

SECOND DIVISION

[G.R. No. 151369, March 23, 2011]

ANITA MONASTERIO-PE AND THE SPOUSES ROMULO TAN AND EDITHA PE-TAN, PETITIONERS, VS. JOSE JUAN TONG, HEREIN REPRESENTED BY HIS ATTORNEY-IN-FACT, JOSE Y. ONG, RESPONDENT.

D E C I S I O N

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal and nullification of the Decision^[1] and Order,^[2] respectively dated October 24, 2001 and January 18, 2002, of the Regional Trial Court (RTC) of Iloilo City, Branch 24.

The instant petition stemmed from an action for ejectment filed by herein respondent Jose Juan Tong (Tong) through his representative Jose Y. Ong (Ong) against herein petitioners Anita Monasterio-Pe (Anita) and the spouses Romulo Tan and Editha Pe-Tan (Spouses Tan). The suit was filed with the Municipal Trial Court in Cities (MTCC), Branch 3, Iloilo City and docketed as Civil Case No. 2000(92).

In the Complaint, it was alleged that Tong is the registered owner of two parcels of land known as Lot Nos. 40 and 41 and covered by Transfer Certificate of Title (TCT) Nos. T-9699 and T-9161, together with the improvements thereon, located at *Barangay Kauswagan, City Proper, Iloilo City*; herein petitioners are occupying the house standing on the said parcels of land without any contract of lease nor are they paying any kind of rental and that their occupation thereof is simply by mere tolerance of Tong; that in a letter dated December 1, 1999, Tong demanded that respondents vacate the house they are occupying, but despite their receipt of the said letter they failed and refused to vacate the same; Tong referred his complaint to the *Lupon of Barangay Kauswagan*, to no avail.^[3]

In their Answer with Defenses and Counterclaim, herein petitioners alleged that Tong is not the real owner of the disputed property, but is only a dummy of a certain alien named Ong Se Fu, who is not qualified to own the said lot and, as such, Tong's ownership is null and void; petitioners are the true and lawful owners of the property in question and by reason thereof they need not lease nor pay rentals to anybody; a case docketed as CA-G.R. CV No. 52676 (RTC Civil Case No. 20181) involving herein petitioner Pe and respondent is pending before the Court of Appeals (CA) where the ownership of the subject property is being litigated; respondent should wait for the resolution of the said action instead of filing the ejectment case; petitioners also claimed that there was, in fact, no proper *barangay* conciliation as Tong was bent on filing the ejectment case before conciliation proceedings could be validly made.^[4]

On March 19, 2001, the MTCC rendered judgment in favor of herein respondent, the dispositive portion of which reads as follows:

WHEREFORE, judgment is rendered, finding the defendants Anita Monasterio-Pe, and Spouses Romulo Tan and Editha Pe-Tan to be unlawfully withholding the property in litigation, *i.e.*, Lot. Nos. 40 and 41 covered by TCT Nos. T-9699 and 9161, respectively, together with the buildings thereon, located at Brgy. Kauswagan, Iloilo City Proper, and they are hereby ordered together with their families and privies, to vacate the premises and deliver possession to the plaintiff and/or his representative.

The defendants are likewise ordered to pay plaintiff reasonable compensation for the use and occupancy of the premises in the amount of P15,000.00 per month starting January, 2000 until they actually vacate and deliver possession to the plaintiff and attorney's fees in the amount of P20,000.00.

Costs against the defendants.

SO DECIDED.^[5]

Aggrieved by the above-quoted judgment, petitioners appealed the decision of the MTCC with the RTC of Iloilo City.

In its presently assailed Decision, the RTC of Iloilo City, Branch 24 affirmed in its entirety the appealed decision of the MTCC.

Hence, the instant petition for review on *certiorari*.

At the outset, it bears emphasis that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised by the parties and passed upon by this Court.^[6] It is a settled rule that in the exercise of this Court's power of review, it does not inquire into the sufficiency of the evidence presented, consistent with the rule that this Court is not a trier of facts.^[7] In the instant case, a perusal of the errors assigned by petitioners would readily show that they are raising factual issues the resolution of which requires the examination of evidence. Certainly, issues which are being raised in the present petition, such as the questions of whether the issue of physical possession is already included as one of the issues in a case earlier filed by petitioner Anita and her husband, as well as whether respondent complied with the law and rules on *barangay* conciliation, are factual in nature.

Moreover, the appeal under Rule 45 of the said Rules contemplates that the RTC rendered the judgment, final order or resolution acting in its original jurisdiction.^[8] In the present case, the assailed Decision and Order of the RTC were issued in the exercise of its appellate jurisdiction.

Thus, petitioners pursued the wrong mode of appeal when they filed the present petition for review on *certiorari* with this Court. Instead, they should have filed a

petition for review with the CA pursuant to the provisions of Section 1,^[9] Rule 42 of the Rules of Court.

On the foregoing bases alone, the instant petition should be denied.

In any case, the instant petition would still be denied for lack of merit, as discussed below.

In their first assigned error, petitioners contend that the RTC erred in holding that the law authorizes an attorney-in-fact to execute the required certificate against forum shopping in behalf of his or her principal. Petitioners argue that Tong himself, as the principal, and not Ong, should have executed the certificate against forum shopping.

The Court is not persuaded.

It is true that the first paragraph of Section 5,^[10] Rule 7 of the Rules of Court, requires that the certification should be signed by the "petitioner or principal party" himself. The rationale behind this is because only the petitioner himself has actual knowledge of whether or not he has initiated similar actions or proceedings in different courts or agencies.^[11] However, the rationale does not apply where, as in this case, it is the attorney-in-fact who instituted the action.^[12] Such circumstance constitutes reasonable cause to allow the attorney-in-fact to personally sign the Certificate of Non-Forum Shopping. Indeed, the settled rule is that the execution of the certification against forum shopping by the attorney-in-fact is not a violation of the requirement that the parties must personally sign the same.^[13] The attorney-in-fact, who has authority to file, and who actually filed the complaint as the representative of the plaintiff, is a party to the ejectment suit.^[14] In fact, Section 1,^[15] Rule 70 of the Rules of Court includes the representative of the owner in an ejectment suit as one of the parties authorized to institute the proceedings. In the present case, there is no dispute that Ong is respondent's attorney-in-fact. Hence, the Court finds that there has been substantial compliance with the rules proscribing forum shopping.

Petitioners also aver that the certificate against forum shopping attached to the complaint in Civil Case No. 2000(92) falsely stated that there is no other case pending before any other tribunal involving the same issues as those raised therein, because at the time the said complaint was filed, Civil Case No. 20181 was, in fact, still pending with the CA (CA-G.R. CV No. 52676), where the very same issues of ejectment and physical possession were already included.

Corollarily, petitioners claim that the MTCC has no jurisdiction over Civil Case No. 2000(92) on the ground that the issue of physical possession raised therein was already included by agreement of the parties in Civil Case No. 20181. As such, petitioners assert that respondent is barred from filing the ejectment case, because in doing so he splits his cause of action and indirectly engages in forum shopping.

The Court does not agree.

The Court takes judicial notice of the fact that the disputed properties, along with

three other parcels of land, had been the subject of two earlier cases filed by herein petitioner Anita and her husband Francisco against herein respondent and some other persons. The first case is for specific performance and/or rescission of contract and reconveyance of property with damages. It was filed with the then Court of First Instance (CFI) of Iloilo City and docketed as Civil Case No. 10853. The case was dismissed by the CFI. On appeal, the Intermediate Appellate Court (IAC) upheld the decision of the trial court. When the case was brought to this Court,^[16] the decision of the IAC was affirmed. Subsequently, the Court's judgment in this case became final and executory per Entry of Judgment issued on May 27, 1991.

Subsequently, in 1992, the Spouses Pe filed a case for nullification of contract, cancellation of titles, reconveyance and damages with the RTC of Iloilo City. This is the case presently cited by petitioners. Eventually, the case, docketed as Civil Case No. 20181, was dismissed by the lower court on the ground of *res judicata*. The RTC held that Civil Case No. 10853 serves as a bar to the filing of Civil Case No. 20181, because both cases involve the same parties, the same subject matter and the same cause of action. On appeal, the CA affirmed the dismissal of Civil Case No. 20181. Herein petitioner Anita assailed the judgment of the CA before this Court, but her petition for review on *certiorari* was denied *via* a Resolution^[17] dated January 22, 2003. On June 25, 2003, the said Resolution became final and executory. The Court notes that the case was disposed with finality without any showing that the issue of ejectment was ever raised. Hence, respondent is not barred from filing the instant action for ejectment.

In any case, it can be inferred from the judgments of this Court in the two aforementioned cases that respondent, as owner of the subject lots, is entitled to the possession thereof. Settled is the rule that the right of possession is a necessary incident of ownership.^[18] Petitioners, on the other hand, are consequently barred from claiming that they have the right to possess the disputed parcels of land, because their alleged right is predicated solely on their claim of ownership, which is already effectively debunked by the decisions of this Court affirming the validity of the deeds of sale transferring ownership of the subject properties to respondent.

Petitioners also contend that respondent should have filed an *accion publiciana* and not an unlawful detainer case, because the one-year period to file a case for unlawful detainer has already lapsed.

The Court does not agree.

Sections 1 and 2, Rule 70 of the Rules of Court provide:

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,