideration, but the RTC denied her motion on November 13, 1996.<sup>[14]</sup>

### **Decision of the CA**

The petitioner appealed to the CA by petition for review.

On May 26, 2004, the CA promulgated its decision,<sup>[15]</sup> affirming the decision of the RTC, and dismissing the case for ejectment, but on the ground that the respondent was either a co-owner or an assignee holding the right of possession over the disputed property.

The CA observed that the RTC correctly dismissed the ejectment case because a question of ownership over the disputed property was raised; that the rule that inferior courts could pass upon the issue of ownership to determine the question of possession was well settled; that the institution of a separate action for quieting of title by the respondent did not divest the MTCC of its authority to decide the ejectment case; that Eliseo, as a co-owner, had no right to sell a definite portion of the undivided estate; that the deeds of sale Eliseo executed in favor of the respondent were valid only with respect to the alienation of Eliseo's undivided share; that after the execution of the deeds of sale, the respondent became a co-owner along with Eliseo and his co-heirs, giving him the right to participate in the partition of the estate owned in common by them; that because the respondent was not given any notice of the project of partition or of the intention to effect the partition, the partition made by the petitioner and her co-heirs did not bind him; and that, as to him, the entire estate was still co-owned by the heirs, giving him the right to the co-possession of the estate, including the disputed portion.

### **Issues**

The petitioner has come to the Court on appeal by *certiorari*,<sup>[16]</sup> contending that the CA grossly erred in holding that the respondent was either a co-owner or an assignee with the right of possession over the disputed property.<sup>[17]</sup>

The petitioner explains that the respondent, being a lawyer, knew that Eliseo could not validly transfer the ownership of the disputed property to him because the disputed property was then still a part of the undivided estate co-owned by all the heirs of the late Bibiano Quijano; that the respondent's knowledge of the defect in Eliseo's title and his failure to get the co-heirs' consent to the sale in a registrable document tainted his acquisition with bad faith; that being a buyer in bad faith, the respondent necessarily became a possessor and builder in bad faith; that she was not aware of the sale to the respondent, and it was her ignorance of the sale that led her to believe that the respondent was occupying the disputed property by the mere tolerance of Eliseo; that the partition was clearly done in good faith; and that she was entitled to the possession of the disputed property as its owner, consequently giving her the right to recover it from the respondent.<sup>[18]</sup>