SECOND DIVISION

[G.R. NO. 150642, October 23, 2006]

BENJAMIN G. NAVALTA, PETITIONER, VS. MARCELO S. MULI, RESPONDENT.

DECISION

SANDOVAL-GUTIERREZ, J.:

For our resolution is the Petition for Review on Certiorari[1] assailing the twin Resolutions[2] dated July 30, 2001 and October 18, 2001 of the Court of Appeals in CA-G.R. SP No. 65789, entitled "Benjamin G. Navalta, *petitioner*, versus Marcelo S. Muli, *respondent*."

The facts are:

On October 21, 1997, a contract entitled "Deed of Sale Under *Pacto de Retro*"[3] was executed by Marcelo S. Muli, respondent, and Benjamin Navalta, petitioner. The contract provides that respondent is the registered owner and occupant of a two-fourth (2/4) portion of a parcel of land consisting of 144.40 square meters located at 439-G Herbosa Street, Tondo, Manila, covered by Transfer Certificate of Title (TCT) No. 216508 of the Registry of Deeds of Manila;[4] that for a consideration of P325,000.00, respondent agrees to sell to petitioner his 2/4 portion of land together with the house and improvements thereon; that respondent reserves the right to repurchase the subject property for the same price within six (6) months from execution of the contract, or until April 21, 1998; and that should respondent fail to exercise such right, the sale shall become absolute and irrevocable.

Respondent failed to repurchase the property within the stipulated period. Thus, on June 27, 1998, petitioner sent a demand letter to respondent asking him to vacate the property within ten (10) days from notice. However, respondent ignored the demand letter.

Instead, respondent, on July 29, 1998, filed with the Regional Trial Court (RTC), Branch 14, Manila, a complaint for annulment of the contract against petitioner, docketed as Civil Case No. 98-89928. The complaint is mainly anchored on respondent's allegation that although the contract is entitled "Deed of Sale Under *Pacto de Retro*," what was really agreed upon by the parties was an "*equitable mortgage* in accordance with Articles 1602, 1603 and 1365 of the Civil Code."[5]

For his part, petitioner, on February 11, 1999, filed with the Metropolitan Trial Court (MeTC), Branch 6, Manila, a complaint[6] for unlawful detainer against respondent, docketed as Civil Case No. 162403-CV. Petitioner alleged that respondent has no more right to continue occupying the subject property since he failed to repurchase the same within the period stipulated in the contract; and that despite demand,

respondent refused to vacate the premises.

In his answer,[7] respondent averred that the complaint is premature as there is an action for annulment of the contract (Civil Case No. 98-89928) pending before the RTC involving the same parties and the same property. Thus, he prayed for the dismissal of the complaint.

On May 26, 1999, the MeTC rendered a Decision[8] in favor of the petitioner, thus:

> **WHEREFORE**, premises considered, judgment on the merits is hereby rendered for the plaintiff [Benjamin Navalta] as follows:
>
> 1. Ordering the defendant [Marcelo Muli] and all persons claiming rights of possession under him to voluntarily vacate the subject premises at No. 439 - G Herbosa Street, Tondo, Manila and surrender the same to him;
>
> 2. Ordering the defendant to pay plaintiff the sum of P4,000.00 a month from May 1998 as reasonable compensation for use and occupation of the subject lot until fully vacated;
>
> 3. Ordering the defendant to pay plaintiff the sum of P5,000.00 as and for attorneyï¿½s fees, plus costs of suit.
>
> SO ORDERED."

The MeTC held:

> "As the court notes that defendant had not controverted any of the allegations by the plaintiff, such as the termination of their contract, the receipt of the demand letter, and the referral to the *Barangay* [for conciliation], this court is disposed to order the ejectment of the defendant from the premises.
>
> Since, the plaintiff is now the new owner of the subject premises as evidenced by the Deed of Sale [Under *Pacto de Retro*], the defendant's continued occupancy is deemed to be on the plaintiff's tolerance which is terminable upon notice, which the latter did when he sent the demand letter.
>
> As provided in the case of *Banco de Oro Savings and Mortgage Bank v. CA* (182 SCRA 464):
>
> > A person who occupies the land of another at the latter's tolerance or permission without any contract between them, is based on an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against him.
>
> Further, an action for unlawful detainer may be filed when possession by the landlord, vendor, vendee or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any

contract, express or implied (*Dela Paz v. Paniz*, 245 SCRA 242), which in this case is the expiration of the right to repurchase the land.

Also, the defendant's contention that there is still a pending annulment case at the RTC involving the subject premises is wholly unmeritorious. As held by the Supreme Court in numerous cases, the issue of ejectment is the right to *physical possession* of the premises or possession *de facto* (*Del Rosario v. CA*, 241 SCRA 519; *De Luna v. CA*, 221 SCRA 703).

Upon appeal by respondent, the RTC, Branch 8, Manila, rendered a Decision[9] reversing the MeTC Decision, holding that respondent could not sell his 2/4 share since the property has not yet been partitioned between him and his co-heirs. Thus, petitioner "cannot as yet exercise any possessory right over any specific part of the property covered by TCT No. 216508. The pertinent law provides that only those persons who have been deprived of possession of any land or building may institute ejectment proceedings (Sec. 1, Rule 70, Rules of Court)."

Petitioner filed a Motion for Reconsideration[10] contending that the RTC violated his right to due process since the issue of whether the questioned property is owned in common by respondent and his co-heirs was never raised by the parties in their pleadings. However, the RTC denied the motion in its Order[11] dated July 11, 2001, reiterating that until there is a partition of the inherited property, petitioner cannot as yet exercise any possessory right over any specific portion of it.

Petitioner then filed with the Court of Appeals a Petition for Review, under Rule 42 of the 1997 Rules of Civil Procedure, as amended, docketed as CA-G.R. SP No. 65789. On July 30, 2001, the appellate court issued a Resolution, now being assailed, dismissing the petition on the ground that the only documents attached thereto are the certified true copies of the Decisions of the MeTC and RTC, petitioner's motion for reconsideration of the RTC Decision, and the RTC Order denying the said motion. The Court of Appeals ruled that since Section 2, Rule 42 of the 1997 Rules of Civil Procedure, as amended, requires *inter alia* that the petition shall be accompanied by *other papers that would support the allegations thereof*, petitioner should have also attached to his petition "the complaint, answer, position papers and appeal memoranda of the parties."

Petitioner moved for a reconsideration[12] contending that the documents and papers he attached to his petition are sufficient to support the allegations therein. Nonetheless, he *attached to his motion the complaint, answer, reply to the answer, the position papers and memoranda of the parties, and prayed that in the interest of justice, his petition be reinstated*. But the Court of Appeals, in a Resolution dated October 18, 2001, still denied his motion.

Hence, the instant Petition for Review on Certiorari.

Petitioner contends in the main that the Court of Appeals erred in not considering his submission of the additional copies of pleadings and papers as *substantial compliance* with the requirements under Rule 42.

Respondent, in his Comment, prays for the dismissal of the petition for being unmeritorious.