

## **SPECIAL NINETEENTH DIVISION**

**[ CA-G.R. SP NO. 05019, June 30, 2014 ]**

**HEIRS OF ANASTACIO FAUNILLAN, PETITIONERS, VS. HON. CHRISTINE MUGA-ABAD, PRESIDING JUDGE, MCTC, MOALBOAL, CEBU, HON. LEOPOLDO T. CAÑETE, PRESIDING JUDGE RTC, BR.60, BARILI, CEBU AND THE SPS. BERNARD AND GLENDA KESSLER, RESPONDENTS.**

### **D E C I S I O N**

**LAGURA-YAP, J.:**

Before Us is this Petition for Review<sup>[1]</sup> under Rule 42 of the 1997 Rules of Civil Procedure, which seeks to assail: 1) the *May 11, 2009 Decision*<sup>[2]</sup> of the 12<sup>th</sup> Municipal Circuit Trial Court (MCTC) of Moalboal, Cebu, 2) the *January 7, 2010 Decision*<sup>[3]</sup> of the Regional Trial Court (RTC) Branch 60 of Barili, Cebu, and 3) its *March 19, 2010 Order*<sup>[4]</sup> in Civil Case No. CEB-BAR-595 for Ejectment With Damages.

The Petition prays that We set aside the assailed Decisions and Order, and in their stead, render a new one, as follows:

- a. Ordering the respondents to vacate the subject premises and or to surrender peaceful possession thereof to the petitioners;
- b. Ordering the respondents to remove their house and/ or any improvement which they might have constructed on the subject premises;
- c. Ordering the respondents to restore the stone embankment; and finally,
- d. Ordering the respondents to pay the petitioners the amount of P300,000.00 as moral damages; P50,000 as actual damages and P1,000 per month from June 15, 1994 up to the actual restoration of petitioners' possession of the subject premises, as reasonable rentals thereof.

### **THE ANTECEDENTS**

On May 25, 1995, petitioners Heirs of Anastacio Faunillan, Heirs of Sotero Faunillan and Heirs of Feliciano F. Bontigao, filed a Complaint<sup>[5]</sup> for Ejectment with Damages against the Spouses Bernard and Glenda Kessler before the Municipal Trial Court (MTC) of Moalbal, Cebu. Petitioners claimed that they are the registered owners of an agricultural land, located at Balabagon, Moalboal, Cebu, known as Lot 7452 as per Original Certificate of Title No. 02-25985<sup>[6]</sup> with an area of approximately 23,715 square meters.

Petitioners averred that the title over Lot 7452 was issued in 1981, but that they and their predecessors-in-interest have been in actual, continuous, public and adverse possession of their property in concept of owner for more than forty (40) years. They claimed that Lot 7452 has been marked by monuments after the cadastral survey was conducted in 1978, more particularly points "13" and "5" of the approved plan, which marked the boundary line of their property from that of Fernando Buhat from whom the private respondents acquired the adjacent property designated as Lot 7379. The petitioners said that the late Anastacio Faunillan constructed a stone embankment and planted a row of coconut trees to further mark the boundary line between the two properties.

On June 15, 1994, the respondents allegedly entered Lot 7452 by force, intimidation, stealth and strategy. They allegedly constructed a house thereon and caused the cutting of twenty (20) fruit-bearing coconut trees owned by petitioners. Petitioners demanded that the private respondents stop the construction and vacate the premises, but the respondents refused to return the peaceful possession thereof to the petitioners.

The petitioners went to the Barangay Captain of Balabagon, Moalboal, Cebu to file a complaint about the dispossession. Since no settlement was reached, a Certification to file action<sup>[7]</sup> was issued to them, hence the original action.

In their Answer,<sup>[8]</sup> the respondents denied petitioner's allegations in the complaint. They argued that their house was built inside their Lot 7379 with an area of 5, 320 square meters covered by Original Certificate of Title No. 1551<sup>[9]</sup> and Tax Declaration No. 12858.<sup>[10]</sup> They bought the lot from Spouses Fernando Buhat and Leonarda Beriarmante through a Deed of Absolute Sale dated November 25, 1993.<sup>[11]</sup> They never entered the property in question by force, intimidation, stealth and strategy because they built their residential house on their own lot and had complied with all the legal requirements<sup>[12]</sup> before its construction. The 20 fruit bearing coconut trees were allegedly theirs and not owned by the respondents, thus they argued that petitioners have no cause of action against them.

For their special and affirmative defenses, the respondents averred that there is a pending case for Injunction and Damages with Writ of Preliminary injunction filed on April 21, 1995 by respondent Glenda Kessler as plaintiff, against the Heirs of Anastacio Faunillan as defendants before the RTC of Barili. The portion which petitioners claim as belonging to them in the ejectment case, is allegedly the same portion which is claimed by Glenda Kessler to be theirs, and to have been illegally fenced by petitioners in the said Injunction case, thus respondents posited that petitioners' complaint for ejectment should be dismissed or at least suspended, by reason of *litis pendentia*.

Moreover, respondents likewise pointed out as a defense that the case between them and petitioners is one of a boundary dispute. They submitted that it is therefore premature for petitioners to demand their eviction, considering that both parties claim ownership of the portion in litigation.

To support their argument that the case is in reality a boundary dispute and to prove consequently that they did not encroach on petitioners' property, respondents

highlighted in their position paper the fact that there were at least four (4) relocation surveys conducted by Engr. Godofredo Sale, a Geodetic Engineer of CENRO to draw the boundaries of their lot which is Lot 7379 and petitioners' Lot 7452. The first was on March 1994 upon the authority of the Station Officer of DENR, Argao, Cebu<sup>[13]</sup>; the second was on August 23, 1994 upon the order of RTC Executive Judge Priscilla Agana<sup>[14]</sup>; the third, on May 26, 1997 during the ocular inspection conducted by RTC Barili, and the fourth was in July 1995 by virtue of his being a member of the court- designated Commission, created initially by the RTC 57,<sup>[15]</sup> in connection with the aforementioned Injunction case involving the parties. The said Commission was composed of Engineer Wellington Kintanar of the DENR Region 7, Land Management Service, as chairman, and Engrs. Godofredo Sale and Felipe Alison, as members, representing respondents and petitioners respectively.

In the first three relocation surveys, it was allegedly shown that the area claimed by the petitioners actually belonged to respondents. And in the survey conducted by the Commission in the Injunction case, the following favorable conclusion was pertinent in the August 28, 1995 Report<sup>[16]</sup> of Engr. Kintanar, to wit:

"Lot 7379 claimed by the plaintiff (Glenda Kessler) did not encroach Lot 7452 as per relocation and verification where the actual position of boundaries were observed. This is based on the data and the Cadastral map gathered from the records on file at the records section, Lands Management Services, Banilad, Mandaue City."

The report also mentioned that the parties were present during the survey and submitted to the Commission their respective copies of the Original Certificate of Title, Deed of Absolute Sale, Tax Declaration, etc.

On May 11, 2009, the MCTC rendered the first assailed decision dismissing petitioners' complaint. The court opined therein that the petitioners cannot lawfully eject respondents because the former failed to prove that the latter's house encroached on their Lot 7452. Declaring on the contrary, that the evidence of the respondents sufficiently established that their house was constructed within the parameter of their Land, lot 7379, the MCTC evidently gave weight on, among others, the findings of the RTC 57 designated Commission, thus its ratiocination:

"The Commission's Report made a conclusion that defendants did not encroach on plaintiffs' Lot 7452. The plaintiffs tried to assail the Commissioner's Report, by alleging that the Chairman of the Commission Engr. Kintanar made mistakes in the survey. But in the absence of evidence to indicate that the Chairman and the members of the Commission made errors or were moved by improper motive or bias, their repost is entitled to full faith and credit."

Accordingly, the trial court in its dispositive, ruled that:

"WHEREFORE, the foregoing considered, the above captioned case is hereby DISMISSED for lack of cause of action for forcible entry.

SO ORDERED."

Subsequently, petitioners interposed an Appeal before the RTC of Barili. The RTC on January 7, 2010, affirmed the decision of the MCTC and in its disquisition, it made

mention of the Injunction case decided by it between the same parties. On the basis of its findings thereon that no act of encroachment was done by respondents, the court then declared that the issue of prior possession in the ejectment case is put to naught, thus it ordered the dismissal of the appeal for want of merit.

A Motion for Reconsideration of the January 7, 2010 Decision was thereafter filed by petitioners. The Motion was however denied on March 19, 2010, hence the instant Petition for Review with the following Assignment of Errors:

I.

THE CHALLENGED DECISIONS FAILED TO RESOLVE THE BOTTOM-LINE ISSUE AS TO WHO HAD A PRIOR MATERIAL AND/OR PHYSICAL POSSESSION OF THE ENCROACHED PORTION OF THE PROPERTY;

II.

THE CHALLENGED DECISIONS FAILED TO APPRECIATE THE EVIDENCE OF DEPRIVATION BY THE PRIVATE RESPONDENTS OF PETITIONERS' PRIOR POSSESSION BY FORCE, INTIMIDATION, THREAT, STRATEGY OR STEALTH;

III.

THE CHALLENGED DECISIONS FAILED TO APPRECIATE PETITIONERS' PROOF OF DAMAGES;

IV.

THE PUBLIC RESPONDENT ERRED IN DENYING PETITIONERS' MOTIONS FOR RECONSIDERATION.

### **OUR RULING**

Forcible entry, which is an original and summary action, is governed by Section 1, Rule 70 of the Rules of Court. It reads:

SECTION 1. *Who may institute proceedings, and when.* -- **Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.**