

TWENTY-THIRD DIVISION

[CA-G.R. SP NO. 05295-MIN, February 27, 2015]

**SPOUSES ADEMAR OBINA AND LEOLINDA OBINA PETITIONERS,
VS. ALFREDO PULIDO, RESPONDENT.**

D E C I S I O N

CONTRERAS, J.:

The Case

This is a petition for review assailing the Decision^[1] of the Regional Trial Court (hereafter RTC) in Dipolog City, which affirmed the Decision^[2] of the Municipal Trial Court in Cities (hereafter MTCC) dismissing the complaint for forcible entry filed by the Spouses Ademar and Leolinda Obina (Hereafter spouses Obina) against Alfredo Pulido (hereafter Pulido).

A Motion for Reconsideration was likewise denied.

The Facts

The records reveal the following facts:

On May 31, 2010, spouses Obina filed a complaint in the Municipal Trial Court in Cities, Branch 2, Dipolog City, for Forcible Entry and Damages against Pulido, alleging that he stealthily entered their property sometime in June 2009.^[3]

In their Complaint,^[4] spouses Obina's version of the events is as follows:

Spouses Obina are claiming to be the owners of a parcel of land in Dipolog City. They allegedly purchased the land from Victoriano M. Regencia in 1984, who acquired the lot from Fortunato Marquiala in June 1964. Immediately after buying the said lot, spouses Obina constructed and constituted their family home on it. In 2007, the city government of Dipolog ordered the spouses Obina to leave the area to give way for the construction of the road connecting Barangay Turno-Estaka and Barangay Miputak. With the other residents in the area, they were relocated to Olingan, Dipolog City, while road construction was undertaken. Upon completion, the road sliced a portion of their lot. On the last week of May 2009, spouses Obina learned that the road construction was finished. So they went back to their lot, bringing some lumber to rebuild their house. When spouses Obina returned to the area sometime in the first week of June, they saw a skeletal structure already being erected by Pulido. Spouses Obina then complained to the barangay authorities to no avail. They also sent to Pulido a demand letter to vacate which was also left unheeded.^[5]

For his part, Pulido claimed he bought portions of lot 3150 from Fortunato Marquiala in August 1964 and January 1965.^[6] Pulido also asserted that the property allegedly claimed by the spouses Obina is beyond or outside the perimeter area of Pulido's property, as shown by the sketch plan at the back portion of the Affidavit of Quitclaim that Pulido got from Fortunato Marquilla. Pulido maintained that the lot claimed by the spouses Obina is actually located farther to the western portion as found in the sketch plan, which was totally overrun by the recently created bypass road.^[7]

For his defense, Pulido countered that in the first place, the allegation of prior physical possession cannot be determined since the spouses Obina were unable to categorically identify or specify with exactitude their three hundred (300) square meters as a part of lot 3150. They cannot just claim to be of prior physical possession of the property belonging to Pulido, which was specifically identified in the sketch plan attached to the affidavit of quitclaim that Pulido has from Fortunato Marquilla. Also, it was not through Pulido's acts that spouses Obina were allegedly dispossessed of the property in question since it was their voluntary compliance with the relocation order of the city government that made them leave the area. Thus, it was actually the city government which caused the spouses Obina to lose possession of their alleged property. Secondly, there was no force, intimidation, threat, strategy or stealth when the alleged deprivation of possession was made since Pulido was actually in America when the Geodetic Engineer, upon his request, relocated the markers of his property after a portion of it had been encroached by the constructed bypass road. Lastly, the action, if there is merit to it, had been filed out of time. The road construction was actually started by the city government of Dipolog in the second quarter of 2006, not 2007 as claimed by the spouses Obina. The complaint was filed on May 28, 2010. Clearly, it was more than a year from the alleged dispossession of the property. Thus, Pulido argued that the action must be dismissed.^[8]

On May 30, 2012, the MTCC issued a decision dismissing the complaint. The MTCC found that "no forcible entry was committed and instead, there was abundant proof of Pulido's ownership and prior possession of the lot in question."^[9] The MTCC also declared that the spouses Obina assumed that the lot belonging to Pulido was the remainder of their lot, but their bare allegations were not backed by any documentary evidence. On a last note, the MTCC ruled that from the mass of evidence presented, the court is more than persuaded that Pulido is the absolute owner of the land in question.^[10]

The dispositive portion states:

"WHEREFORE, in view of all foregoing the Court hereby renders judgment as follows:

- a) Ordering the dismissal of the complaint;
 - b) Declaring defendant Alfredo Pulido as lawful owner and possessor of the land in question;
- Ordering the dismissal of the defendant's counterclaim."

On September 28, 2012, the RTC issued the herein assailed decision affirming the MTCC. The RTC ruled that spouses Obina failed to prove prior physical possession

over the subject property, which is a fundamental issue in actions of forcible entry.

Spouses Obina asserted that the RTC failed to consider the entire evidence on record, as to the nature and cause of why they left their land.^[11]

A Motion for Reconsideration was likewise denied.^[12]

The Issues

Spouses Obina averred that the RTC seriously erred:

when it ruled that they were no longer in possession of the property after leaving for resettlement in Barangay Olingan, Dipolog;

in ruling that spouses Obina failed to prove the identity of the property;

in not ruling that spouses Obina enjoyed prior physical possession of the lot subject of this case;

in not ejecting Pulido from the property. Our Ruling

The petition is devoid of merit.

As provided in *Rule 70, Section 1*^[13] of the Rules of Court, forcible entry is defined as “an action to recover possession founded on illegal occupation from the beginning”^[14] and “where one is deprived of physical possession of any land or building by means of force, intimidation, threat, strategy or stealth.”^[15] There is no evidence presented that would support the claim of spouses Obina as to the identity of the subject lot, more so that they have prior physical possession thereof, and that Pulido surreptitiously entered their property. On the contrary, the evidence presented supports the defense of Pulido that the property in question had been transmitted to him and had been in his possession, even during the period when the road construction was underway.

On the Alleged Prior Possession by spouses Obina

A condition sine qua non to a claim for forcible entry is for plaintiffs (spouses Obina) to prove prior physical possession of the subject property. The RTC correctly ruled that a plaintiff in an action for forcible entry must first prove that “he was in prior physical possession of the disputed property and that the defendant deprived him of his possession by any of the means provided for”^[16] by law.

The kind of possession required by law and jurisprudence is physical and not ideal possession. “As used in forcible entry and unlawful detainer cases, ‘possession’ refers to “physical possession, not legal possession in the sense contemplated in civil law.”^[17]

The eminent civilist Arturo M. Tolentino stated that “to possess means to have, to actually and physically occupy a thing, with or without right. XXX Possession always includes the idea of occupation XXX. Without occupancy, there is no possession.”^[18]