

THIRD DIVISION

[G.R. No. 183606, October 27, 2009]

**CHARLIE T. LEE, PETITIONER, VS. ROSITA DELA PAZ,
RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure filed by petitioner Charlie T. Lee seeking the reversal and setting aside of the Decision^[1] dated 25 January 2008 and Resolution^[2] dated 1 July 2008 of the Court of Appeals in CA-G.R. SP No. 97334. In its assailed Decision, the Court of Appeals dismissed petitioner's Petition for Review under Rule 42 of the 1997 Revised Rules of Civil Procedure because of petitioner's failure to establish his claim of ownership and right of possession over portions of respondent Rosita dela Paz's^[3] property. Thus, the Court of Appeals affirmed the Decision^[4] dated 4 April 2005 of the Regional Trial Court (RTC) of Antipolo City, Branch 71, in Civil Case No. 04-361, reversing the Decision^[5] dated 3 May 2004 of the Municipal Trial Court in Cities (MTCC), Branch 1, Antipolo City, in Civil Case No. 68-00, and ordering petitioner to vacate portions of respondent's property that petitioner occupied. In its questioned Resolution, the Court of Appeals refused to reconsider its earlier Decision.

The undisputed facts of the case are as follows:

On 29 October 1990, Gabriel Danga (Danga) executed a notarized Transfer of Rights^[6] transferring to respondent, for the consideration of P150,000.00, all his rights, interest, and title over a parcel of agricultural land located in Barrio Pinagbarilan (later known as Barangay San Isidro and now Barangay San Juan), Antipolo City,^[7] covered by Homestead Application No. V-38136 (E-V-33129) in Danga's name,^[8] approved on 12 July 1948. According to the actual survey of the said property, it measured 143,417 square meters.^[9]

However, Danga, previous to the transfer of his rights over the property to respondent, transferred the very same rights to Josefina delos Reyes (Delos Reyes). Delos Reyes was able to secure the issuance, on 1 December 1989, of an Order of Transfer of Homestead Rights in her favor, from then Director of Lands Abelardo Palad. Respondent instituted before Department of Environment and Natural Resources (DENR) Region IV an administrative case for the cancellation of the Order of Transfer of Homestead Rights in Delos Reyes' favor, docketed as DENR 4 Case No. 5723.

During an ocular inspection conducted pursuant to DENR 4 Case No. 5723, DENR Region IV observed that certain portions of the 143,417-square-meter property were occupied by petitioner and several other persons.

Thus, on 13 September 2000, respondent filed before the MTCC a Complaint for Forcible Entry with Prayer for Issuance of Preliminary Mandatory Injunction against petitioner, docketed as Civil Case No. 68-00. Respondent later amended her Complaint to implead other defendants, namely: Jesus E. Viola (Viola), Juanito Magsino (Magsino), Evelyn Pestano (Pestano), and Victorio Datu (Datu).

Respondent alleged in her Complaint that she became the owner of the 143,417-square-meter property by virtue of the Transfer of Rights dated 19 October 1990 executed in her favor by the former owner, Danga. Since the transfer, respondent possessed the property peacefully, publicly, and adversely. She introduced valuable improvements thereon. She planted trees, and repaired Danga's old hut where she would occasionally stay to rest.

Respondent avowed that sometime in June 2000, petitioner and the other defendants in Civil Case No. 68-00 deprived her of possession of certain portions of her property. Taking advantage of respondent's absence due to her lingering sickness, petitioner and his co-defendants unlawfully entered said portions by means of stealth and strategy, and without respondent's knowledge and consent. Up to the present time, petitioner and his co-defendants remain in illegal possession of portions of respondent's property, despite respondent's repeated demands that possession of said portions be restored to her. Petitioner even went as far as assigning security men to the portions of the property he occupied to prevent respondent from recovering possession thereof.

In his Answer to respondent's Complaint, petitioner claimed to be the owner and occupant of the two parcels of land, which respondent averred to be part of her property. In fact, petitioner was already granted Free Patent Nos. 045802-91-204 and 045802-91-203 for these two parcels of land, and pursuant to which, he was issued Original Certificate of Title (OCT) Nos. P-619^[10] and P-620^[11] in his name on 3 June 1991. Additionally, the 143,417-square-meter property, which respondent was claiming, was still under the administration of the DENR, and had not yet been declared alienable and disposable; hence, the property was still public land.^[12]

Petitioner further maintained that he never saw respondent occupy her alleged property. Respondent herself failed to introduce evidence of her prior physical possession of the property. Petitioner also did not receive from respondent any demand to vacate prior to the latter's filing of the Complaint for Forcible Entry before the MTCC.

Lastly, petitioner argued that respondent was guilty of forum shopping, because DENR 4 Case No. 5723 was still pending before DENR Region IV.

The three other defendants in Civil Case No. 68-00, namely, Viola, Magsino, and Pestano, asserted in their Answer that respondent had no cause of action against them, as respondent filed her Complaint for Forcible Entry before the MTCC more than two years after the afore-named defendants' occupation of their respective parcels of land. Respondent not only failed to allege prior physical possession of the parcels of land now occupied by the defendants, respondent also did not establish with certainty that said parcels were really within her property. The three defendants presented object evidence such as trees and other growing plants to

prove their long possession of their respective parcels of land.

Datu, the other defendant in Civil Case No. 68-00, alleged in his Answer that he was the *bonafide* and lawful possessor and occupant of two parcels of land in Barrio San Isidro (formerly known as Barrio Pinagbarilan and now known as Barangay San Juan), Antipolo City. He had been in peaceful, continuous, and adverse possession of said parcels of land for a period of 15 years. He denied that these parcels of land were within respondent's property. Also, the Complaint for Forcible Entry was filed by respondent beyond the one year period set by law.

Before the MTCC could render judgment in Civil Case No. 68-00, DENR Region IV issued on 30 October 2000 its Resolution^[13] in DENR 4 Case No. 5723, finding that:

In the case of the first transfer of right in favor of [Delos Reyes], we are of the considered opinion that the same is bereft of validity. **Firstly**, the transfer of right was done sans the consent of the Secretary of Environment and Natural Resources; **secondly**, then Director of Lands, Abelardo Palad is no longer allowed under Executive Order No. 192 to issue an Order for the transfer of rights involving public land applications; and **thirdly**, [Delos Reyes] is not qualified nor an eligible homesteader about to succeed transferor, [Danga], as contemplated for (sic) under Section 20 of the Public Land Act.

x x x x

It is evident from the records of the case that the transfer of right executed by [Danga] in favor of Josefina delos Reyes was never sanctioned nor had the prior consent or approval of the Secretary of Environment and Natural Resources.

x x x x

On the other side of the fence, this Office is impressed by the fact that [herein respondent] laid her claims over the land in dispute. Although, the adverted transfer of rights may have been executed in a much later date, we believe, however, that this fact will not militate against her claims thereon. **The findings in the ocular inspection that she was ascertained an occupant of the contested area is a clear act of an exercise of dominion to the exclusion of others. x x x. We opine that [respondent's] overt act in occupying controverted land and filing instant protest for the cancellation of the transfer of rights in favor of [Delos Reyes], speaks well of a claimant who is in a better position to fit in the shoes of grantee, Gabriel Danga.**

x x x While some appear to have occupied and cultivated portions thereof in the persons of Messrs. [herein petitioner], Juanito Magsino, Jesus Viola and Mrs. Evelyn Pestano, these undertaking, however, will not merit any scant consideration. As we have herein clarified, and to reiterate with, well settled is the doctrine that "the approval of the application for the homestead has the effect of segregating the land from the public domain and divesting the Bureau of Lands of the control and possession of the

same." Applying the same rule in this particular instance, we hold that the property in question is no longer considered a public land where the actual possession and cultivation are condition *sine qua non*. (Emphases supplied.)

The DENR Region IV finally adjudged:

WHEREFORE, In Light of All Foregoing Considerations, it is hereby resolved, as it is resolved, that the claim of [herein respondent] Rosita dela Paz over Lot 10008, Mcad 585, situated in Brgy. San Juan, Antipolo City, **BE GIVEN DUE COURSE**. Consequently, the Order of Transfer of [Homestead] Rights issued on [1 December 1989] by then Director, Abelardo Palad, and the subsequent Homestead Application of Josefina delos Reyes, is hereby declared **CANCELLED** and without force and effect.

[Respondent] Rosita dela Paz, is hereby **ORDERED** to file her Homestead Application over said Lot 10008, within sixty (60) days upon approval of the Order of Transfer of Rights by the Secretary of Environment and Natural Resources.^[14] (Emphases supplied.)

Since no appeal or motion for reconsideration of the foregoing DENR Region IV Resolution had been filed, it became final and executory per Order^[15] of DENR Region IV dated 22 June 2001. Following the directive of the DENR Region IV in the said Resolution, respondent, after being issued a Transfer of Homestead Rights^[16] on 20 March 2002, filed her homestead application,^[17] still under Danga's original Homestead Application No. V-38136 (E-V-33129). The Community Environment and Natural Resources Office (CENRO) of DENR Region IV, however, issued on 15 July 2003 an Order^[18] rejecting and/or canceling from the records respondent's homestead application because respondent assigned a portion of the property covered thereby in favor of Remedios dela Paz (Remedios) and Emiliana M. Camino.

Respondent then filed a Free Patent Application covering the 143,417-square-meter property. However, considering respondent's assignment of a portion of her property to Remedios, respondent submitted a request for the subdivision of said property, together with the proposed Subdivision Plan. On 23 September 2003, the DENR Regional Technical Director approved respondent's Subdivision Plan. Subsequently, on 10 December 2003, Free Patent No. 045802-03-4722 and the corresponding OCT No. P-46^[19] were issued in respondent's name, while Free Patent No. 045802-03-4723 and the resulting OCT No. P-47^[20] were issued in Remedios' name, covering their respective subdivided portions of the property.

On 3 May 2004, the MTCC rendered its Decision in favor of petitioner and other defendants in Civil Case No. 68-00. The MTCC dismissed respondent's Complaint for Forcible Entry on the ground that respondent failed to prove prior physical possession of the parcels of land in question. Prior physical possession of the property by the plaintiff is an indispensable requirement in the successful prosecution of a forcible entry case.

Respondent's appeal of the aforesaid MTCC Decision before the RTC was docketed as Civil Case No. 04-361. Respondent presented before the RTC the free patent and certificate of title issued in her name for the property. The RTC, in its Decision dated 4 April 2005, favored respondent and, in effect, reversed and set aside the appealed MTCC Decision. The RTC gave great weight and consideration to the DENR Region IV Resolution dated 30 October 2000 in DENR 4 Case No. 5723. The RTC ordered petitioner and his co-defendants in Civil Case No. 68-00 to vacate the portions of respondent's property that they were occupying.

Petitioner and his co-defendants in Civil Case No. 04-361 separately moved for the reconsideration of the aforesaid RTC judgment, but they were all denied in the RTC Order^[21] dated 10 November 2006.

Petitioner, by himself, filed a Petition for Review of the RTC Decision dated 4 April 2005 before the Court of Appeals, docketed as CA-G.R. SP No. 97334. In its Decision dated 25 January 2008, the Court of Appeals dismissed petitioner's Petition and, thus, affirmed the RTC Decision dated 4 April 2005. Petitioner's Motion for Reconsideration was denied by the appellate court in its Resolution dated 1 July 2008.

Petitioner now comes before this Court raising the following issues:

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR WHEN IT SUSTAINED THE CLAIM OF THE RESPONDENT THAT SHE WAS ABLE TO FULLY ESTABLISH EXCLUSIVE OWNERSHIP AND PHYSICAL POSSESSION OVER THE [143,417-SQUARE METER PROPERTY], HEAVILY RELYING ON THE DENR RESOLUTION DATED 30 OCTOBER 2000, DESPITE THE ABSENCE OF CLEAR, CONVINCING AND COMPETENT EVIDENCE TO PROVE [HER] CLAIM AND DESPITE THE FACT THAT IT WAS PETITIONER LEE WHO HAD BEEN FOR A LONG TIME IN PRIOR, PHYSICAL, ADVERSE, UNINTERRUPTED AND CONTINUOUS POSSESSION OF [PORTIONS OF THE SAID 143,417-SQUARE METER PROPERTY].

II

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN HOLDING THAT THE [143,417-SQUARE-METER PROPERTY] IS NO LONGER CONSIDERED A PUBLIC LAND, AS POSSESSION AND OWNERSHIP OF THE SAID PROPERTY WERE LODGED WITH THE RESPONDENT, DESPITE THE FACT THAT IT IS PETITIONER LEE WHO HAS THE LEGAL RIGHT TO POSSESSION AND OWNERSHIP OF THE [PORTIONS OF THE SAID PROPERTY].

III

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN HOLDING THAT RESPONDENT VALIDLY ACQUIRED HER TITLE