

## FIRST DIVISION

[ G.R. No. 184079, April 17, 2013 ]

**SPS. ARMANDO SILVERIO, SR. AND REMEDIOS SILVERIO,  
PETITIONERS, VS. SPS. RICARDO AND EVELYN MARCELO,  
RESPONDENTS.**

[G.R. No. 184490]

**SPS. EVELYN AND RICARDO MARCELO, PETITIONERS, VS. SPS.  
ARMANDO SILVERIO, SR. AND REMEDIOS SILVERIO,  
RESPONDENTS.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

Before the Court are twin petitions for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

The petition<sup>[1]</sup> in G.R. No. 184079 was filed by petitioners spouses Armando Silverio, Sr. and Remedios Silverio to assail the Decision<sup>[2]</sup> dated March 18, 2008 and Resolution<sup>[3]</sup> dated August 12, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 98105. The CA had affirmed the Decision<sup>[4]</sup> dated November 7, 2006 of the Regional Trial Court (RTC) of Parañaque City, Branch 258, in Civil Case No. 06-0099, which in turn, affirmed the Decision<sup>[5]</sup> dated September 6, 2005 of the Metropolitan Trial Court (MeTC), Branch 78 in Civil Case No. 2004-271. The Parañaque MeTC, Branch 78, had ordered petitioners to demolish the improvements they have introduced in Lot No. 3976, Parañaque Cad. 299 (Lot 3976), to peacefully surrender possession of the same to respondents spouses Ricardo and Evelyn Marcelo and to pay P1,000 per month from May 20, 2004 until they have done so. The court *a quo* likewise directed petitioners to pay respondents P20,000 as attorney's fees plus P3,000 per appearance of the latter's counsel and costs.

Meanwhile, the petition<sup>[6]</sup> in G.R. No. 184490 was filed by petitioners spouses Evelyn and Ricardo Marcelo to contest the Decision<sup>[7]</sup> dated March 27, 2008 and Resolution<sup>[8]</sup> dated September 1, 2008 of the CA in CA-G.R. SP No. 98713. The CA had reversed and set aside the Decision<sup>[9]</sup> dated December 29, 2006 of the RTC of Parañaque City, Branch 257, in Civil Case No. 06-0237, which in turn, affirmed *in toto* the Decision<sup>[10]</sup> dated April 25, 2006 of the MeTC of Parañaque City, Branch 77, in Civil Case No. 2004-269. The Parañaque MeTC, Branch 77, had ordered respondents Armando Silverio, Sr. and Remedios Silverio to vacate the Marcelo Compound in Lot 3976 and to surrender possession thereof to petitioners. The court *a quo* likewise directed respondents to pay petitioners P1,000 per month from May 20, 2004 until they have completely moved out of said property, P10,000 as

attorney's fees and costs.

The factual antecedents of these consolidated petitions are culled from the records.

**G.R. No. 184079**

On July 12, 2004, respondents spouses Ricardo and Evelyn Marcelo filed a Complaint<sup>[11]</sup> for unlawful detainer against petitioners spouses Armando Silverio, Sr., and his mother, Remedios Silverio. The case was docketed as Civil Case No. 2004-271 before the MeTC of Parañaque City, Branch 78.

Respondents represented themselves as the lawful owners and possessors of Lot 3976, a residential land with an area of 5,004 square meters located in Marcelo Compound, Philip St. Ext., Multinational Village, Parañaque City. They claimed ownership over said lot by virtue of a Decision<sup>[12]</sup> dated December 12, 1996 of the Department of Environment and Natural Resources (DENR) in DENR-NCR Case No. 95-253 and Tax Declaration No. E-008-19942.<sup>[13]</sup>

Respondents alleged that sometime in May 1987, petitioners sought permission to construct a house within Lot 3976. Respondents agreed on the condition that petitioners will vacate the moment they need the land. Subsequently, respondents made an oral demand on petitioners to leave the house and return possession of the lot within 15 days from notice. In a Letter<sup>[14]</sup> dated May 18, 2004, respondents reiterated their demand for petitioners to demolish the house, vacate the 120-square-meter lot on which the house stands and to pay P1,000 as rent until they have done so.

As respondents' demands remained unheeded, they filed a complaint for unlawful detainer against petitioners before *Barangay Moonwalk* in Parañaque City. The case was docketed as Barangay Case No. 05/04-051. On July 24, 2004, Atty. Wendell E. Coronel, *Lupon/Pangkat* Secretary of Barangay Moonwalk issued a Certification to File Action<sup>[15]</sup> in said case upon the reasons "Failed or refused to accept/obey summons to appear for hearing" and "Settlement has been repudiated."

In their Answer,<sup>[16]</sup> petitioners sought the dismissal of the complaint on the ground that respondents had filed a similar case against them before the MeTC of Parañaque City, Branch 77, docketed as Civil Case No. 2004-269. The latter case is the subject of the petition in G.R. No. 184490.

On September 6, 2005, the MeTC of Parañaque City, Branch 78, rendered judgment in favor of respondents Marcelo. The court *a quo* ruled out forum shopping upon finding that the house subject of the present case is different from that in Civil Case No. 2004-269. The structure involved in the latter case was "originally occupied by [petitioners'] relative and later taken over by [them]"<sup>[17]</sup> while the house subject of the present case was constructed by petitioners themselves. The MeTC held that petitioners failed to refute the character of their possession as merely tolerated by respondents and they became deforciant upon the latter's demand for them to vacate the subject premises. The court ordered petitioners to pay respondents P1,000 as reasonable compensation for the use and occupation of the premises, attorney's fees of P20,000 and P3,000 per appearance of counsel for respondents.

On appeal, the Parañaque RTC, Branch 258, affirmed the ruling of the MeTC. In a Decision dated November 7, 2006, the RTC sustained respondents' right to bring action to evict petitioners from the contested property. It found petitioners' claim of ownership unsubstantiated and their defense of forum shopping without merit since the properties involved in Civil Case Nos. 2004-269 and 2004-271 are different from each other.

Petitioners moved for reconsideration but their motion was denied in an Order<sup>[18]</sup> dated February 5, 2007. Thereafter, petitioners filed a Petition for Review<sup>[19]</sup> under Rule 42 of the Rules with the CA.

In the assailed Decision dated March 18, 2008, the appellate court affirmed *in toto* the RTC judgment. It found no basis to dismiss respondents' complaint based on either forum shopping or splitting a cause of action. The CA disregarded petitioners' argument that the subject property is public land in view of their admission in their Answer<sup>[20]</sup> that respondents are the owners and possessors thereof.

Petitioners filed a Motion for Reconsideration<sup>[21]</sup> which the CA denied in a Resolution<sup>[22]</sup> dated August 12, 2008.

### **G.R. No. 184490**

On July 12, 2004, petitioners spouses Ricardo and Evelyn Marcelo filed a Complaint<sup>[23]</sup> for unlawful detainer against respondents Armando Silverio, Sr., and Remedios Silverio. The case was docketed as Civil Case No. 2004-269 before the MeTC of Parañaque City, Branch 77.

Petitioners' Complaint bore essentially the same allegations as their Complaint in Civil Case No. 2004-271 save for two allegations: (1) respondents requested petitioners' permission to construct a house in Lot 3976 in May 1986; and (2) respondents "*improved the house and even operated a sari-sari store*"<sup>[24]</sup> in Marcelo Compound.

In their Answer<sup>[25]</sup> dated August 3, 2004, respondents belied petitioners' claim of exclusive ownership and possession of the subject property. According to respondents, the land in dispute was first occupied by Graciano Marcelo along with his sons Armando Marcelo, petitioner Ricardo Marcelo and Florante Marcelo. Respondents anchor their right of possession on Florante Marcelo, in his capacity as an ostensible co-owner of the contested property. Florante Marcelo is the husband of Marilou Silverio, the daughter of respondents spouses Silverio.

Subsequently, petitioners submitted an Amended Complaint<sup>[26]</sup> dated August 14, 2004, in which they clarified that it was the spouses Florante Marcelo and Marilou Silverio, and not the respondents, who sought their consent to build a house and live in Marcelo Compound. Petitioners recounted that it was after Florante Marcelo and Marilou Silverio separated in 1998 and abandoned said house that respondents asked for permission to stay therein. Petitioners agreed upon an understanding that respondents shall "dismantle said house the moment [petitioners] need the premises."<sup>[27]</sup> However, respondents refused to move out and surrender possession

of the subject property upon demand.

In a Demand Letter<sup>[28]</sup> dated May 18, 2004, petitioners insisted on their demand for respondents to demolish the house they built, vacate the 80-square-meter lot on which it stands, to surrender peaceful possession of the same and to pay P1,000 as rent until they have done so.

As respondents ignored petitioners' demands, the latter brought a complaint for unlawful detainer against respondents before *Barangay* Moonwalk in Parañaque City. The case was docketed as Barangay Case No. 05/04-070. On July 24, 2004, Atty. Wendell E. Coronel, Lupon/Pangkat Secretary of Barangay Moonwalk issued a Certification to File Action<sup>[29]</sup> in said case upon the reasons "Failed or refused to accept/obey summons to appear for hearing" and "Settlement has been repudiated."

In an Answer<sup>[30]</sup> dated September 8, 2004, respondents assailed the DENR Decision dated December 12, 1996 for supposedly awarding ownership of the subject property to petitioners. According to respondents, Graciano Marcelo, Sr., petitioner Ricardo Marcelo's father, was a tenant of Fabian Lumbos before the latter sold his land to Mike Velarde. Subsequently, Velarde fenced the subject property, which respondents insist is not part of the parcels that Lumbos sold to Velarde. Upon the belief that Lot 3976 is still government property, the sons of Graciano Marcelo, Sr., including petitioner Ricardo Marcelo and Florante Marcelo, divided the land among themselves and occupied the same. On the tract allotted to Florante, he took in respondent Remedios Silverio to live with him and his wife, Marilou.

Respondents averred that it was in 1997 when the Marcelos conceived the idea of applying for a sales patent over Lot 3976 with the DENR. The Marcelo siblings appointed petitioner Ricardo Marcelo to file the Miscellaneous Sales Application (MSA) in their behalf, sharing the expenses among themselves. However, it was not until later that the Marcelo siblings learned that Ricardo had filed the application in his name alone. Respondents revealed that Ricardo had sold several portions of Lot 3976 even before he could apply for a sales patent thereon.

On February 3, 2005, respondents filed a Supplemental Answer<sup>[31]</sup> in which they charged petitioners with forum shopping for filing another ejectment case against them, docketed as Civil Case No. 2004-271 before Branch 78 of the Parañaque MeTC.

In a Decision dated April 25, 2006, the MeTC of Parañaque City, Branch 77, ruled for petitioners Marcelo. The court *a quo* ordered respondents to vacate the subject property, to surrender peaceful possession thereof to petitioners, to give reasonable rent from May 20, 2004 until they have moved out and to pay attorney's fees and costs.

On the basis of the Decision dated December 12, 1996 of the DENR, the MeTC declared petitioners the owners of the subject property, with concomitant right to possess it. The court found no evidence to support respondents' possessory claim and considered their occupation of the subject land as merely tolerated by petitioners. The court *a quo* discounted forum shopping upon finding that the house concerned in Civil Case No. 2004-271 was built by petitioners whereas the house in this case was only taken over by them.

In a Decision dated December 29, 2006, the Parañaque RTC, Branch 257, affirmed *in toto* the MeTC ruling. The RTC declared petitioners as the lawful possessors of the subject property by virtue of Tax Declaration No. E-008-19942 in the name of petitioner Ricardo Marcelo. It explained that Florante Marcelo's affinity with petitioner Ricardo, alone, did not automatically make him a co-owner of the contested property.

Dissatisfied, respondents elevated the case to the CA through a petition<sup>[32]</sup> for review under Rule 42.

In the assailed Decision dated March 27, 2008, the CA reversed and set aside the RTC judgment. It brushed aside the alleged procedural infirmities that attended the filing of respondents' petition for being trivial and insufficient to warrant its dismissal. The appellate court found petitioners guilty of forum shopping and splitting of a cause of action. It observed that the two cases for unlawful detainer filed by petitioners are based on a single claim of ownership over Lot 3976 which embraces the subject properties. The CA explains that an adjudication in either suit that petitioners are entitled to the possession of Lot No. 3976 would necessarily mean *res judicata* in the other case. The appellate court noted that the demand letter in both cases was served on respondents on the same day.

### **Issues/Assignment of Errors**

On September 29, 2008, spouses Armando Silverio, Sr. and Remedios Silverio filed a petition for review on certiorari which was docketed as G.R. No. 184079. Said petition, which seeks to reverse and set aside the Decision dated March 18, 2008 and Resolution dated August 12, 2008 of the CA in CA-G.R. SP No. 98105, assigns a lone error:

THE COURT OF APPEALS, WITH ALL DUE RESPECT, SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN DISMISSING THE APPEAL INTERPOSED BY PETITIONERS IN THE ABOVE-ENTITLED CASE ON TECHNICALITIES AND HAS DECIDED A QUESTION OF SUBSTANCE, NOT THERETOFORE DETERMINED BY THE SUPREME COURT, AND/OR HAS DECIDED IT IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT.<sup>[33]</sup>

A few days later, on October 2, 2008, spouses Evelyn and Ricardo Marcelo filed a Petition for Review on Certiorari which was docketed as G.R. No. 184490. Said petition, in turn, contests the Decision dated March 27, 2008 and the Resolution dated September 1, 2008 of the CA in CA-G.R. SP No. 98713. Condensed, the issues presented by petitioners are as follows: (1) Whether the filing of separate complaints for unlawful detainer against the same lessees who refuse to vacate, on demand, two different houses constitutes forum shopping and splitting of a cause of action; (2) Whether the CA erred in dismissing Civil Case No. 2004-269; and (3) Whether the instant petition was filed seasonably.

Essentially, the questions that must be addressed in the consolidated petitions before us are common: (1) Are the spouses Ricardo and Evelyn Marcelo guilty of