439 Phil. 966

SECOND DIVISION

[G.R. No. 138955, October 29, 2002]

AMPARO ROXAS, PETITIONER, VS. HON. COURT OF APPEALS, AND MANOTOK REALTY, INC., RESPONDENTS.

D E C I S I O N

QUISUMBING, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court, seeking the reversal of the decision[1] of the Honorable Court of Appeals in CA-G.R. SP No. 44650. The CA had affirmed that of the Regional Trial Court[2] of Marikina, Branch 273, in SCA No. 97-198-MK, which earlier overturned the order[3] of the Metropolitan Trial Court of Marikina, Branch 76, in Civil Case No. 96-6235, for unlawful detainer.

The factual antecedents as found by the Court of Appeals are as follows:

> A complaint for unlawful detainer was filed by herein private respondent Manotok Realty, Inc. against herein petitioner Amparo Roxas before the Metropolitan Trial Court of Marikina, Branch 76. Manotok Realty, Inc. alleged in its complaint that: it is the registered owner of a parcel of land located at the Manotok-Ramos Subdivision IX, City of Marikina, Metro Manila, known as Lot 14, Block 9 duly covered under Transfer Certificate of Title No. 100498; that sometime on September 18, 1961, plaintiff and defendant entered into a Contract to Sell covering the subject property, however, on September 14, 1973, plaintiff notarially rescinded and cancelled the contract as of June 25, 1966 for defendant's failure to comply with the terms thereof, specifically for her failure to pay the stipulated monthly payments; that despite receipt of said notice of cancellation however, defendant continued in her possession and occupation of subject parcel of land without any legal basis except by mere tolerance of plaintiff; that defendant since and from that time of the service of the notice of rescission and the demand to vacate on September 14, 1973, defendant has possessed and occupied said property without making any payment to plaintiff of such reasonable compensation for her use and occupancy thereof; that on August 3, 1995, plaintiff needing said property for its own use, made a final demand to defendant, through counsel, to vacate subject property within three (3) months from receipt thereof; that notwithstanding however her receipt of said final demand and the lapse of the three (3) months period within which to vacate, defendant unlawfully failed and refused to vacate the same without legal basis.
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> In her answer, Amparo Roxas denied the material allegations of the complaint, and by way of special and affirmative defenses, alleged that the notice of cancellation has not been received by defendant hence, a

> condition precedent has not been complied with, thus subject to dismissal; that she has complied with all the terms and conditions of the Contract to Sell, but Manotok Realty, Inc. has not been recording defendant's compliance, amounting to plaintiff's dealing in bad faith and with malice afterthought; and by way of special and affirmative defense alleged that there is no cause of action and therefore, the complaint must be dismissed; and by way of counterclaim seeks moral and exemplary damages in the total amount of P200,000.00 and an award of attorney's fee in the amount of P50,000.00.

After the requisite preliminary conference and the submission of affidavits and position papers by both parties, Hon. Judge Jerry B. Gonzales of MeTC, Marikina City, Branch 76, dismissed the complaint on the ground of lack of jurisdiction. In an order dated November 20, 1996, Judge Gonzales ratiocinated:

> This is a clear case of ejectment through accion publiciana, jurisdiction of which belongs to the Regional Trial Court because the cause of action is tolerance.
>
> The Honorable Supreme Court in the case of *Magin vs. Avelino*,[4] 127 SCRA 602, said:
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> > "Where the possession of the land by another is due to tolerance of owner the action for ejectment is accion publiciana, not unlawful detainer or forcible entry."
>
> Under the above doctrine, the demand being that of terminating possession allowed by tolerance of the alleged owner, this Court has no jurisdiction to try the case.[5]

Aggrieved, Manotok Realty, Inc. appealed the matter before the Regional Trial Court of Marikina, Branch 273. The RTC ruled for Manotok Realty, Inc. holding that the MeTC had jurisdiction to hear and decide the case as "the complaint is one for unlawful detainer" as clearly alleged in the complaint, "and not for *accion publiciana* as incorrectly ruled by the lower court."[6]

The RTC disposed of the case as follows:

> WHEREFORE, foregoing premises considered, the judgement appealed from is hereby REVERSED and SET ASIDE. Judgment is hereby rendered in favor of plaintiff-appellant and against defendant-appellee Amparo Roxas, ordering the latter and all persons claiming rights under her:
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> > 1) to immediately vacate and surrender the possession of the premises in question described in paragraph 3 of the complaint;
> >
> > 2) to pay plaintiff-appellant the amount of P2,000.00 per month as reasonable compensation for the use and occupation of the subject premises from November 4, 1995 up to the time the premises in question is fully vacated, and possession thereof is surrendered to plaintiff-appellant;

> 3) to pay plaintiff-appellant the sum of TEN THOUSAND (P10,000.00) PESOS as reasonable attorney's fees, and the costs of suit.
>
> SO ORDERED.[7]

The reversal of the MeTC order prompted Amparo Roxas to elevate the matter to the Court of Appeals for review under Rule 42. However, the appellate court affirmed the aforequoted RTC decision opining that Amparo's reliance on *Velez vs. Avelino*[8] is misplaced for the latter partakes of a different factual setting. The RTC of Marikina had found, *inter alia*:

> In this particular case, the private respondents from the very beginning occupied the subject premises without any contract and constructed thereon houses sans any building permits. The Court described them as squatters and characterized their possession as one of tolerance…in the case at bench, the petitioner was not a squatter but a lawful possessor of the property by virtue of a contract to sell duly entered into by the petitioner and private respondent. Her occupation became illegal only upon her refusal to vacate despite the cancellation of the contract to sell and a demand letter dated August 3, 1995 for her to vacate.
>
> While in the Velez case, supra, there was no contract, express or implied, at the start, in the case at bench, there was such an express contract to sell that governed the relationship between the petitioner and private respondent… Accordingly, it is imperative in a case of unlawful detainer that the incipient occupancy is founded on some legal authority such as an express or implied contract, which however, has expired. In the Velez case supra, there was no expiration or termination to speak of because there was really no contract in the first place, whereas, in the instant case there was.[9]

The aforesaid finding was upheld by the Court of Appeals.

Hence, this petition for review on certiorari raising the lone issue of:

WHETHER OR NOT THE REGULAR COURT HAS JURISDICTION TO TRY AND HEAR THE INSTANT CASE.[10]

While this petition for review does not assign any specific error committed by the court *a quo* in affirming the decision of the RTC, what petitioner raises is the question of jurisdiction of the regular courts of justice over the subject matter of this case. According to her petition,[11] the matter involved in the present petition falls squarely within the jurisdiction of an administrative agency, namely the Housing and Land Use Regulatory Board (HLURB).[12] She explains that "this is for the simple reason that the issue between the parties is the determination of whether or not the terms and conditions of their contract to sell are violated." She adds that she is one of the buyers on installment of a subdivision lot in private respondent's subdivision. For Manotok Realty Inc. is the subdivision owner and/or developer. Consequently, according to petitioner, any question that may arise regarding their contract, be it for non-payment of amortization, specific performance, or in general, violation of any term or condition thereof, including a special instance of ejectment[13] if proper,

should be resolved before the HLURB by a proper initiatory pleading filed thereat. [14]

Moreover, petitioner Amparo Roxas reiterated in her memorandum[15] that although the complaint has been framed to be one for unlawful detainer, the truth is that the matter involves a dispute between a subdivision owner/developer and a subdivision lot buyer. She further asserts that she could not be estopped from raising the question of lack of jurisdiction of the courts to try and hear the case because, in her position paper filed with the MeTC, she has already raised the argument that the matter was cognizable by the HLURB.

Respondent Manotok Realty, Inc., maintains the contrary, to wit, that the settled rule is that the question of jurisdiction must be raised before the inferior court. Otherwise, petitioner is barred by estoppel or even laches. Respondent contends that in the determination of whether or not an inferior court has jurisdiction over ejectment suits, what determines the nature of the action as well as the court that has jurisdiction over the case are the allegations in the complaint. Citing *Sumulong vs. CA*,[16] private respondent avers that the cause of action in a complaint is not what the designation of the complaint states, but what the allegations in the body of the complaint define or prescribe. Private respondent claims that the CA correctly pointed out that the complaint expressly provides that the case is one for unlawful detainer and not an *accion publiciana*.

In our view, the following issues now appear for the Court's resolution: (1) whether petitioner could still raise the issue of jurisdiction at this stage of the proceedings; and (2) whether the instant case falls within the exclusive jurisdiction of the HLURB.

Considering the circumstances of the cases, including the averments of the parties, we find the present petition without merit.

On the first issue, we hold that petitioner is already estopped from raising the issue of jurisdiction. What she raised in her position paper as a special and affirmative defense was the purported failure of the complaint to state a cause of action, arising from an alleged failure to exhaust administrative remedies before the HLURB as a condition precedent to filing a case in court. This is not an explicit attack on the court's jurisdiction over the subject matter of the complaint, but merely a claim for the need to go through an alleged jurisdictional requirement, namely exhaustion of administrative remedies.

Granted that she placed MeTC's jurisdiction at issue, on the supposition that it is the HLURB that has jurisdiction over Manotok's complaint below, she abandoned her theory after she obtained a favorable judgment at the MeTC. She chose not to appeal the MeTC's decision and instead consistently adopted in her pleadings before the RTC and CA, the MeTC's ruling that the action is one for *accion publiciana*. Nowhere in her pleadings before the RTC and CA did she raise the argument that jurisdiction properly lies with the HLURB. As earlier mentioned, it was only in her present petition with this Court that she squarely asserted for the first time that the HLURB has exclusive jurisdiction over the instant case.

Indeed, the general rule is that a question of jurisdiction may be raised at any time, even on appeal, provided that doing so does not result in a mockery of the tenets of fair play.[17] When, however, a party adopts a particular theory, and the case is tried and decided upon that theory in the court below, he will not be permitted to change