

SPECIAL SIXTEENTH DIVISION

[CA-G.R. SP No. 136811, March 30, 2015]

**EMMA BUENVIAJE NABO AND ALL PERSONS CLAIMING RIGHTS
UNDER HER, PETITIONER, VS. FELIX C. BUENVIAJE,
RESPONDENT.**

DECISION

BUESER, J.:

Before this Court is a Petition for Review under Rule 43 of the Rules of Court, filed by Emma Buenviaje Nabo ("petitioner"), seeking to annul and set aside the Decision dated July 10, 2014, of the Regional Trial Court, Branch 77, San Mateo, Rizal ("trial court").

The Facts

Felix Buenviaje ("respondent") filed a complaint for ejectment against Emma Buenviaje ("petitioner") alleging that he is the registered owner of 198 square meters of land located in the Municipality of San Mateo, Province of Rizal covered by Original Certificate of Title (OCT) No. 0-1777 of the Register of Deeds for the Province of Rizal. Since the issuance of title in his favor, he has allowed the petitioner, his niece, to stay on 100 square meters of his property ("subject property") but with the understanding that she should vacate the same once he needs it.

On or about July 2012, respondent sent petitioner, and all those claiming rights under her, a letter ordering them to vacate the subject property, within fifteen (15) days, from receipt of the said letter. However, petitioner refused to heed respondent's demand despite her receipt of the letter on October 1, 2012. The subsequent barangay conciliation failed resulting to the issuance of a barangay certificate to file an action and this present complaint.

Petitioner countered that she had been in possession of the subject property for more than 30 years. Subject property is registered with the Office of the Assessor of the Province of Rizal in the name of her father, Carlos Buenviaje, for which Tax Declaration No. 14233 was issued by the Municipal Assessor of San Mateo Rizal. Later on, she purchased the subject property from her father and has been paying the real property taxes thereon up to present. She claimed that the title of the respondent had been secured through fraud. In 1998, respondent, together with a municipal assessment officer, convinced her to consolidate their properties so they can get a single title to help petitioner's son get a loan. Petitioner rejected respondent's offer. In May 2012, petitioner found out that the subject property is already titled under respondent's name.

The Lower Courts' Decisions

After due proceedings, the Municipal Trial Court rendered its decision^[1] dated October 4, 2013, in favor of the petitioner to wit -

"xxx, in the case at bench, it is unarguable that defendant has been in possession of the subject property since time immemorial even long before plaintiff was able to secure title, those who can prove prior physical possession or priority in time have the security that entitles them to continue in possession, even against the new owner or person having a better right, irrespective of whatever may be the character of their possession until they are lawfully evicted in a proper action by the said new owner or person having a better right (xxx) as in the situation herein of the defendant."

Aggrieved, respondent appealed.

On July 10, 2014, the trial court issued the assailed Decision^[2] reversing and setting aside the MTC's decision because -

"It was established that plaintiff is the registered owner of the parcel of land subject matter of this case under Original Certificate of Title No. 0-1777 issued on 28 August 2008 by the Land Registration Authority pursuant to the Decision dated 07 February 2003 of MTC Judge Ma. Teresa Cruz-San Gabriel of San Mateo, Rizal Municipal Trial Court."

Hence, this petition.

Petitioner raises the following -

Assignment of Errors

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FAILING TO DISMISS THE COMPLAINANT'S APPEAL DATED 10 DECEMBER 2013 CONSIDERING THAT THE RESPONDENT IS THE UNCLE OF PETITIONER AND HIS COMPLAINT FAILED TO ALLEGE THAT EARNEST EFFORTS TO COMPROMISE WERE MADE.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING THAT RESPONDENT IS ENTITLED TO THE POSSESSION OF THE SUBJECT PROPERTY.

This Court's Decision

Petitioner argues that the trial court committed error in not dismissing the complaint despite the lack of allegation that earnest efforts were exhausted to try to settle their differences considering that the respondent is the uncle of the petitioner.

In addition, the trial court committed error in giving credence to respondent's bare allegation that petitioner's possession is by his mere tolerance.

We decide.