

SECOND DIVISION

[G.R. No. 121646, June 21, 1999]

**SPOUSES DR. CLARO L. MONTECER AND CARINA P. MONTECER,
PETITIONERS, VS. COURT OF APPEALS AND SPOUSES
PETRONILO BAUTISTA AND ILUMINADA L. BAUTISTA,
RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

This is a petition for review by *certiorari* under Rule 45 of the Revised Rules of Court. Petitioners are appealing from the decision of the Court of Appeals in C.A. - G.R. SP No. 33167 which affirmed the decision of the Regional Trial Court^[1] ordering the remand of an unlawful detainer case filed by petitioners against private respondents, for further reception of evidence by the Municipal Circuit Trial Court.^[2]

The facts of this case, as found by the MCTC, are as follows:^[3]

Plaintiffs [herein petitioners] commenced this action against the defendants [herein private respondents] on November 6, 1991, asking for the latter to vacate the premises within the area covered by Original Certificate of Title No. FP-12741 of the Register of Deeds of Batangas which is located in Bo. Santiago, Malvar, Batangas.

x x x

Evidence for the plaintiffs shows that plaintiffs are the absolute owners of the parcel of land located in Bo. Santiago, Malvar, Batangas as evidence[d] by Original Certificate of Title No. FP-12741. Sometime in 1987, they discovered that defendants have entered and occupied the Southwest portion of their land near the national road. To satisfy their doubt on defendants['] intrusion to the land they secured a plan of their land from the Bureau of Lands. A resurvey and relocation of the boundaries of the land done by a Geodetic Engineer confirmed defendants['] occupation of their land. The confrontation held between plaintiffs and defendants ended with the latter's promise of communicating to the former whatever decision they may arrive [at] to solve the problem.

A long time has elapsed without any word from defendants thus plaintiffs made a formal demand upon them to remove their house and other structures built on the questioned land and to surrender peacefully the possession of said land to plaintiffs within a period of one year. In 1991, plaintiffs returned from abroad and discovered that defendants, instead of removing their constructions on the land, enlarged them to cover

approximately 160 square meters. In another confrontation defendants promise[d] to vacate the premises on or before September 30, 1991 but same was in vain. They also ignored the demand letter to leave the land sent by plaintiffs['] counsel. Constrained by defendants['] refusal to surrender peacefully their possession of the land to plaintiffs, the latter filed this complaint through counsel...

Defendants did not deny the ownership of the land by plaintiffs. However, they claim that their house on the questioned land was constructed in 1960 with the knowledge of plaintiffs and their late mother, Maria Lantin Montecer, who is the first cousin of the mother of defendants. The land was given to them by their late mother. Efren Bautista confirmed in his affidavit the fact that defendants['] house was built in 1960 [and] [t]hat it was only in 1991 when plaintiffs asked them to remove their house which is worth P390,000.00 and to surrender possession of the land to them."^[4]

The MCTC found that private respondents were of the mistaken belief that the land on which they erected their house belonged to their mother. They learned of petitioners' ownership of the land only on August 29, 1991.

The court ruled in favor of petitioners and ordered private respondents to remove their house and vacate petitioners' land. It also ordered private respondents to pay rent at the amount of P300.00 a month, from October 1991 until they vacate the land.

Private respondents appealed to the RTC and prayed that, in the event the decision of the MCTC is affirmed, they be reimbursed the value of their house as builders in good faith.

The RTC affirmed the ruling of the MCTC, but declared that certain factual issues remain to be resolved concerning the specific portions of private respondents' house constructed in 1961 and then in 1991, and the value of the structure constructed in 1961. The RTC ruled that it cannot pass upon these issues as these are not proper for determination in its exercise of its appellate jurisdiction. Thus, the RTC ordered the remand of the case to the MCTC.

Petitioners brought their case to the Court of Appeals which, however, dismissed their petition and affirmed the decision of the RTC, finding no grave abuse of discretion on the part of the RTC. Besides, the Court of Appeals pointed out that the proper remedy should have been a petition for review by *certiorari* and not an original action for *certiorari*.

The dispositive portion of the CA decision in C.A.-G.R. SP No. 33167 reads:

"WHEREFORE, the petition for writs of certiorari and mandamus with preliminary injunction is DENIED. The assailed Decision dated July 22, 1993 and the Order dated December 7, 1993 issued by the respondent court are affirmed. Let the original records of Civil Case No. T-833 be remanded to the municipal trial court through the respondent court for further appropriate proceedings.

No costs.

SO ORDERED."^[5]

Hence, this appeal by petitioners to the Supreme Court by way of petition for review by *certiorari*.

Petitioners raise the following issue in this petition:

"whether in the light of [Section 21(d) of the Interim Rules Implementing the Judiciary Reorganization Act of 1981 or B.P. Blg. 129], it is mandatory upon regional trial courts to decide [an] appealed ejectment case on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may have been filed, even if the evidence transmitted to it is wanting to determine factual questions in consonance with the provisions of the Civil Code..."^[6]

Section 21(d) of the Interim Rules Implementing B.P. Blg. 129 provides:

"21. *Appeal to the regional trial courts.* --

x x x

(d) Within fifteen (15) days from receipt by the parties of the notice referred to in the preceding paragraph, they may submit memoranda and/or briefs, or be required by the regional trial court to do so. After the submission of such memoranda and/or briefs, or upon the expiration of the period to file the same, the regional trial court *shall* decide the case on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs, as may have been filed."^[7]
(Emphasis supplied)

Petitioners contend that the use of the word "shall" in the foregoing provision make it mandatory upon the regional trial court to decide a case on appeal on the basis of the pleadings filed and proceedings had in the lower court, "even if the evidence transmitted to it is wanting to determine certain factual questions."^[8] Petitioners claim that this is a duty which cannot be evaded by the RTC.

Moreover, petitioners point out that the value of the structures erected by private respondents on their land was only mentioned in passing in the latter's answer to the complaint but was not actually raised as an issue in the case. Petitioners argue that private respondents' failure to adduce evidence in the MCTC concerning the value of the structures constitute waiver on their part.

Petitioners rely on the case of *Bersabal v. Salvador*^[9] as authority for their arguments. The petitioner in that case appealed to the then Court of First Instance the adverse decision of the City Court in an ejectment case filed against her. The CFI required the parties to submit memoranda. Since the transcript of stenographic notes were incomplete, petitioner asked for and was granted a period of 30 days from receipt of notice of submission of complete TSNs within which to file her memoranda. However, without petitioner ever receiving such a notice, the CFI dismissed her appeal for her failure to file a memorandum. On appeal to the