

## THIRD DIVISION

[ G.R. No. 146501, August 28, 2003 ]

**FLORDELIZA RIVERA, PETITIONER, VS. GREGORIA SANTIAGO, FELICITAS SANTIAGO-NICOLAS, CORAZON SANTIAGO-NICOLAS, RUBEN SANTIAGO, REMEDIOS SANTIAGO, PRISCILLA SANTIAGO-CASTANEDA, AS LEGAL HEIRS OF THE LATE JOVITO SANTIAGO, REPRESENTED BY THEIR ATTORNEY-IN-FACT PANFILO SANTIAGO; AND PANFILO SANTIAGO, ALSO ONE OF THE LEGAL HEIRS OF THE LATE JOVITO SANTIAGO AND BENEDICTO ALQUIROZ, RESPONDENTS.**

### D E C I S I O N

**PANGANIBAN, J.:**

Mere invocation of agricultural tenancy does not ipso facto divest the Municipal Trial Court (MTC) of jurisdiction over a complaint for ejectment. This is especially true in the instant case in which the essential requisites of a tenancy relationship have not been duly established.

#### The Case

Before us is a Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court, seeking to set aside the June 13, 2000 Decision<sup>[2]</sup> and the December 20, 2000 Resolution<sup>[3]</sup> of the Court of Appeals<sup>[4]</sup> (CA) in CA-GR SP No. 55146. The dispositive part of the assailed Decision reads as follows:

"WHEREFORE, premises considered, the instant petition is hereby GRANTED. The decision of the Regional Trial Court, Branch 84, Malolos, Bulacan dated May 27, 1997 affirming the decision of the Municipal Trial Court of Bocaue, Bulacan dated May 7, 1996 is hereby SET ASIDE and a new one is rendered DISMISSING the case for lack of jurisdiction."<sup>[5]</sup>

The assailed Resolution denied petitioner's Motion for Reconsideration.

#### The Facts

The facts of the case are summarized by the CA in this wise:

"The late Pacifico Santiago, father of Jovito Santiago and Raymundo Santiago, originally owned the five (5) parcels of land subject of the instant case. Raymundo Santiago, who later became the owner, mortgaged the subject lots with the Development Bank of the Philippines (DBP), and for failure to pay his loans, the same were foreclosed.

"Alejandrina Tuzon purchased the properties from DBP. After the

purchase, Tuzon filed an action for injunction against the defendants ([respondents] herein), to prevent them from tilling and working on the landholding. The case was docketed as Civil Case No. 289-M-88 and assigned to Branch 7, RTC, Malolos, Bulacan. A writ of preliminary injunction was issued on May 28, 1990, and [respondents] were forced to stop working on the land.

"Later on, Tuzon sold the said parcels of land to Flordeliza Rivera, herein [petitioner].

"On August 9, 1995, Flordeliza Rivera also filed a complaint for ejectment with the Municipal Trial Court (MTC) of Bocaue, Bulacan, naming Jovito Santiago, Benedicto Alquiroz, Emilio Umali, Felix Santiago, Spouses Ariel and Lydia Listangco, Toto Nicolas, Jorge Albacino and Alberto Santiago as defendants. The case was docketed as Civil Case No. 95-2449. [Petitioner] Rivera averred in her complaint that Jovito Santiago and Benedicto Alquiroz, together with their [co-respondents], have, for the past seven (7) years, been in unlawful possession and occupation of the parcels of land subject matter of the case upon her (Rivera's) tolerance and refused to vacate the same despite repeated demands.

"On August 31, 1995, the [respondents] filed their Answer with Counterclaim, alleging that they are the actual tillers/tenants of subject parcels of land and questioned the jurisdiction of the Municipal Trial Court to hear and decide the case.

"On May 7, 1996, the MTC rendered a decision in favor of herein [petitioner] Rivera, ordering *'[respondents] and all persons claiming rights or authority from it to vacate the property in question and immediately surrender possession of the same to [petitioner].'*

"Jovito Santiago and Benedicto Alquiroz appealed the decision of the MTC to the Regional Trial Court (RTC) of Bulacan. The other [respondents] did not appeal.

"On May 27, 1997, the RTC Branch 84, rendered a decision, affirming *in toto* the decision of the MTC.

"A Motion for Reconsideration of the RTC decision was seasonably filed by Jovito Santiago and Benedicto Alquiroz. Subsequent thereto, Santiago and Alquiroz filed a Motion to Dismiss reiterating the issue of jurisdiction earlier raised in the MTC.

"Meanwhile, Jovito Santiago and Benedicto Alquiroz filed a case before the Department of Agrarian Relations Adjudication Board (DARAB), docketed as DARAB Case No. R-03-02-5145'97, against DBP, Alejandrina Tuzon, Flordeliza Rivera, former Deputy Register of Deeds Jose G. Flores of Meycauayan, Bulacan, and the then incumbent Register of Deeds of Meycauayan, Bulacan. The said DARAB action sought to annul the Deed of Sale executed by and between Tuzon and Rivera covering the subject parcels of land.

"On March 26, 1999, the DARAB dismissed the complaint filed by Jovito Santiago and Benedicto Alquiros and ruled against the existence of any tenancy relationship.

"On April 27, 1999, the court *a quo* (RTC) directed the parties to submit their respective comment on the status of the DARAB cases filed by Santiago and Alquiros against Rivera, et. al., to which Order both parties complied.

"Meantime, the ejectment case filed by Alejandrina Tuzon was dismissed on June 1, 1999. Thereupon, [respondents] resumed working on the landholding as tenants with notices sent to [petitioner] Rivera, the Barangay Agrarian Reform Chairman, and the Barangay Captain.

"On September 7, 1999, the RTC issued an Order denying [respondents'] Motion for Reconsideration as well as their Motion to Dismiss."<sup>[6]</sup>

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

On September 29, 1999, respondents filed with the CA a "Petition for Review *Abundante Cautela*,"<sup>[7]</sup> assailing the September 7, 1999 Order and May 27, 1997 Decision of the Regional Trial Court (RTC). In its June 13, 2000 Decision, the CA held that the MTC and the RTC "committed grave abuse of discretion amounting to clear want of jurisdiction in not finding that the instant case is one of tenancy dispute." According to the appellate court, the lower courts disregarded the issues of jurisdiction and tenancy even though respondents had invoked them from the very beginning and had been able to substantiate them.

Hence, this Petition.<sup>[8]</sup>

### **The Issues**

Petitioner raises the following issues for our consideration:

"I.

No tenancy relationship exists between petitioner and respondents.

"II.

Findings of fact of the trial court and quasi-judicial agencies as to the non-existence of tenancy relationship must be accorded highest respect.

"III.

The application by the Court of Appeals of P.D. 316 (on the requirement of preliminary determination by the Secretary of Agrarian Reform) is clearly erroneous.

"IV.

The Court of Appeals erred in giving due course to the petition before it

which -- in violation of basic remedial law -- erroneously invoked and combined disallowable simultaneous remedies under Rule 42 and Rule 65."<sup>[9]</sup>

Simply put, the main substantive issue is whether a tenancy relationship exists between the parties so as to divest the MTC of jurisdiction over the Complaint for ejectment filed by petitioner. For a better presentation of the case, we shall discuss the procedural aspect (item IV above) ahead of the substantive ones (items I, II and III).

### **The Court's Ruling**

The Petition is meritorious.

#### **Preliminary Procedural Issue:** **Did the CA Err in Giving** **Due Course to the Petition?**

Petitioner contends that the CA erred in giving due course to the Petition for Review *Abudante Cautela* filed by respondents, because they combined the remedies provided for under Rules 42 and 65.

We clarify. It is a hornbook doctrine that a simultaneous or successive resort to appeal and certiorari cannot be done, because one of the requisites for the latter is that the former remedy is not available.<sup>[10]</sup> These recourses are mutually exclusive and not alternative or successive.<sup>[11]</sup> It is also elementary that certiorari is not a substitute for a lapsed appeal.

However, there are exceptions in which *certiorari* may be resorted to even if an appeal is available. One such instance is where the appeal does not appear to be a plain, speedy and adequate remedy.<sup>[12]</sup> This is especially true when the substantive questions and the equities involved far outweigh the technical and procedural issues. Thus, where an appeal will not promptly relieve respondents from the injurious effects of the acts of the lower courts, a resort to certiorari may be allowed, especially when the petition is filed while the period for appeal has not yet expired.<sup>[13]</sup>

In the present case, the Petition for Review under Rule 42 (with an alternative invocation of *certiorari* under Rule 65) was filed on September 29, 1999. At that point, the reglementary periods for both remedies had not yet lapsed. In the interest of substantial justice and the speedy disposition of the case,<sup>[14]</sup> we will consider the present case as an exception and treat it as an appeal properly filed before the CA under Rule 42.

#### **Main Substantive Issue:** **Presence of Tenancy**

Under Batas Pambansa Blg. (BP) 129,<sup>[15]</sup> as amended by Republic Act No. (RA) 7691, the MTC shall have exclusive original jurisdiction over cases of forcible entry and unlawful detainer.<sup>[16]</sup> The Revised Rule on Summary Procedure (RSP) governs

the remedial aspects of such suits.<sup>[17]</sup>

Under Section 50 of RA 6657,<sup>[18]</sup> however, the Department of Agrarian Reform (DAR) is vested with "primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform."<sup>[19]</sup> In the present appeal, the Court is faced with the question of which of these two laws apply. We hold that it is BP 129, not RA 6657.

Jurisdiction is determined by the allegations in the complaint.<sup>[20]</sup> This is basic. Unquestionably, petitioner lodged an action for ejectment before the MTC.<sup>[21]</sup> Under BP 129, the allegations in the complaint conferred initiatory jurisdiction on that first level court.

### **Tenancy as a Defense in Ejectment**

However, when tenancy is averred as a defense and is shown *prima facie* to be the real issue, the MTC must dismiss the case for lack of jurisdiction.<sup>[22]</sup> Under RA 6657, it is the DAR that has authority to hear and decide when tenancy is legitimately involved.

In the instant case, respondents averred tenancy as an affirmative and/or special defense in their Answer with Counterclaim.<sup>[23]</sup> Under the RSP, the MTC was supposed to conduct a preliminary conference<sup>[24]</sup> to determine if such relationship was indeed the real issue. We emphasize that the MTC did not automatically lose its jurisdiction simply because respondents raised tenancy as a defense. It continued to have the authority to hear the case precisely to determine whether it had jurisdiction to dispose of the ejectment suit on its merits.<sup>[25]</sup>

While the MTC conducted a preliminary conference, respondents contend that a preliminary hearing, being mandatory, should have been held instead. Again, we clarify.

Under the Revised Rules of Court,<sup>[26]</sup> a preliminary hearing may be conducted on any of the affirmative grounds raised in an answer<sup>[27]</sup> as though a motion to dismiss had been filed. Although no motion to dismiss on the ground of lack of jurisdiction over the subject matter<sup>[28]</sup> was filed in the MTC by herein respondents, they nonetheless insist that a preliminary hearing should have been held as a matter of right. We hold, however, that a hearing is merely discretionary.<sup>[29]</sup> It is not a matter of right<sup>[30]</sup> under the RSP and the Rules then and now. Instead of a hearing, the MTC conducted a preliminary conference among the parties. This is enough compliance with the Rules.

### **No Error in MTC, RTC and DARAB Finding of No Agricultural Tenancy**

The records show that the MTC did consider the evidence presented by respondents during the preliminary conference. In fact, it ruled against the presence of a tenancy