

SECOND DIVISION

[G.R. No. 140473, January 28, 2003]

MELBA MONCAL ENRIQUEZ, PETITIONER, VS. HON. COURT OF APPEALS AND VICTORINA TIGLE, RESPONDENTS.

RESOLUTION

QUISUMBING, J.:

This is a petition to review the decision^[1] of the Court of Appeals dated July 20, 1999, in CA-G.R. SP No. 50360, affirming the orders of the Regional Trial Court of Dumaguete City, Branch 31, in Civil Case No. 12044. In its order^[2] dated October 6, 1998, the RTC dismissed herein petitioner's appeal from the decision of the Municipal Circuit Trial Court (MCTC) of Bayawan-Basay, Negros Oriental in Civil Case No. 1062 for ejectment, and denied petitioner's motion for reconsideration in its order^[3] dated October 30, 1998. Petitioner also assails the resolution^[4] of the appellate court dated September 24, 1999, denying her motion for reconsideration.

The factual antecedents of this petition are as follows:

On February 29, 1996, herein respondent Victorina Tigle filed an action for unlawful detainer against herein petitioner Melba Moncal Enriquez before the MCTC of Bayawan-Basay, Negros Oriental. Tigle's complaint, which was docketed as Civil Case No. 1062, alleged inter alia, that on December 14, 1994, she bought a parcel of land known as Lot No. 377, located at Tinego, Bayawan, Negros Oriental from Engracia Macaraya. Prior to the sale, Enriquez was staying at said lot by mere tolerance of Macaraya. Enriquez was given an option to buy said lot but she refused to exercise it. After the sale, Tigle then made demands on Enriquez to vacate the property, but Enriquez adamantly refused.

In her Answer with Counterclaim filed before the MCTC, Enriquez averred that the subject property is owned in common by the heirs of Felix Moncal and any sale by Macaraya (one of the heirs of Felix Moncal) could only refer to Macaraya's undivided 1/7 share of the lot. Since said 1/7 share of Macaraya is still unidentified, the same cannot be a subject of ejectment pursuant to Article 434^[5] of the Civil Code.

In its decision dated June 2, 1997, the MCTC of Bayawan-Basay, decreed:

ACCORDINGLY, in the light of the foregoing considerations, this Court hereby renders judgment in favor of the plaintiff to be in physical, actual, and prior possession of the parcel of land described in Paragraph 3 of the Complaint unlawfully occupied by defendant MELBA MONCAL ENRIQUEZ, and plaintiff is entitled to the reliefs prayed for in the Complaint as follows:

1. Declaring plaintiff VICTORINA TIGLE to be in actual, physical and prior possession of the premises of the parcel of land mentioned in Paragraph 3 of the Complaint consisting of ONE HUNDRED SEVENTY NINE (179) square meters, more or less, or SUB-LOT NO. 2-A, of LOT NO. 2, mentioned in Par. 5, Page 2 of EXH. "B";
2. Ordering defendant MELBA MONCAL ENRIQUEZ, her agents, representatives, and all other persons acting in her behalf to immediately vacate the premises of the parcel of land mentioned in Par. 5, Page 2, EXH. "B", otherwise known as SUB-LOT NO. 2-A of LOT NO. 2;
3. To remove and/or demolish all workings, constructions and improvements illegally built and/or constructed in the parcel of land mentioned in Par. 5, Page 2, of EXH. "B", otherwise known as SUB-LOT NO. 2-A of LOT NO.2;
4. Ordering defendant MELBA MONCAL ENRIQUEZ to pay to plaintiff the sum of P3,000.00 by way of litigation expenses;
5. Ordering the defendant MELBA MONCAL ENRIQUEZ to pay to plaintiff the sum of P10,000.00 by way of attorney's fees;
6. However, for failure to allege and pray for reasonable compensation and fair rental value for the use and occupation of the premises of the parcel of land mentioned in land mentioned in Par. 5, Page 2, of EXH. "B", known as SUB-LOT NO. 2-A of LOT NO.2, the same is deemed waived;
7. On the other hand, moral and exemplary damages are not allowed in ejectment cases;
8. Any allegations by way of Counterclaim are dismissed for lack of sufficient basis.

SO ORDERED.^[6]

Enriquez seasonably appealed to the RTC of Dumaguete City. In its order of February 16, 1998, the RTC directed respective counsel for the parties to "submit within fifteen (15) days from receipt of this order their respective memoranda and/or briefs."^[7] The RTC stated that upon expiration of the period to submit memoranda, it "shall decide the case on the basis of the entire record of the proceedings in the court of origin and/or such brief(s) as may have been filed."^[8]

The counsel for Enriquez failed to comply with the order to submit a memorandum. On October 6, 1998, the RTC issued the following order:

For failure of defendant-appellant to file and submit a memorandum within the reglementary period as required by Rule 40, Section 7 (b),^[9] her appeal is dismissed.

Upon finality of this order, the Clerk of Court is hereby directed to remand the records of this case to the lower court for execution of judgment.

SO ORDERED.^[10]

Enriquez then moved for reconsideration, manifesting that she was adopting her position paper in the MCTC as her memorandum.

On October 30, 1998, the RTC denied Enriquez's motion on the ground that "the records does (sic) not show of such manifestation."^[11]

Enriquez then elevated the matter to the Court of Appeals, which docketed her petition as CA-G.R. SP No. 50360. The appellate court found the primary issue to be procedural in character, namely: the correctness of the order of the RTC dismissing herein petitioner's appeal for failure to file her memorandum on appeal.

On July 20, 1999, the appellate court decided CA-G.R. SP No. 50360 as follows:

WHEREFORE, premises considered, the instant petition is hereby DISMISSED for lack of merit.

SO ORDERED.^[12]

The appellate court held that "under Section 7, Rule 40 of the 1997 Rules of Civil Procedure (the filing of a memorandum) is a mandatory obligation on the part of the appellant, such that, the failure to do so warrants a concomitant dismissal of the appeal."^[13]

Enriquez moved for reconsideration of the appellate court's decision, but this was denied by the Court of Appeals in its order of September 24, 1999.^[14]

Hence, the instant petition before us. Petitioner raises the following issues:

1. HAS THE HONORABLE COURT OF APPELAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION OR ARE ITS DECISION (ANNEX "N") AND RESOLUTION (ANNEX 'P') APPEALED FROM NOT IN ACCORD WITH THE RULES AND APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT?
2. AND, THAT IN ORDER TO SERVE THE ENDS OF JUSTICE AND PREVENT MISCARRIAGE OF JUSTICE, SHOULD THE ORDER DATED OCTOBER 6, 1998 (ANNEX "I"); ORDER DATED OCTOBER 30, 1998 (ANNEX "K"); THE DECISION (ANNEX "N") AND RESOLUTION (ANNEX "P"), BE ALL PLEASE SET ASIDE AND THE COMPLAINT FILED IN THE MCTC OF BAYAWAN-BASAY (ANNEXES "C" TO "C-3") BE PLEASE ORDERED TERSELY DISMISSED WITH COSTS AGAINST THE RESPONDENT AND THE RESPONDENT BE ORDERED TO PAY TO THE PETITIONER THE MONETARY COUNTERCLAIMS INTERPOSED IN THE ANSWER WITH COUNTERCLAIM (ANNEXES "D" TO "D-7")?^[15]

Stated simply, the sole issue for our resolution is: Did the Court of Appeals commit a reversible error in sustaining the order of the RTC which dismissed petitioner's appeal for failure to file memorandum on appeal?

Petitioner faults the appellate court with grave error of law when it failed to rule that the RTC should have decided her appeal before it in accordance with Rule 40, Section 7 (c)^[16] of the 1997 Rules of Civil Procedure. She avers that the appellate court erred when it did not rule that the RTC should have decided the case, based on the record of the MCTC proceedings, instead of sustaining the order to dismiss