

## THIRD DIVISION

[ G.R. NO. 150187, March 17, 2006 ]

**CARMELITA GUANGA, PETITIONER, VS. ARTEMIO DELA CRUZ  
SUBSTITUTED BY LYDIA ARTEMIO JR., MARILOU, JULIET,  
ROMEO, RYAN, AND ARIEL, ALL SURNAMED DELA CRUZ, AND  
THE COURT OF APPEALS RESPONDENTS.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This is a petition for review<sup>[1]</sup> of the Decision<sup>[2]</sup> dated 25 April 2001 and the Resolution dated 1 October 2001 of the Court of Appeals. The 25 April 2001 Decision reversed the ruling of the Regional Trial Court, Olongapo City, Branch 72, in an unlawful detainer suit. The 1 October 2001 Resolution denied the motion for reconsideration of petitioner Carmelita Guanga ("petitioner").

#### The Facts

Petitioner and respondent Artemio dela Cruz ("respondent")<sup>[3]</sup> are two of the eight children of Nicolasa P. dela Cruz ("Nicolasa") and Ireneo dela Cruz. In April 1998, respondent sued petitioner in the Municipal Trial Court in Cities, Olongapo City, Branch 5 ("MTCC"), for unlawful detainer ("Civil Case No. 4065"). Respondent alleged that he is the owner of a two-storey house at No. 11, Ifugao Street,<sup>[4]</sup> Barretto, Olongapo City ("Property"). On 18 December 1996, respondent allowed petitioner to use the house's second floor for the wake of petitioner's husband. Afterwards, respondent asked petitioner to leave but petitioner refused. After sending petitioner a final written demand to vacate on 16 March 1998, which petitioner ignored, respondent filed Civil Case No. 4065.

In her Answer, petitioner denied respondent's ownership of the Property. Petitioner alleged that she, her sisters, and parents have been living in that house even when she was still single. Petitioner added that although she and her husband later moved to their farm in Jolo, Barretto, Olongapo City in 1994, she regularly visited the Property to see her son who remained there.

As affirmative defenses, petitioner contended that respondent's complaint did not state a cause of action and the MTCC had no jurisdiction over Civil Case No. 4065 for respondent's non-compliance with the conciliation procedure under the Local Government Code of 1991. Petitioner added that respondent had raised the question of the Property's ownership in two criminal complaints for Falsification of Public Document ("I.S. Nos. 97-603 and 97-604") respondent filed against her but the Olongapo City Fiscal dismissed the complaints. Petitioner also prayed for payment of damages and attorney's fees.

Petitioner filed an Amended Answer, attaching two Decisions of the Regional Trial Court, Olongapo City, Branch 72 ("Branch 72"). The first Decision, rendered on 22 November 1993 in Civil Case No. 38-0-93 entitled "*Jose R. Peñafior v. Carmelita Guanga*," ordered the issuance of a writ of possession to Jose Peñafior ("Peñafior") following Peñafior's foreclosure of a mortgage petitioner, as Nicolasa's attorney-in-fact, executed over the Property "in the early 1990's." The second Decision, rendered on 4 March 1998 in Civil Case No. 15-0-94 entitled "*Artemio dela Cruz v. Jose Peñafior, Carmelita Guanga, and Sheriff Atilano G. Nanquil*," dismissed respondent's petition to annul the Decision in Civil Case No. 38-0-93 for lack of jurisdiction. Petitioner contended that having known of Branch 72's Decisions in Civil Case Nos. 38-0-93 and 15-0-94, respondent's filing of Civil Case No. 4065 renders him liable for forum-shopping.

In the proceedings in the MTCC, respondent presented, among others, the following: (1) respondent's Miscellaneous Sales Application No. (1-4) 3407 over the Property filed with the Bureau of Lands, Olongapo City on 2 October 1968; (2) Deeds of Real Estate Mortgage, dated 30 May 1973 and 30 October 1974, signed by respondent mortgaging the Property and the parcel of land on which it stands to one Rosita Bonilla ("Bonilla"); and (3) Certifications, dated 7 January 1969 and 22 May 1989, of the Office of the City Assessor, Olongapo City, attesting that respondent had declared the Property in his name for taxation purposes.

For her part, petitioner presented, among others, the following: (1) Tax Declaration Nos. 001-1601, 001-1602, and 001-3622 of Nicolasa declaring the Property in her name; (2) Tax Declaration No. 001-4523 of petitioner declaring the Property in her name; (3) Waiver and Transfer of Possessory Rights ("Waiver"), dated 3 May 1989, of Nicolasa transferring to respondent her rights over the Property; (4) Letter, dated 1 August 1989, of Nicolasa to the District Land Officer, Bureau of Lands, Olongapo City, impugning the Waiver's validity; and (5) Undated Miscellaneous Sales Application of Nicolasa over the Property. In her position paper, petitioner further submitted the Affidavits of Ampara B. Carey and Editha Crisostomo, dated 15 February 1999, attesting that they have known petitioner to have resided at the Property since 1952 and 1960, respectively.

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

In its Decision of 26 April 1999, the MTCC ruled for respondent. The MTCC ordered petitioner to vacate the Property and to pay respondent P10,000 as attorney's fees. The MTCC held:

x x x The only issue in ejectment proceedings is x x x who is entitled to the physical or material possession of the premises, that is, possession de facto and not possession de jure. [The i]ssue as to the right of possession or ownership is not involved in the action and evidence thereon is not admissible, except only for the purpose of proving the extent and character of the possession (Pitarque vs. Sorilla, 48 O.G. 384).

To bolster plaintiff's prior physical possession of the subject premises, the plaintiff presented two (2) Deed[s] of Real Estate Mortgages showing that on May 30, 1973, and October 30, 1974, he mortgaged the subject

residential house and lot to Rosita D. Bonilla (Exhibit "H" and "J").

Moreover, were it not true that defendant's occupation of the second floor of the subject house was only by tolerance of the plaintiff during the wake of defendant's deceased husband which took place on December 18, 1996, why did the defendant did not response [sic] to the letter of plaintiff's counsel informing her of the nature of her stay at said house and formally asking her to vacate the same [?].<sup>[5]</sup>

Petitioner appealed to the Regional Trial Court, Olongapo City. Petitioner's appeal was raffled to Branch 72.

### **The Ruling of Branch 72**

In its Decision of 28 July 2000, Branch 72 reversed the MTCC's ruling. Branch 72 held:

The Municipal Trial Court in Cities, Branch 5 in deciding in favor of the plaintiff and ordering the ejectment of the defendant relied on its findings that the occupation or stay by the defendant on the one-half portion of the property was merely tolerated by the plaintiff on December 18, 1996 for the duration of the wake of the defendant's husband. The claim that the stay of defendant was merely tolerated for the wake of her husband is belied by the fact that during the time the alleged toleration of the stay took place there [were] pending case[s] between the plaintiff and the defendant x x x for falsification of public document before the City Prosecutor's Office which is I.S. No[s]. 97-603 & [97-]604. In view of the filing and pendency of th[o]se cases for falsification of document made by the defendant, it is not logical to believe that x x x such stay would be tolerated and even extended by the plaintiff.

Furthermore, the Decision of the Regional Trial Court, Branch 72, [in] Civil Case No. 38-0-93 entitled ["]Jose Peñaflor versus Carmelita Guanga["] which was for [the issuance of a] writ of possession was decided in favor of x x x Peñaflor and from which premises the said defendant is sought to be ejected will show that the filing of the said action by plaintiff Jose Peñaflor was because Carmelita Guanga as attorney in fact of Nicolasa dela Cruz failed to pay the mortgage obligation she contracted by virtue of a Real Estate Mortgage over the property in litigation. This shows that even before the alleged toleration of stay which took [place] allegedly on December 18, 1996 the defendant was already in possession of the one-half share of the property in litigation.

It must be pointed out also that the x x x mortgage executed by Carmelita Guanga in favor of Jose Peñaflor was by virtue of a power of attorney executed in favor of defendant by [Nicolasa, mother] of the plaintiff Artemio [dela] Cruz and defendant Carmelita Guanga. The said ownership and possession by [Nicolasa] is supported by Tax Declaration No. 001-4523 (Exhibit "16["]). The defendant Carmelita Guanga was never out of the premises in question because during the time that she was temporarily absent and living at No. 18 Highway, Barrio Barretto,

Olongapo City[,] her son Charlie Guanga was staying in the premises.

Considering the foregoing, the Court finds even from the point of view of ownership defendant Carmelita Guanga is entitled to stay in the premises by virtue of being owner of one-half share of the inheritance from their parent Nicolasa dela Cruz. From the point of view of possession, the Court finds that Carmelita Guanga was continuously in possession of the property even before the alleged tolerated stay on December 18, 1996. Therefore plaintiff need not tolerate her stay in the said premises.<sup>[6]</sup>

Respondent appealed to the Court of Appeals.

### **The Ruling of the Court of Appeals**

In its Decision of 25 April 2001, the Court of Appeals reversed Branch 72's ruling and reinstated the MTCC's Decision. The appellate court held:

The mere fact that the petitioner Artemio filed two (2) criminal cases for falsification of public documents against herein respondent Carmelita on 17 March 1997, would not lead to a logical conclusion that the former could not have tolerated the latter to use temporarily the second storey of the subject house during the wake of her husband which started sometime on 18 December 1996. This conclusion has no evidentiary bases and was a product of mere speculation and conjecture on the part of the RTC court. Besides, in th[o]se criminal cases, petitioner Artemio questioned the legal capacity of the respondent C[armelita], to represent their mother, Nicolasa[,] in mortgaging the subject property in favor of Jose Peñaflor. For one, Artemio claimed that Carmelita forged the signatures of their mother, Nicolasa, to make it appear that the latter issued a special power of attorney in favor of Carmelita. And secondly, their mother, Nicolasa, could not have legally and validly mortgaged the subject property as the same was already transferred to him in 1989 by virtue of the Waiver and Transfer of Possessory Rights executed by their mother in his favor. Besides, the alleged toleration came ahead of four (4) months after the filing of the said criminal cases against the respondent Carmelita.

Neither d[o] we consider [that] the existence of a mortgage contract between Nicolasa dela Cruz, represented by the respondent Carmelita as attorney-in-fact, in favor of Jose Pe?aflor, involving the subject property as security or collateral sometime in the early 1990's, would establish the fact of possession on the part of respondent Carmelita even before 18 December 1996.

In a Real Estate Mortgage Contract, as provided in Article 2127 of the Civil Code of the Philippines, it can be executed or established whether or not the mortgaged property remains in the possession of the mortgagor, or it passes into the hands of a third person. In such kind of a contract, the operative act is the registration or recording of mortgage lien in the Registry of Property. Thus, one can mortgage the real property even without her or him in actual physical possession of the same. Ergo, the