

## **SPECIAL SECOND DIVISION**

**[ CA-G.R. SP NO. 131341, June 26, 2014 ]**

**SALVADOR M. DIAMSAY, PETITIONER, VS. BIENVENIDO M. DIAMSAY AND AURORA BENITEZ, RESPONDENTS.**

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

**SALAZAR-FERNANDO, J.:**

Before this Court is a Petition for Review<sup>[1]</sup> under Rule 42 of the 1997 Revised Rules of Civil Procedure seeking to reverse and set aside the Decision<sup>[2]</sup> dated April 29, 2013 of the Regional Trial Court (RTC), Third Judicial Region, Branch 64, Tarlac City in Civil Case No. 122-2012 entitled "*Bienvenido M. Diamsay and Aurora Benitez, Plaintiffs-Appellees, versus Salvador M. Diamsay and all other persons claiming rights under him, Defendants-Appellants.*", the dispositive portion of which reads:

"WHEREFORE, premises considered, the appeal is DENIED. The assailed decision dated October 8, 2012 of the 5<sup>th</sup> Municipal Circuit Trial Court, Gerona-Ramos-Pura, Tarlac is hereby AFFIRMED.

SO ORDERED."

The facts are:

On March 6, 2012, respondents Spouses Bienvenido M. Diamsay and Aurora Benitez (Sps. Diamsay for brevity) filed with the 5<sup>th</sup> Municipal Circuit Trial Court (MCTC) of Gerona-Ramos-Pura, Tarlac a Complaint<sup>[3]</sup> for ejectment against petitioner Salvador M. Diamsay (Salvador for brevity) alleging that: they are the registered owners of a parcel of land covered by Transfer Certificate of Title (TCT) No. 24323 of the Registry of Deeds for the Province of Tarlac, situated in Estipona, Pura, Tarlac; petitioner Salvador has been occupying the subject property as its caretaker without being required to pay rental or fees whatsoever; during the later part of 2011, they informed petitioner Salvador that they needed the subject property for themselves, thus they demanded that he and all persons claiming rights under him vacate the same; however, petitioner Salvador failed and refused to heed their demand, thereby making his possession of the subject property illegal; they sought amicable settlement of the dispute with the Barangay Agrarian Reform Committee (BARC) of Barangay Estipona, Pura, Tarlac, but the parties failed to reach a settlement; and, consequently, a Certificate to File Action was issued by the BARC.

In his Answer<sup>[4]</sup> petitioner Salvador averred that: sometime in 2001, he replaced his father as tenant of the subject property after being persuaded by respondents Sps. Diamsay to transfer his residence from Nueva Ecija; after being instituted as tenant and caretaker of the subject property by respondent Bienvenido Diamsay, who is his uncle, he improved it by planting rice and 86 mango trees; there was no demand to vacate the subject property and this case did not pass through mediation proceeding as required by law; there was no legal ground for his ejectment from the

subject property as the only disagreement between the parties was his refusal to work on respondents Sps. Diamsay's land situated in another place; he built his house on the subject property in good faith, thus he should not be ordered to remove it or vacate the premises without being reimbursed of his expenses therefor; and, since this case involves tenancy relationship between the parties, it is the DARAB and not the court which has jurisdiction over it.

After the preliminary conference, the parties were required to, as they did file, their respective position papers.<sup>[5]</sup> On October 8, 2012, the MCTC rendered a Decision<sup>[6]</sup> with the following disposition:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendant, ordering the latter and all other person or persons claiming rights under him:

1. to vacate and surrender possession of the land in question to the plaintiffs; and
2. to pay the costs.

SO ORDERED."

Aggrieved, petitioner Salvador appealed from the decision of the MCTC to the RTC Branch 64, Tarlac City which rendered the assailed decision. A Motion for Reconsideration<sup>[7]</sup> thereof was denied in a Resolution<sup>[8]</sup> dated August 2, 2013. Hence this petition assigning the following errors:

1. THE HONORABLE COURT ERRED IN FAILING TO CONSIDER THE CASE AS AN AGRARIAN DISPUTE.
2. THE HONORABLE COURT ERRED IN FAILING TO REFER THE CASE TO THE PROVINCIAL AGRARIAN REFORM OFFICE FOR DETERMINATION OF WHETHER OR NOT THE CASE IS PROPER FOR TRIAL; and
3. THE HONORABLE COURT FAILED TO CONSIDER THAT THE APPELLEES NOW RESPONDENTS DID NOT DEMAND THE PETITIONERS TO VACATE.

The petition is meritorious.

Petitioner Salvador argues that: Department of Agrarian Reform (DAR) Administrative Order No. 3, Series of 2011 and OCA Circular No. 62-2010 implementing Republic Act No. 9700, otherwise known as the CARPER Law mandate the automatic referral of the case filed before the court to the Provincial Agrarian Reform Office (PARO) for determination of tenancy relationship if there appears in the pleading an allegation that one of the parties is an agricultural tenant or farmworker; in this case, he alleged in his answer that he is a tenant of the subject property owned by respondents Sps. Diamsay, yet the MCTC and the RTC did not refer this case to the PARO as required by the law; had this case been referred to the PARO, said office could have conducted an investigation to determine whether a tenancy relationship between the parties exists; the presence of his house on the subject property, the referral of this case to the BARC before its filing with the court, and the fact that he has been the actual tiller of the subject property for a number of years, clearly indicate the existence of a tenancy relationship between him and respondents Sps. Diamsay; in unlawful detainer cases, the demand to vacate should