541 Phil. 386

FIRST DIVISION

[G.R. NO. 130316, January 24, 2007]

ERNESTO V. YU AND ELSIE O. YU, PETITIONERS, VS. BALTAZAR PACLEB,[1] RESPONDENT.

D E C I S I O N

CORONA, J.:

The present petition filed under Rule 45 of the Rules of Court originated from an action for forcible entry and damages filed by petitioners Ernesto and Elsie Yu against respondent Baltazar Pacleb.

The antecedent facts follow.

Sometime in September 1992, Ruperto Javier allegedly offered to sell Lot No. 6853-D to petitioners for P75 per sq.m. The lot was approximately 18,000 square meters and was located in Barangay Langkaan, Dasmariñas, Cavite. Javier supposedly purchased the lot from one Rebecca del Rosario who, in turn, acquired it from respondent and his wife. The title of the property (Transfer Certificate of Title [TCT] No. T-118375), however, remained in the names of respondent and his wife. The instruments in support of the series of alleged sales were not registered.

On September 11, 1992, petitioners accepted the offer and gave Javier P200,000 as downpayment for the lot. Javier then delivered his supposed muniments of title to petitioners. After the execution of a contract to sell, he formally turned over the property to petiti oners.

At the time of the turn-over, a portion of the lot was occupied by Ramon C. Pacleb, respondent's son, and his wife as tenants. On September 12, 1992, Ramon and his wife allegedly surrendered possession of their portion to petitioners. Later on, petitioners appointed Ramon as their trustee over the subject lot.

Aside from taking possession of the property, petitioners also caused the annotation on TCT No. T-118375 of a decision rendered in their favor in Civil Case No. 741-93.[2] This decision attained finality on April 19, 1995.

Petitioners alleged that they exercised ownership rights as well as enjoyed open, public and peaceful possession over the property from September 12, 1992 until the early part of September 1995. During this time, respondent was in the United States.

Upon respondent's return to the Philippines in May 1995, he allegedly entered the property by means of force, threat, intimidation, strategy and stealth thereby ousting petitioners and their trustee, Ramon.

Despite repeated demands, respondent, asserting his rights as registered owner of the property, refused to vacate the premises and surrender its possession to petitioners.

Petitioners filed an action for forcible entry[3] in the Municipal Trial Court (MTC) of Dasmariñas, Cavite on November 23, 1995. Respondent filed an answer with compulsory counterclaim dated December 8, 1995. After the issues were joined, the MTC required the submission of the parties' position papers at a preliminary conference on March 11, 1996. Respondent failed to comply.

On June 17, 1996, the MTC ruled:

> WHEREFORE, in view of the foregoing, the [respondent] and other persons claiming right under him are hereby ordered to surrender physical possession of Lot No. 6853-D in favor of the [petitioners] and to pay the sum of TWENTY-FIVE THOUSAND (P25,000.00) PESOS as attorney's fees.
>
> SO ORDERED.[4]

On appeal,[5] the Regional Trial Court (RTC) of Imus, Cavite rendered a decision affirming the MTC decision *in toto*.[6]

Respondent elevated his case to the Court of Appeals (CA)[7] which rendered the assailed decision on March 18, 1997:

> WHEREFORE, the Petition is GRANTED; the Decision dated October 25, 1996 of the [RTC] of Imus, Cavite in Civil Case No. 052-96 and the Decision of the [MTC] of Dasmariñas, Cavite in Civil Case No. 182 are SET ASIDE; and Civil Case No. 182 for Forcible Entry and Damages is hereby ordered DISMISSED. No pronouncement as to costs.
>
> SO ORDERED.[8]

In a resolution dated August 20, 1997, the CA denied petitioners' motion for reconsideration for lack of merit.

Before us now come petitioners who claim that the appellate court erred in finding that respondent had prior physical possession of the subject property.

"In an action for forcible entry, the plaintiff must prove that he was in prior possession of the land or building and that he was deprived thereof by means of force, intimidation, threat, strategy or stealth."[9] The plaintiff, however, cannot prevail where it appears that, as between himself and the defendant, the latter had possession antedating his own.[10] We are generally precluded in a Rule 45 petition from reviewing factual evidence tracing the events prior to the first act of spoliation.[11] However, the conflicting factual findings of the MTC and RTC on one hand, and the CA on the other, require us to make an exception.

We overrule petitioners' contentions.

The Civil Code states that possession is the holding of a thing or the enjoyment of a right.[12] In the grammatical sense, to possess means to have, to actually and physically occupy a thing, with or without right.[13] "Possession always includes the idea of occupation x x x. It is not necessary that the person in possession should himself be the occupant. The occupancy can be held by another in his name."[14] Without occupancy, there is no possession.[15]

Two things are paramount in possession.[16] First, there must be occupancy, apprehension or taking. Second, there must be intent to possess (*animus possidendi*).[17]

Here, petitioners failed to establish that they had prior physical possession to justify a ruling in their favor in the complaint for forcible entry against respondent.

In the decision in Civil Case No. 741-93 (a case for specific performance and damages against Javier, the alleged vendor of the lot in question) upon which petitioners based their right to possess in the first place, the trial court categorically stated:

> The **[petitioners were never placed] in possession of the subject property** on which [was] planned to be [site of] a piggery, nor [were they] given a clearance or certification from the Municipal Agrarian Reform Officer.[18] (emphasis ours)

The claim that the lot was turned over to petitioners in 1992 was self-serving in the face of this factual finding. On the other hand, the tax declarations and receipts in the name of respondent in 1994 and 1995 established the possession of respondent.[19] The payment of real estate tax is one of the most persuasive and positive indications showing the will of a person to possess in *concepto de dueño* or with claim of ownership.[20]

"[P]ossession in the eyes of the law does not mean that a man has to have his feet on every square meter of the ground before he is deemed in possession."[21] In this case, Ramon, as respondent's son, was named caretaker when respondent left for the United States in 1983.[22] Due to the eventual loss of trust and confidence in Ramon, however, respondent transferred the administration of the land to his other son, Oscar, in January 1995 until his return in May 1995.[23] In other words, the subject land was in the possession of the respondent's sons during the contested period.

Petitioners cite an alleged document (*Kusangloob na Pagsasauli ng Lupang Sakahan at Pagpapahayag ng Pagtalikod sa Karapatan*) dated March 10, 1995 executed by them and Ramon to prove a turn over of possession. They also seek to prove their exercise of rights over the land through alleged frequent visits and the designation of Ramon as their own trustee as declared in a joint affidavit attached to their position paper filed with the MTC. These instruments, however, fail to convince us of petitioners' actual occupancy of the subject land. First, petitioners themselves acknowledged that Ramon and his wife occupied part of the land as tenants of respondent. Second, Ramon, a mere tenant, had no authority to sign such document dated March 10, 1995 waiving all rights to the land. Third, there was no