

## SECOND DIVISION

[ G.R. No. 130841, February 26, 2008 ]

**SPOUSES VIRGINIA G. GONZAGA G.R. No. 130841 and ALFREDO GONZAGA, Petitioners, vs. COURT OF APPEALS, BIENVENIDO AGAN, and ROWENA AGAN, Respondents.**

### D E C I S I O N

**VELASCO JR., J.:**

#### The Case

This Petition for Certiorari under Rule 65 seeks to reverse and set aside the Resolution dated April 10, 1997<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 43793, denying the petition for review of petitioners-spouses Virginia and Alfredo Gonzaga of the Decision dated December 20, 1996 of the Davao City Regional Trial Court (RTC), Branch 33; and the Resolution dated August 29, 1997<sup>[2]</sup> of the CA, denying petitioners' Motion for Reconsideration.

#### The Facts

Petitioners are the registered owners of a residential lot covered by Transfer Certificate of Title No. T-240379,<sup>[3]</sup> with an area of 247 square meters, more or less, and located in Ecoland Subdivision, Phase IV, Matina, Davao City. Petitioners admitted that they do not reside at this property.<sup>[4]</sup>

In May 1995, petitioners decided to construct a house on the said parcel of land and engaged the services of a civil engineer to prepare the corresponding construction plan. Petitioners claimed that there was no occupant on the land when construction began in June 1995.

Sometime in June 1995, petitioners went to inspect the above lot and discovered that a shanty belonging to private respondents Bienvenido and Rowena Agan had been built on the land in question.

A demand later made on private respondents to vacate the lot in question went unheeded.<sup>[5]</sup>

Thus, on April 26, 1996, petitioners filed a Complaint dated April 18, 1996<sup>[6]</sup> against private respondents for Forcible Entry, Damages, and Attorney's Fees with Prayer for Temporary Restraining Order and Preliminary Injunction with the Municipal Trial Court in Cities (MTCC) in Davao City. The case entitled *Spouses Virginia Gonzaga and Alfredo Gonzaga v. Bienvenido Agan and Rowena Agan* was docketed as Civil Case No. 3001-E-96. As alleged by petitioners, private respondents put up the structure by stealth and strategy.

In their Answer dated June 10, 1996,<sup>[7]</sup> private respondents alleged that they are the occupants of a portion of what is known as the "Sabroso Village." They further alleged that their shanty is within the land covered by a Free Patent Application dated February 9, 1992 in the name of Ponciano Sabroso,<sup>[8]</sup> who knew of the shanty's existence for a long time and consented to their stay in the village.

### **The Ruling of the MTCC**

Thereafter, the MTCC rendered a Decision dated August 26, 1996<sup>[9]</sup> in favor of petitioners, the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs, the spouses Virginia G. Gonzaga and Alfredo Gonzaga, and against the defendants Bienvenido Agan and Rowena Agan, ordering the defendants to vacate plaintiffs' property covered by TCT No. T-240379 and to remove their improvements and structures, or shanty therefrom, and further defendants are ordered to pay plaintiffs the reasonable value of the use of the land occupied by them, at P1,000.00 a month, from June 1995, until they vacate, and the sum of P10,000.00 for attorney's fees, and pay the costs.

SO ORDERED.

In so ruling, the MTCC held that private respondents failed to rebut allegations that they entered petitioners' property by stealth. The MTCC found as untenable private respondents' counter-allegation that they gained entry to the land in 1983 that is allegedly covered by the Free Patent Application of Ponciano Sabroso.

### **The Decision of the RTC**

Unconvinced, private respondents appealed the above MTCC ruling to the Davao City RTC docketed as Civil Case No. 24,772-96. Eventually, the RTC rendered a Decision dated December 20, 1996, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the appealed decision is REVERSED and judgment is entered dismissing the complaint for lack of cause of action for forcible entry.

The counterclaim is likewise dismissed.

No costs.

SO ORDERED.<sup>[10]</sup>

The RTC predicated its ruling on the premise that petitioners, although claiming to be owners of the subject property, failed to prove prior actual physical possession, a necessary element in an action for ejectment. To the RTC, petitioners should have not commenced an action for forcible entry but an *accion publiciana* suit.

Thus, petitioners filed with the CA on March 4, 1997 a petition for review docketed as CA-G.R. SP No. 43793.

## The Ruling of the CA

On April 10, 1997, the CA issued the first assailed Resolution, denying due course to petitioners' petition for review mainly on the strength of the following observations:

A perusal of the complaint would show that apart from claiming ownership of the lot in question, petitioners have not asserted prior possession thereof, much less the manner of their dispossession, which is essential in an action for forcible entry.

As correctly pointed out by respondent Court, plaintiffs' action should be one for recovery of possession or an accion publiciana, not for forcible entry.<sup>[11]</sup>

From this Resolution, petitioners sought reconsideration. However, the CA, in its second assailed Resolution dated August 29, 1997, denied petitioners' Motion for Reconsideration.

Hence, we have this Petition for Certiorari.

### The Issues

The issues raised in the petition are set forth in the following assignment of errors

#### I.

The court *a quo* committed grave abuse of discretion in failing to give due course to the petition for review filed therewith as it committed a gross mistake in appreciating the facts of the case.

#### II.

The court *a quo* erred in holding that petitioners' action should not be for forcible entry but for *accion publiciana*.<sup>[12]</sup>

### The Ruling of this Court

The petition must be dismissed.

At the outset, it must be pointed out that petitioners invoked the certiorari jurisdiction of the Court under Rule 65 when an appeal under Rule 45 is the proper remedy and should have been filed.

Under the first paragraph of Section 1 of Rule 65, the remedy of certiorari may only be availed of in the absence of any other remedy in the ordinary course of law open to the petitioner. The provision states:

Section 1. *Petition for certiorari.*<sup>3/4</sup>When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and **there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper