539 Phil. 279

THIRD DIVISION

[G.R. NO. 148423, December 06, 2006]

ESPERANZA G. FRONDARINA, JOINED BY HER HUSBAND, PEDRO A. FRONDARINA, ETITIONERS, VS. NAPOLEON MALAZARTE AND LAURA P. MALAZARTE, RESPONDENTS.

D E C I S I O N

VELASCO, JR., J.:

> *There is no standard by which the weight of conflicting evidence can be ascertained. We have no test of the truth of human testimony except its conformity to our knowledge, observation, and experience.*[1]

The Case

This petition for review seeks to overturn the Decision of the Court of Appeals (CA) in CA-G.R. SP No. 61335 which sustained the Olongapo City Regional Trial Court's dismissal of the forcible entry complaint originally filed by petitioners Frondarina spouses against the respondent Malazarte spouses in Civil Case No. 2853 before the Olongapo City Municipal Trial Court in Cities (MTCC).

The Facts

Evidence culled from the records of the Olongapo City MTCC[2] shows that on July 22, 1970, Lot 5, Block 15-B, Gordon Heights Subdivision, Olongapo City (disputed lot), with an area of 450 square meters, was acquired by Flordelina Santos from Iluminado Amar. On June 17, 1971, Cirila Gongora, petitioner Esperanza Frondarina's sister, in turn, acquired the disputed lot from Santos, as shown in the Deed of Transfer of Possessory Right over a Lot (Exhibit "B"). On the same date, Gongora, as Esperanza Frondarina's predecessor-in-interest, filed a Miscellaneous Sales Application (MSA) (Exhibit "D") with the Bureau of Lands.

The disputed lot was also declared in Gongora's name for taxation purposes under Tax Declaration No. 32821 in 1970 (Exhibit "E"), under Tax Declaration No. 16-0611 in 1974 (Exhibit "F"), and under Tax Declaration No. 16-0431 in 1980 (Exhibit "G"). She also paid the real estate taxes due on said property as shown by the April 12, 1985 Official Receipt No. 7841503, representing real estate taxes on the property for the years 1980 to 1985 (Exhibit "H").

Petitioner Esperanza Frondarina, in turn, obtained the disputed lot from her sister, Cirila Gongora, on February 19, 1985, as evidenced by the Waiver and/or Renunciation of Rights to a Parcel of Land (Exhibit "A"). On July 1, 1985, said petitioner likewise filed an MSA with the Bureau of Lands over the disputed lot.

Petitioner Esperanza Frondarina also declared the disputed lot in her name in 1986

under Tax Declaration No. 004-3574 (Exhibit "J") and paid real estates taxes on the property for the years 1986 to 1988 (inclusive of Exhibits "K" to "K-3"). She also had the lot surveyed (inclusive of Exhibits "L," "L-1," "M," "N," "N-1," "N-2," and "O"), fenced it with four (4) strands of barbed wire, and tended two (2) mango and one (1) coconut trees and planted different kinds of vegetables on the lot.

Meanwhile, respondents Malazartes alleged that on March 1, 1988, they bought the said lot from Romeo Valencia (Exhibit "S"); and that they resided on the lot since May 1988. On the said date, respondents immediately started the construction of their house on the lot without a building permit—as their application was denied due to petitioners' complaint. They also admitted that an employee of the City Engineer's Office told them to stop the construction because of the complaint and absence of a building permit.

In the meantime, the records reveal that on March 18, 1988, after they allegedly bought the said lot, respondents threatened petitioners' caretaker, Lorenza Andrada. More so, according to petitioner Esperanza Frondarina, in her testimony, the respondents dug holes to put up posts, riprapped the rear of the lot, and deposited hollow blocks to construct a house. On March 28, 1988, when confronted by petitioners Frondarinas on why they entered petitioners' lot, respondents replied that they got permission to enter the land from Mr. Valencia, as they had bought it from him. Petitioners then reported the matter to the City Engineer's Office; and Mr. Malik of said office went to the said place and told the respondents to stop the construction of the house as they had no building permit.

The respondents, however, continued the construction on the lot as shown in the photographs taken by petitioner Esperanza Frondarina on May 18, 1988 (Exhibits "T," "T-1," "T-2," and "T-3"). Aggrieved, on April 5, 1988, petitioners sent a letter request to City Engineer Nicolas D. de Leon (Exhibits "P," "P-1," and "S"); and on April 28, 1989, they also sent letters to then Mayor Richard Gordon and Atty. Ma. Ellen Aguilar about respondents' intrusion on their lot (Exhibits "R" and "Q," respectively).

Furthermore, the Olongapo City MTCC found that respondents' witness, Romeo Valencia, admitted that his possession of the disputed lot had already been questioned—for almost three (3) years—by petitioners before he sold it to respondents.[3] Thus, according to the MTCC, "it is very clear from the evidence that [petitioners] did not only have prior possession of the subject lot, but it is also clear that the possession of the land by [petitioners][4] was not adverse, uninterrupted, open and in the concept of owners."

The Ruling of the Olongapo City MTCC

Finding that the "totality of evidence preponderates in favor of [petitioners Frondarinas] who have sufficiently established their cause of action against [respondents Malazartes],"[5] the MTCC rendered its February 28, 2000 Decision in favor of petitioners, the *fallo* of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants, as follows:

1. ordering the defendants and all and any other persons claiming under them to vacate the parcel of land located at No. 5 Latires Street, Gordon Heights, Olongapo City, also identified as Lot 5, Block 15-B, Gordon Heights Subdivision, Gordon Heights, Olongapo City, with an area of 450 square meters, declared in the name of plaintiff Esperanza G. Frondarina under Tax Declaration No. 004-3574 and more particularly described under paragraph 2 of the complaint, and to deliver its possession to the plaintiffs;

2. ordering the defendants to remove from the subject premises all constructions that they built thereat;

3. ordering the defendants, jointly and severally to pay unto the plaintiffs actual damages in the amount of P3,000.00 and reasonable rentals of P500.00 every month from the time of forcible entry on March 18, 1988 until the time defendants have vacated the premises and delivered possession thereof to the plaintiffs; and

4. ordering the defendants to pay jointly and severally, unto the plaintiffs the sum of P15,000.00, as attorney's fees, plus costs.[6]

On April 26, 2006, respondents Malazartes filed a Notice of Appeal[7] from the adverse Decision of the Olongapo City MTCC with the Olongapo City Regional Trial Court (RTC) Branch 72.

The Ruling of the Olongapo City RTC

Upon respondents' appeal, the Olongapo City RTC Branch 72 arrived at factual findings[8] diametrically opposed to the facts culled by the Olongapo City MTCC. According to the trial court, it was convinced that respondents were in actual and physical possession of the disputed lot through their predecessor-in-interest, Romeo Valencia; because they bought it from him on March 1, 1988 and they started to occupy the disputed lot on March 18, 1988 according to the testimony of Laura Malazarte. The trial court said that "this [testimonial evidence] is the strong point in the evidence on record in favor of the [respondents]."

The trial court further discoursed that:

> [P]laintiffs failed to prove, with preponderance of evidence, that they were in actual and physical possession of the subject land. The plaintiffs were not in personal actual and physical possession of the subject land. The plaintiffs' possession was through a caretaker. Esperanza Frondarina testified on this fact:
>
> Q – Did you occupy the property after it was sold to you by your sister?
>
> A – I have a caretaker, sir.
>
> Q – What is the name of your caretaker Mrs. Witness?
>
> A – Andrada sir.
> (TSN, p. 4, Nov. 16, 1989).

> The plaintiffs have only hearsay knowledge of who planted the two mango trees and one coconut tree.
>
> Q – Mrs. Frondarina, do you know who planted this two mango trees and one (1) coconut tree?
>
> A – Santos [Flordelina] from whom my sister bought the lot sir.
>
> x x x
>
> Q – You were there present when these trees were planted Mrs. Witness?
>
> A – I was not present sir.
> (TSN, pp. 11 to 12, Nov. 16, 1989).
>
> The evidence of the plaintiffs in the imputed forcible entry sometime on March 18, 1988 was also hearsay. Mrs. Esperanza Frondarina's testimony went this way:
>
> Q – You said that you a have a caretaker of this lot on or about March 18, 1988, how was it possible for the Malazarte to enter your lot if you a have a "bantay" there?
>
> A – My caretaker told me that she was being threatened.
>
> Q – Who threatened her?
>
> A – She told that she was threatened by the Malazarte and certain Mr. Valencia.
> (TSN, p. 21, Nov. 16, 1988).

Moreover, the trial court reasoned that petitioners' pieces of evidence on the issues of possession and forcible entry were of "hearsay nature"– which could have been remedied by presenting their caretaker, Andrada, who, according to the trial court, was not presented as witness. Further, the Olongapo City RTC stated that petitioners did not explain why their caretaker could not testify– which led to its presumption that "if Andrada is presented, her testimony will be adverse to the cause of [petitioners]." Thus, it found that the respondents were in personal, actual, and physical possession of the disputed lot; they did not commit forcible entry; and the evidence on record supported their cause.

On September 13, 2000, the Olongapo City RTC rendered a Decision in favor of respondents Malazartes:

> WHEREFORE, judgment is hereby rendered reversing in toto the Decision in Civil Case No. 2853 and a new decision is issued dismissing the complaint. The plaintiffs are ordered to pay the defendants the sum of P6, 400.00 by way of attorney's fees; and the costs of this suit.[9]

Unconvinced, the Frondarina spouses filed a petition for review[10] with the CA on November 8, 2000 which was docketed as CA-G.R. SP No. 61335.

The Ruling of the Court of Appeals

Finding no reversible error in the Olongapo City RTC's ruling, the Court of Appeals (CA) on March 13, 2001 rendered a Decision affirming *in toto*[11] the September 13, 2000 Decision of the trial court.

The CA sustained the findings and conclusions of the Olongapo City RTC that petitioners Frondarina spouses failed to prove that they were in actual and physical possession of the disputed lot. It ruled that the Frondarina spouses' possession was through a caretaker, Lorenza Andrada, who did not appear as witness because of alleged threats made by respondents Malazartes and their predecessor-in-interest, Romeo Valencia. However, the court *a quo* concluded that petitioner Esperanza Frondarina's testimony on the alleged threat to her caretaker, Andrada, constituted hearsay evidence, as it was based on the personal knowledge of said petitioner. Thus, the CA declared that respondents Malazartes' imputed forcible entry was not supported by evidence on record.[12]

Aggrieved, petitioners Frondarina spouses filed the instant petition for review on July 11, 2001 raising the following issues:[13]

I. - THE COURT OF APPEALS RENDERED THE DECISION IN GRAVE ABUSE OF ITS DISCRETION IN THE APPRECIATION OF FACTS;

II. - THE AFFIRMING DECISION OF THE COURT OF APPEALS OMITTED PETITIONER'S PRIOR, ACTUAL POSSESSION ON THE DISPUTED PROPERTY, ESSENTIAL TO THE ISSUE IN FORCIBLE ENTRY;

III. - THE APPELLATE DECISION RENDERS RECOGNITION OF PRIVATE RESPONDENTS' UNLAWFUL ENTRY AS LAWFUL, DISREGARDED THE MENACING ATTITUDE [OR] INTENT TO FORCIBLY ACQUIRE THE LAND BY FORCE.

The Court's Ruling

This petition for review is meritorious.

The preliminary matter to be addressed is whether the Court should entertain questions of fact in this petition.

A close perusal of the three issues presented for review before the Court readily reveals a lone issue—who between petitioners Frondarina spouses and respondents Malazarte spouses have prior possession of the disputed lot. Undeniably, this is a question of fact which is proscribed by Rule 45 of the 1997 Rules of Civil Procedure.

It is clear under Section 1, Rule 45 of the 1997 Rules of Civil Procedure that petitions for review on certiorari shall ONLY raise questions of law. Questions of fact are not permitted because generally, the findings of fact of the CA are final, conclusive, and cannot be reviewed on appeal. The reason behind the rule is that the Court is not a trier of facts and it is not its duty to review, evaluate, and weigh the probative value of the evidence adduced before the lower courts.