

## TWENTY-THIRD DIVISION

[ CA-G.R. SP NO. 04861-MIN, February 27, 2015 ]

**GODOFREDO C. PINEDA, PETITIONER, VS. TOMAS H. TIONKO JR., RESPONDENT.**

### DECISION

**CONTRERAS, J.:**

Before this Court is a Petition for Review, under Rule 42 of the 1997 Rules of Civil Procedure, seeking to nullify and/or reverse the Decision<sup>[1]</sup> dated March 19, 2012 of the Regional Trial Court (RTC) of Davao City, Branch 15 in Civil Case No. 34,202-2011 which affirmed the Decision<sup>[2]</sup> dated August 18, 2011 of the Municipal Trial Court in Cities (MTCC), Branch 1, Davao City in Civil Case No. 21,801-A-10.

#### *The Facts*

The facts of the present controversy borne by the records are:

On August 11, 2010, Tomas H. Tionko, Jr. (respondent, for brevity) filed a Complaint<sup>[3]</sup> before the MTCC for Unlawful Detainer, Payment of Rentals, with prayer for issuance of Temporary Restraining Order (TRO), Preliminary Injunction, Interest and Attorney's fees against Godofredo C. Pineda (petitioner, for brevity) docketed as Civil Case No. 21,801-A-10.

In his complaint, respondent (plaintiff therein) alleged that: he is the registered owner of two (2) parcels of land situated at F. Torres Street and Lopez Jaena Street, Davao City described as Lots 5 and 6, Block 3, with an area of Seven Hundred Ninety-Eight (798) square meters covered by Transfer Certificate of Title (TCT) Nos. T-277663 and T-277664; on September 21, 2000, petitioner, a known businessman-contractor, and respondent entered into a First (1<sup>st</sup>) Contract of Lease over a portion of the abovementioned parcels of land for a monthly rental of Two Thousand Pesos (PHP 2,000.00) plus 10% VAT, retroactively effective on June 1, 2000; when the 1<sup>st</sup> lease expired on November 30, 2000, the parties entered into a Second (2<sup>nd</sup>) Contract of Lease on June 1, 2001, for a period of six (6) months or up to November 30, 2001; upon the expiration of the 2<sup>nd</sup> lease contract, the parties entered in a Third (3<sup>rd</sup>) Contract of Lease on September 1, 2007, this time, on a month-to-month basis; on September 5, 2008, respondent sent a letter to petitioner informing the latter that he is terminating the lease contract effective January 1, 2009; however, petitioner continued to stay on the premises; sometime on June 1, 2009, petitioner stopped paying the monthly rentals of the leased premises after learning that there is a pending case for Annulment, Cancellation of Title, Reversion involving the said land; driven by manifest bad faith and malice, petitioner refused to pay the monthly rentals from June 1, 2009, to July 31, 2010, and up to the present despite demands to pay the due rentals and to vacate the subject leased premises.

Meanwhile, petitioner (defendant therein), in its Answer<sup>[4]</sup> dated August 20, 2010, denied the allegations in the complaint and contended that: sometime in the late 1999 to early 2000, he chanced upon an idle piece of swampy and marshy land at the corner of Florentino Torres Street and Graciano Lopez Jaena Street which was unoccupied and unused by any other person or entity with an area of more or less 3,000 square meters; after discovering that nobody was occupying the said land for many years, he, in all good faith, decided to do earth-filling and gravel-filling in the area; the earth-filling of the subject land required more than fifty (50) to one hundred (100) truckloads of earth and gravel to make the said land flat and at the same level with the street and adjacent properties; thereafter, he decided to occupy, possess and use the property as a garage for his dump trucks and heavy equipments; sometime in the year 2001, while he was already occupying the said property in a peaceful and uninterrupted manner and in good faith, somebody came to the subject premises and claimed that the property belongs to respondent and that he (petitioner) should pay rentals; he then went to respondent and informed the latter that he (petitioner) had incurred huge expenses in filling the subject area with sand and gravel and that he was aware of the reversion case pending in court involving the subject premises; that respondent merely shrugged that off and instead told him that they should execute a lease contract whereby respondent would allow petitioner to occupy and use the premises for a monthly rental of PHP 2,000.00; that he was convinced to execute and sign the lease agreement/contract with the respondent covering Lots 5 and 6, Block 3 with an area of 798 square meters located at Torres St., Davao City.

On August 18, 2011, the MTCC issued a Decision<sup>5</sup> in favor of respondent, the dispositive portion of which reads as follows:

WHEREFORE, this court hereby orders the defendant to:

(1) VACATE the premises (portion of Lot 5, Blk 3, TCT No. T-277663 and portion of Lot 6, Blk 3, TCT No.: T- 277664) subject of the lease contract and to remove all structures inside constructed by the defendant since June 2000;

(2) PAY all unpaid rentals in the amount of ONE HUNDRED THIRTY-THREE THOUSAND (PHP 133,000.00) covering the period from June 1, 2009, to July 30, 2010, only; and

(3) PAY the sum of FIFTY THOUSAND (PHP 50,000.00) as attorney's fees plus

(4) COST OF SUIT.

Other reliefs cannot be awarded in the absence of competent proof in support thereof.

Aggrieved, petitioner filed a Notice of Appeal before the RTC, Branch 15, Davao City assailing the MTCC Decision. Respondent also filed a Partial Notice of Appeal assailing the same Decision but only as to the payment of back rentals.

On March 19, 2012, the RTC rendered a Decision<sup>[6]</sup> in Civil Case No. 34,202-2011

dismissing the appeals filed by both petitioner and respondent and affirming with modification the Decision of the MTCC by reducing the award of attorney's fees to PHP 20,000.00.

Hence, this petition.

### **Issues**

Petitioner contends that the court *a quo* ERRED:

1. In failing to uphold that it is a mandatory statutory requirement under the Civil Code that in any action for recovery of property, the one seeking recovery must properly "identify" the exact area of the property sought to be recovered through this ejectment suit. For respondent's utter failure to 'identify' the property in suit, the instant case should have been dismissed.
2. In failing to uphold that respondent herein who occupied the property in good faith, as a builder in good faith in this case, cannot be evicted or ejected from the property in suit without the herein appellee complying with the provisions of Article 448 of the Civil Code of the Philippines in relation to Articles 546 and 548 thereof.
  - a. The appellate court *a quo*'s positing that only those 'claiming' ownership of the property may be entitled to the provisions of Art. 448 in relation to Arts. 546 and 548 of the Civil Code and that supposedly in this case, petitioner did not claim 'ownership' of the property in suit is gravely erroneous considering the fact that petitioner's occupation of the property was due to his belief that the same was 'public land' and may therefore be subject to acquisitive prescription.

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

This Court finds the petition bereft of merit.

Petitioner asseverates that respondent miserably failed to comply with the Civil Code requirements before any action to recover possession of real property may prosper, that: "In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim." With this utter failure to properly identify the property, the unlawful detainer case filed by respondent should have been dismissed.

Such asseveration is erroneous.

In *accion interdictal* (forcible entry and unlawful detainer), the only question that the courts must resolve is - who is entitled to the physical or material possession of the property; that is, possession *de facto*, and they should not involve the question of ownership or of possession *de jure*, which is to be settled in the proper court and in a proper action.<sup>[7]</sup> Thus, it is not a remedy to obtain or recover ownership of a certain property but rather it is a remedy to determine who has a better right to possess the property subject of the dispute.

In this case, petitioner, in its futile attempt to mislead this Court, argues that Article 434<sup>[8]</sup> of the Civil Code must be complied with before the unlawful detainer case of respondent will prosper. Such is a blatant misapplication of the law. The above-stated provision clearly applies only to "actions to recover" or *accion reivindicatoria* and not to *accion interdictal* where the issue involves only physical or material possession and not ownership. The *case of Canezo v. Bautista*<sup>[9]</sup> is instructive:

"The present case, while inaccurately captioned as an action for a "Writ of Demolition with Damages" is in reality an action to recover a parcel of land or an *accion reivindicatoria* under Article 434 of the Civil Code. Article 434 of the Civil Code reads: "In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim." *Accion reivindicatoria* seeks the recovery of ownership and includes the jus utendi and the jus fruendi brought in the proper regional trial court. *Accion reivindicatoria* is an action whereby plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession."

But assuming *ex gratia argumenti* that the foregoing Civil Code provision is applicable in the case at bar, still, the argument of petitioner does not hold water. Case law has it that, although the identity of the thing that a party desires to recover must be established, if the plaintiff has already proved his right of ownership over a tract of land, and the defendant is occupying without right any part of such tract, it is not necessary for plaintiff to establish the precise location and extent of the portions occupied by the defendant within the plaintiff's property.<sup>[10]</sup> Here, respondent has already established his right of ownership of the property by virtue of the transfer certificate of title (TCT) issued in his name. Such Torrens title is a conclusive evidence of respondent's ownership of the subject property. Having proven his ownership and the fact that petitioner is occupying the subject property without any right, then, compliance with the requirement laid down in Article 434 of the Civil Code is no longer indispensable. Also, as correctly pointed out by the court *a quo*, the contract of lease entered into and signed by the parties, as well as the TCTs presented, have already described, in clear and definite terms, the area and the location of the subject property. Hence, the identity of the subject property is already clearly ascertained and settled. There is no need for further identification of the subject property.

With regard to the second issue raised, petitioner argues that he is a builder in good faith and, therefore, cannot be evicted or ejected from the subject property without respondent complying with the provisions of Article 448<sup>[11]</sup> of the Civil Code in relation to Article 546<sup>[12]</sup> and 548<sup>[13]</sup> thereof.

Such argument deserves scant consideration.

In a plethora of cases, the Supreme Court ruled that Articles 448 of the Civil Code, in relation to Article 546 of the same Code, which allows full reimbursement of useful improvements and retention of the premises until reimbursement is made, applies only to a possessor in good faith, *i.e.*, one who builds on land with the belief that he is the owner thereof. **It does not apply where one's only interest is that of a lessee under a rental contract;** otherwise, it would always be in the