415 Phil. 172

THIRD DIVISION

[G.R. No. 142276, August 14, 2001]

FLORENTINO GO, JR., MA. LUZVIMINDA GO, LEONIDA GO, FELIPE GO, MARIETTA GO, ROBERTO GO, ESTRELITA GO, ANTONIO GO, ALBERTO GO, BABY LUCILA GO AND MANUEL GO, PETITIONERS, VS. HON. COURT OF APPEALS AND AURORA I. PEREZ, RESPONDENTS.

D E C I S I O N

GONZAGA-REYES, J.:

The decision[1] promulgated on January 27, 1999 by respondent Court of Appeals in CA-G.R. SP No. 46779 reversing the decision of the regional trial court, as well as its resolution of February 28, 2000 denying herein petitioners' motion for reconsideration, are assailed in this petition for review on certiorari.

This case originated from a complaint for ejectment filed by herein petitioners Florentino, Jr., Luzviminda, Leonida, Felipe, Marietta, Roberto, Estrelita, Alberto and Baby Lucila (all surnamed Go), as plaintiffs, against herein private respondent Aurora I. Perez, as defendant, in the Metropolitan Trial Court (MTC) of Caloocan City as Civil Case No. 22172, which complaint alleges these material facts:

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> 2. Plaintiffs are the children and the only surviving heirs of the late spouses Florentino, Sr. and Lucila Go who both died intestate on June 10, 1973 and January 22, 1988, respectively, and in whose name a parcel of land situated in Caloocan City is registered under Transfer Certificate of Title No. C-32110.
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> A copy of said Transfer Certificate of Title No. C-32110 is attached hereto and marked as Annex "A" and made as an integral part of this complaint.
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> 3. Through mere tolerance of plaintiffs as well as their late mother, defendant was allowed to occupy the said parcel of land temporarily on condition that she would vacate the same once she is asked.
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> 4. In December, 1994, plaintiffs, feeling the need to establish another residence to accommodate a growing family finally asked defendant to vacate the premises. This demand to vacate was repeated several times more but the same went unheeded even up to this time thus prompting plaintiffs to seek the help of the local Barangay office.
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> 5. Several conciliation meetings were held but no settlement was reached

and as a result of which a Certification to File Action was issued as shown by the attached copy of the same marked as Annex "B" and made as an integral part of the complaint.

6. By reason of defendant's unjustified refusal to vacate the premises notwithstanding repeated demands therefor, plaintiffs were forced to engage the services of counsel for an agreed fee of P5,000.00 plus P500.00 per appearance for which defendant should be made to pay plaintiffs. Defendant should likewise be made to pay plaintiffs litigation expenses of no less than P10,000.00 and the sum of at least P2,000.00 a month for the reasonable use and occupancy of the premises from January, 1995 until the same is vacated."[2]

In her answer,[3] defendant denied the allegations of the plaintiffs and invoked the following alternative defenses, among others: that she has been occupying the subject land since 1963, through permission of the security guards of the People's Homesite and Housing Corporation (PHHC); that she cleared the said land and constructed houses for her family thereon, and applied for its acquisition with the PHHC and its successor-in-interest, the National Housing Authority (NHA); that it was only in December, 1994, when Estrelita Go demanded that she vacate the premises, that she learned that the land had already been titled in the name of Lucila Go in 1980; that Lucila Go acquired the said title through false statements in her application with the PHHC; and that she has the preferential right to acquire the property .

After the issues have been joined, the MTC heard the case under the Rules on Summary Procedure and decided on the basis of the position papers and the oral and documentary evidence of the parties.

On August 26, 1996, the MTC rendered its decision dismissing the case without prejudice. According to the MTC, the case is neither an action for unlawful detainer nor forcible entry. The MTC reasoned out that it could not be a case for unlawful detainer because plaintiffs failed to substantiate their claim that defendant's possession of the subject parcel of land was by mere tolerance as the plaintiffs in open court denied such tolerance, either by their parents or by themselves; and neither could it be forcible entry for failure to file the action within the one year period counted from the date of forcible entry.

On appeal to the Regional Trial Court (RTC) of Caloocan City, Branch 131, in Civil Case No. 17707, plaintiffs assailed the MTC decision. On December 18, 1997, said lower appellate court reversed and set aside the judgment of the MTC, disposing as follows:

(1) Ordering the defendant-appellee and all persons claiming rights under her to immediately vacate the subject premises, particularly, Lot 10, Block 50 of the consolidation subdivision plan PCS-5914, situated in Camarin, Caloocan City, and covered by TCT No. C-32110;

(2) Ordering the plaintiff-appellee to pay plaintiffs-appellants P5,000.00 as and for attorney's fees;

(3) Ordering the defendant-appellee to pay plaintiffs-appellants the amount of P2,000.00 per month for the reasonable use and occupancy of the subject premises from the date of the filing of the complaint in court on June 27, 1996 until she finally vacates the same, and to pay the costs of suit;

(4) Ordering the dismissal of defendant-appellee's counterclaim for lack of merit.[4]

In reversing the MTC, the RTC reasoned out as follows:

"However, the lower court had overlooked and misappreciated facts of substance in rendering its assailed decision.

It was not reliably disputed that a certain attorney was allowed by the registered owner Lucila Go to temporarily utilize the house within the subject premises sometime in 1964 and it was only in 1977 that the defendant-appellee was first seen to be residing with the attorney her relative, in the said house and, thus she was similarly tolerated to stay thereat. It was only sometime in December 1994 that demand was made upon the defendant-appellee to vacate the subject premises.

The lower court overlooked and misappreciated the facts when it concluded that the plaintiffs denied that tolerance was given to the defendant-appellee because what was propounded by the plaintiffs-appellants during the preliminary conference was that their mother did not allow the defendant to build her house on the premises (TSN, February 29, 1996, pages 5 and 6) and not that the claim of tolerance was denied. In this complaint for ejectment, the remedies of unlawful detainer and forcible entry have been fully substantiated.

As regards to unlawful detainer, the defendant-appellee, who was able to lawfully enter the subject premises by residing with her relative attorney, who was tolerated to temporarily occupy and reside in the house within the premises, is now being asked to vacate the same but refused to heed the demand. "After demand and its repudiation, the continuing possession of private respondent became illegal and the complaint for unlawful detainer filed by petitioner was its proper remedy." (Asset Privatization vs. Court of Appeals 229 SCRA 1994).

As regards to forcible entry, the subsequent construction and occupancy of defendant-appellee's house was by stealth. Consistent with the doctrine laid down in the case of Sumulong vs. Court of Appeals, 232 SCRA 372, which applies by analogy, the defendant-appellee was able to avoid discovery and to gain entrance into and remain within the subject premises, the defendant-appellee, without permission, and by her secret or clandestine act of residing first with her relative attorney who was tolerated to reside temporarily in the said premises, succeeded in constructing her own house which she finally occupied. Applicable in this

case, by analogy, is the pronouncement in Piano vs. Court of Appeals, 169 SCRA 485 (1989) that "The remedies of forcible entry and illegal detainer are both allowed in a single action as illegal detainer refers to the 5-hectare portion of the land while the forcible entry refers to the remaining portion."

It is undubitable that the lower court erred in its conclusion that the claim of tolerance was denied and that if this case is for forcible entry, this ejectment case should have been filed within one (1) year from as early as 1977 despite the evidence on record that demand was made in December 1994 and the case for ejectment was filed just about six (6) months after or, specifically, on June 27, 1995, which filing is well within the prescribed period to file the case in court. For sure, it has been held in Elane vs. Court of Appeals, 172 SCRA 822 (1989) that "Where forcible entry was made clandestinely, the one year prescriptive period should be counted from the time respondent demanded that the deforciant desist from such possession when the former learned thereof," and the essence of such pronouncement is that "to deprive the lawful possessor of the benefit of summary action, under Rule 70 of the Revised Rule, simply because the stealthy intruder manages to conceal the trespass for more than a year would be to reward clandestine usurpation even if they are unlawful" (Vda. de Prieto vs. Reyes, 14 SCRA 430).

Furthermore, as held in the Mabalot vs. Madela, 121 SCRA 347, the time limitation of one year within which to file an action for forcible entry and detainer is reckoned not from the moment of occupancy by the defendant, but from the time that his possession becomes unlawful.

In this case, the jurisdictional requirement of demand was complied with as it was alleged in the complaint that demand was made in December 1994 for defendant to vacate the premises, thus, in substance, where a complaint in an ejectment case sufficiently alleges prior demand, the jurisdictional requirement is deemed complied with (Hautea vs. Magallon, 12 SCRA 514)."

Dissatisfied with the RTC's pronouncements, defendant Aurora I. Perez elevated the case to the respondent Court of Appeals. On January 27, 1999, the Court of Appeals rendered judgment in CA-G.R. SP No. 46779 reversing the decision of the RTC and reinstating that of the MTC. The Court of Appeals explained thus-

The cause of action embodied in the respondents' complaint is that the petitioner occupied the land in question only by tolerance of their mother and, after her death, by their own tolerance. Article 537 of the New Civil Code provides that –

> "Acts merely tolerated, and those executed clandestinely and without the knowledge of the possessor of a thing, or by violence, do not affect possession".

Tolentino explains the concept of tolerance under the said article thus: -

> "Acts merely tolerated are those which by reason of neighborliness or familiarity, the owner of property allows his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who permits them out of friendship or courtesy. They are acts of little disturbances which a person, in the interest of neighborliness or friendly relations, permits others to do on his property, such as passing over the land, tying a horse therein, or getting some water from the well. Although this is continued for a long time, no right will be acquired by prescription.
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> There is tacit consent of the possessor to the acts which are merely tolerated. Thus, not every case of knowledge and silence on the part of the possessor can be considered mere tolerance. By virtue of tolerance that is considered as an authorization, permission or license, act of possession are realized and performed. The question reduces itself to the existence or non-existence of permission.
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> It is difficult to draw a dividing line between tolerance of the owner and abandonment of his rights when the acts of the possessor are repeated, specially when the lapse of time has consolidated and affirmed a relation the legality of the origin of which can be doubted. When there is license or permission, the proof of easy. It is for the court to decide in each case whether there exists tolerance or an abandonment of right on the part of the owner." (Tolentino, Civil Code of the Philippines, 1972 ed., Vol. 2, pp. 253-254)

In the instant case, the evidence of tolerance on the part of the respondents consists of the affidavit of Luzviminda Go, which states, among others, the following: -

> "1. That I am one of the daughters of the late Lucila Go who died on January 22, 1988;
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> 2. That sometime in 1964 I was made to accompany my mother to visit a parcel of land which I know as the lot subject of our ejectment case against one Aurora Perez;
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> 3. That during that visit I saw a lone house there being occupied by a certain 'Attorney' who I learned from my mother that he was being allowed to stay there temporarily as we had no immediate need yet of the premises as we were allowed free use of a premises in Cubao, Quezon City belonging to a relative of our grandfather;