

## THIRD DIVISION

[ G.R. No. 165769, December 12, 2011 ]

**EDITO PAGADORA, PETITIONER, VS. JULIETA S. ILAO,  
RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

Adventitious resort to technicality resulting in the dismissal of cases is disfavored because litigations must as much as possible be decided on the merits and not on technicalities.

This is a petition for review under Rule 45, assailing the twin Resolutions <sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 83933, <sup>[2]</sup> dated June 8, 2004 <sup>[3]</sup> and October 20, 2004. <sup>[4]</sup> The former is a minute resolution that dismissed on technicality herein petitioner's appeal from the Judgment <sup>[5]</sup> rendered by Regional Trial Court of San Mateo, Rizal, Branch 75 in Civil Case No. 1581-01-SM. In turn, said judgment reversed the ruling of the Metropolitan Trial Court (MeTC) of Rodriguez, Rizal in Civil Case No. 1083, one for forcible entry filed by herein respondent Julieta Ilaog against petitioner Edito Pagadora. The second assailed Resolution denied reconsideration.

In November 1997, respondent Julieta Ilaog acquired, under a Contract to Sell, <sup>[6]</sup> a 5,148 sq m piece of land <sup>[7]</sup> in Burgos, Rodriguez, Rizal. The contract stipulated that the balance of the purchase price was payable upon proof by the vendee that the boundaries of the property had already been relocated and that the fence thereon had been constructed. <sup>[8]</sup> Hence, immediately after the sale, respondent as vendee had commissioned the survey of the property, but the work had been stalled because, on several occasions, the occupant of the adjoining lot, herein petitioner Edito Pagadora, had allegedly prevented the surveyor from completing the task. When at length the work was finished, respondent then sought to fence off the property yet again, the work stood to a halt because petitioner, as was the case during the survey, allegedly hindered respondent's workers from completing the work and even threatened them with bodily harm. <sup>[9]</sup> Hence, on March 24, 1998, respondent filed a Complaint <sup>[10]</sup> for forcible entry against petitioner before the MeTC, Rodriguez, Rizal.

It appears that the survey commissioned by respondent revealed that a portion of her property adjoining the land occupied by petitioner was lying within the perimeter fence of the latter, fenced in as it was by galvanized metal sheets. <sup>[11]</sup> This 482-square-meter portion turns out to be claimed by petitioner as part of the entire landholding which his wife had acquired supposedly as inheritance. In his Answer to the complaint, petitioner denied having forcibly entered the disputed property as alleged, and asserted that it has always been in his and his family's open and

peaceful possession since 1986, it forming part of the landholding derived by his wife by succession from her parents Julian Guardiano and Sabina Jacobe. He pointed out that the complaint was infirm, lacking as it did an exact reference on when the alleged forcible entry took place, and also because it did not state that respondent had been in physical possession of the disputed property prior to him. Accordingly, he prayed for the dismissal of the case as the controversy did not fall under the MeTC's jurisdiction, the allegations in the complaint being insufficient to constitute forcible entry. [12]

At the pretrial, respondent moved that a court-appointed surveyor from the Land Registration Authority (LRA) conduct an actual ground verification survey of the two subject properties. [13] Petitioner opposed the move based on his primal belief that the MeTC did not have jurisdiction over the controversy. [14] Resolving the motion, the court directed the conduct of a simultaneous survey of the subject properties, and declared that where the existing common boundary would coincide with the result of the survey then the same should be respected. [15] For this purpose, it subsequently ordered the LRA to provide one surveyor. [16] Of this order, petitioner sought reconsideration. [17] Meantime, Engineer Porfirio Encisa of the LRA was designated to perform the survey. [18]

Meantime, pretrial terminated without the parties arriving at a settlement, and upon stipulation of the fact that their properties were adjacent to each other, petitioner and respondent were directed to submit their position paper. [19] Defendant also attached a copy of the Original Certificate of Title (OCT) [20] of the land he occupied in the name of Sabina Jacobe as well as a certified true copy of the 1958 survey of the land. [21] Apparently, respondent did not file her position paper. Nonetheless, the case was then deemed submitted for decision.

On September 18, 2000, the MeTC rendered its Decision [22] dismissing the complaint for respondent's failure to establish her cause of action for forcible entry. The MeTC, finding that respondent had failed to discharge the burden of proving that petitioner had encroached on the subject property, disposed of the case as follows:

WHEREFORE, x x x the Court below has no choice but to dismiss as it hereby dismisses, the instant complaint for failure of plaintiff to establish its (sic) cause of action and prevail with the evidence it (she) had against the defendant.

No pronouncement as to cost.

SO ORDERED. [23]

On appeal, the RTC noted that while the MeTC's decision was dated September 18, 2000, the report [24] of LRA Engineer Encisa, which formed part of the records transmitted to it, was stamped as received by the MeTC on October 2, 2000, although the report itself was dated October 5, 2000 and that the copy of said decision was served by mail on the parties on October 31, 2000. It pointed out that Engr. Encisa's report was likely to affect the proper resolution of the case. Hence, it

ordered the remand of the case to the MeTC for the determination of the "existence, validity/admissibility and consideration of the said report." [25]

Forthwith, the MeTC heard the testimony of Engr. Encisa, who affirmed his authorship of the report as well as the fact that the same was based on the verification/relocation survey ordered by the MeTC with the agreement of both parties. The survey, he adds, was necessary to determine the actual boundaries of the properties involved and to ascertain whether petitioner indeed encroached on respondent's property. He also explained that the apparent antedating of the report was merely a typographical error. [26] None of the parties objected to the admission of the report; hence, the case was submitted for resolution. [27]

On May 12, 2003, the MeTC issued an Order declaring that it found no basis to abandon its earlier decision in the case.

The MeTC decision, however, was reversed by the RTC. In its January 12, 2004 Decision, [28] it held that:

WHEREFORE, premises considered, judgment is hereby rendered by this Court reversing the Decision of the MeTC of Rodriguez, Rizal dated September 18, 2000 and ordering:

1. the defendant, Edito Pagadora, to immediately vacate the portion of land that forms part of the property of the plaintiff to the extent of 482 square meters and surrender possession of the same to the plaintiff;
2. to immediately remove the galvanized sheets on the portion of the property encroaching on the property of the plaintiff; and
3. to pay the amount of P30,000.00 as attorney's fees.

SO ORDERED. [29]

Petitioner sought reconsideration, [30] but the same was denied. [31] He then elevated the matter to the Court of Appeals which only made short shrift of the appeal for two reasons: *first*, the petition itself does not supposedly contain a written explanation on why a copy thereof was served on respondent Ilao by registered mail, instead of by the preferred mode of personal service in accordance with Section 11, Rule 13 of the Rules of Court and, *second*, the attached verification did not comply with Section 4, Rule 7, as amended by A.M. No. 00-2-10-SC. [32]

Petitioner sought reconsideration, but it was denied by a Resolution dated October 20, 2004 for lack of merit. [33]

Petitioner now assails the outright dismissal of his petition for review on a technicality, and advocates for a liberal interpretation of the rules of procedure to better serve the ends of justice. [34] He points out that, contrary to the appellate court's observation, his petition contained an adequate explanation why a copy thereof was served on respondent by registered mail instead of by personal service which appears in the last two pages [35] of his petition, except only that the

pleading he served is erroneously described as a "Manifestation and Motion to Dismiss" instead of "Petition for Review" – an inadvertent error caused by the mere oversight of his counsel. [36] As to his defective verification, petitioner explains that the allegations in his petition for review are nevertheless based on authentic records comprising of all the relevant documents annexed to it, and that pertinent portions of these documents have likewise been reproduced in the petition itself. He explains that financial constraints had prevented him from having all the documents photocopied and certified by the lower court, and that besides, he had also anticipated the consequent elevation of the records to the appellate court. [37]

On the substantive aspect, petitioner believes the Court of Appeals to have erred in finding no merit in his appeal and in holding that the issues raised therein are too insubstantial to require consideration. Consistent is his stance that the MeTC lacked the jurisdiction over the controversy. He also harps on respondent's failure to establish her cause of action below and, particularly, to prove that she had prior physical possession of the disputed property prior to the act of the supposed dispossession, which likewise has not been established before the ejectment court. Again, he points out that on the contrary, it was he who has been in actual and continuous possession of the property since 1986, and denies having wrestled possession from respondent by force, intimidation, threat, strategy and stealth as alleged. [38] In this connection, he laments that respondent's Contract to Sell, allegedly an unregistered instrument, would vest title only on full payment of the purchase price and that the same hardly proves prior possession in respondent's favor because it was executed only in 1997 – or way further in time than when he himself had established possession of the disputed property. [39]

Petitioner likewise assails the report of Engr. Encisa of the LRA as it hardly constitutes evidence of forcible entry. He opines that the RTC erred in reversing the judgment of the MeTC only on the basis of the said report. He posits that the survey, against which he had registered his objections, was not the survey contemplated in the MeTC's February 8, 2003 Order, and alleges that it was conducted by Engr. Encisa without his participation. [40]

Respondent stands by the Court of Appeals' ruling. In her rather non-extensive Comment, she reiterates that no special reason exists to warrant a review of the RTC's decision in this case, and that the violations committed by petitioner of the rules on verification and of service of pleadings are by all means fatal to his cause. [41]

We shall first address the procedural facet of this case.

The Court finds that indeed the verification on page 24 of herein petitioner's petition for review filed with the Court of Appeals – in which he attested among others that the statements therein were "true and correct to the best of [his] personal knowledge and honest belief" [42] – is defective and non-compliant with Section 4, [43] Rule 7 of the Rules of Court, which requires the affiant to attest the allegations in his petition to be true and correct of his personal knowledge or based on authentic records. Nevertheless, in his Motion for Reconsideration of the June 8, 2004 Resolution dismissing said petition, petitioner, in a *bona fide* attempt to rectify his initial mistake, has actually attached on page 6 [44] thereof another verification

which in all respects complies with the requirements of the aforementioned rule.

It is settled that liberal construction of the rules may be invoked in situations where there may be some excusable formal deficiency or error in a pleading, provided that the same does not subvert the essence of the proceeding and it at least connotes a reasonable attempt at compliance with the rules. [45] Besides, fundamental is the precept that rules of procedure are meant not to thwart but to facilitate the attainment of justice; hence, their rigid application may, for deserving reasons, be subordinated by the need for an apt dispensation of substantial justice in the normal course. They ought to be relaxed when there is subsequent or even substantial compliance, [46] consistent with the policy of liberality espoused by Rule 1, Section 6. [47] Not being inflexible, the rule on verification allows for such liberality.

Verification is merely a formal, not jurisdictional, requirement, affecting merely the form of the pleading such that non-compliance therewith does not render the pleading fatally defective. It is simply intended to provide an assurance that the allegations are true and correct and not a product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court may in fact order the correction of the pleading if verification is lacking or it may act on the pleading although it may not have been verified, where it is made evident that strict compliance with the rules may be dispensed so that the ends of justice may be served. [48] The *Court en banc*, in *Altres v. Empleo*, [49] has issued guidelines based on previous jurisprudential pronouncements respecting non-compliance with the requirements on, or submission of a defective, verification as well as on certification against forum shopping, as follows:

- 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
- 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
- 3) Verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct. [50]

In *Santos v. Litton Mills*, [51] where the petitioner therein had initially filed a petition before the Court of Appeals with a defective verification and certification, this Court noted that said defect has been corrected when after dismissal, said petitioner filed a motion for reconsideration and attached to it a verification and certification sufficient in form; because there was subsequent compliance in that case, the Court eagerly adopted liberality to secure the greater interest of justice and held that the Court of Appeals should have given due course to said petition in the first place.