

TWENTIETH DIVISION

[CA-G.R. SP NO. 07681, June 06, 2014]

**FELISA DANA O, JOINED BY HER HUSBAND NORBERTO DANA O,
PETITIONERS, VS. NERISSA TARTANA, RYAN TARTANA AND HIS
WIFE ALIAS "TESSA" TARTANA, DANNY SANICO AND GIL
SANICO, RESPONDENTS.**

D E C I S I O N

QUIJANO-PADILLA, J.:

The Case

This is a petition for review^[1] under Rule 42 of the Rules of Court of the Decision^[2] dated April 10, 2013 and Order^[3] dated May 15, 2013 of the Regional Trial Court (RTC) Branch 16 of Roxas City in Civil Case No. V-31-11. The RTC ruled in the exercise of its appellate jurisdiction and found no reversible error in the findings of facts and law of the 1st Municipal Circuit Trial Court (MCTC), President Roxas-Pilar, President Roxas, Capiz, in the latter's decision^[4] dated May 27, 2011, which dismissed the case for unlawful detainer filed by herein petitioners against herein respondents. Thereafter, the RTC denied petitioners' Motion for Reconsideration.

The Antecedent Facts

On April 14, 2010, the petitioners filed a complaint^[5] for unlawful detainer against the respondents before the MCTC of President Roxas-Pilar, President Roxas, Capiz. They alleged in the complaint that they are the absolute and registered owners of Lot No. 1973-A-6-D (subject Lot), which is covered by TCT No. T-32512 and is particularly described and bounded as follows:

"A parcel of land (Lot 1973-A-6-D, Psd 06-052573, being a portion of Lot No. 1973-A-6, Psd.-06-046816, situated in the Brgy. Of San Nicolas, Municipality of Pilar, Province of Capiz, Island of Panay. Bounded on the NW., along line 1-2, by the Provincial Road; on the NE., along line 2-3, by Lot 1973-A-6-C; on the SE., along line 3-4, by Lot 1973-A-6-I; on the SW., along 4-5, by Lot 1973-A-6-E; and on the NW., along line 5-1, by Provincial Road. Cad. -248. Containing an area of ONE HUNDRED EIGHTY ONE (181) SQUARE METERS, more or less."^[6]

Petitioners also alleged that they have religiously paid real property taxes on the subject Lot^[7] and claimed that the respondents were occupying the subject Lot and were able to build a house thereon and other structures only by mere tolerance of the petitioners and their predecessors-in-interest without the benefit of any contract, express or implied, and without any rent.^[8]

They continued that since petitioners already needed the subject Lot, they sent demand letters to the respondents demanding the latter to vacate the subject Lot, to remove all structures built thereon, and to turn-over actual possession to the petitioners, within fifteen days from receipt of such demand letter.^[9] When the demand letters remained unheeded, petitioners thus filed the complaint for unlawful detainer within one year from their last demand on March 19, 2010.^[10]

In their Answer^[11], respondents claimed that their occupation of a portion of Lot No. 1973, located in Brgy. San Nicolas, Pilar Capiz, consisting of Three Hundred (300) Square Meters, is lawful. They claimed that they are the true and lawful owners of the portion of Lot No. 1973 as they inherited the same from the late Quintin Sanico, the father of herein respondents Nerissa S. Tartana and Gil Sanico.^[12]

To bolster their claim of ownership, respondents presented a Deed of Absolute Sale dated December 3, 1962 between Saturnina Custodio as seller and Spouses Alejo and Estrella Arboleda as buyers and alleged that such deed transferred the property they are claiming from Saturnina Custodio to Spouses Arboleda. Thereafter, the Spouses Arboleda sold the same property to Quintin Sanico under a Deed of Sale dated September 3, 1977. As such, Quintin Sanico left such property to his heirs, including herein respondents.^[13]

Respondents, moreover, alleged in their Answer that the Deeds of Absolute Sale, which transferred the ownership of a portion of Lot No. 1973 from Saturnina Custodio to Spouses Arboleda and later to Quintin Sanico, were registered with the Office of the Register of Deeds under Entry Nos. 34030 and 34031, respectively, in accordance with the provision of Act No. 3344.^[14] They further alleged that after the portion of Lot No. 1973 was sold to Quintin Sanico, Saturnina Custodio fraudulently applied for a Free Patent with the Office of the Department of Environment and Natural Resources (DENR), Roxas City, thus she was issued an Original Certificate of Title No. P-7262, under Free Patent No. (VI-2) 4382, covering Lot No. 1973-A, consisting an area of Eleven Thousand Six Hundred Thirty Three (11,633) Square Meters, more or less, on April 25, 1980.^[15]

Respondents then alleged that Lot No. 1973-A covered by OCT No. P-7262 was subjected to an Extrajudicial Partition among the co-heirs of Saturnina Custodio. After which, portion of Lot No. 1973-A was subdivided into several sub-lots, and later one parcel was sold to Felisa Danao only in 1999,^[16] which is now Lot No. 1973-A-6-D.

Considering that the portion of Lot No. 1973 bought by Quintin Sanico is part of the portion covered by OCT No. P-7262 in the name of Saturnina Custodio, respondents claim that they are in possession of Lot No. 1973-A-6-D not by tolerance but in the concept of an owner. Thus, they claim better right over the property including right to possession of the same.^[17]

On August 11, 2010, the MCTC appointed Mansueto A. Aguirre as Court Commissioner to conduct a relocation survey to determine whether or not the defendants (herein respondents) are in possession of of the lot subject matter of this case being claimed by the plaintiff (herein petitioners).^[18]

Commissioner Aguirre submitted his Report^[19] and stated therein that, "on September 15, 2010 a relocation survey was conducted after giving due notice to the parties concerned. The data and documents used were (sic) the one (sic) requested by the undersigned from the plaintiffs and defendants. The lot subject of this case was identified as Lot 1973-A-6-D, Psd-06-046816 with an area of 181 Sq.M., situated in Brgy. San Nicolas, Pilar, Capiz with TCT No. T-32512 registered in the name of Felisa Danao. That the lot bought by the defendants from Saturnina Custodio with an area of 300 Sq. M. cannot [be] physically identified on the ground except that it is a portion of Lot [No.] 1973, Pilar Cadastre. Neither the defendants can show any survey plan in spite of their claim that it was surveyed a long time ago. Xxx"^[20]

After the parties' submission of their respective position papers^[21] and affidavits, the MCTC dismissed the complaint and reasoned out that the petitioners should have filed an *accion reivindicatoria* since the issue of possession cannot be decided without deciding the issue on ownership, thus:

"WHEREFORE, judgment is hereby rendered:

1. Dismissing the case for failure of plaintiffs to prove their complaint and the issue of possession cannot be decided without deciding the issue on ownership and for having sought an erroneous remedy under the law;
2. Plaintiffs to pay defendants the amount of Thirty Thousand (P30,000.00) Pesos for litigation expenses and attorney's fees; and
3. Without pronouncement as to cost.

SO DECIDED."^[22]

Consequently, on appeal to the RTC, the latter ruled that petitioners' case makes out a case for unlawful detainer within the jurisdiction of the MCTC, contrary to the findings of the court *a quo*. However, the RTC found that petitioners failed to prove the allegations in their complaint as they failed to prove that the possession of respondents is by mere tolerance and that such tolerance was present from the very beginning. Thus, the RTC held:

"WHEREFORE, finding no reversible error in the findings of facts and law of the court *a quo* embodied in the Decision of May 27, 2011, the Court affirms the said findings of facts and law and orders the dismissal of the appeal.

Costs to appellants.

SO ORDERED."^[23]

Petitioners timely filed a Motion for Reconsideration^[24] and questioned the finding that petitioner Felisa Danao's affidavit is not sufficient evidence but mere allegations and raised therein the propriety of the award of attorney's fees and litigation expenses. The RTC, however, denied such motion for lack of merit.

Hence, this petition with the following assignment of errors:

“THE REGIONAL TRIAL COURT GRAVELY ERRED:

A) IN DECLARING THAT APPELLANTS FAILED TO PROVE THEIR OVERT ACTS OF TOLERANCE OF APPELLEE'S POSSESSION OVER THE SUBJECT LOT, ENOUGH TO CONVINCING THE COURT THAT THE LATTER'S ORIGINAL POSSESSION WAS LEGAL;

B) IN AFFIRMING THE FINDINGS OF FACTS AND LAW OF THE FIRST LEVEL COURT AS EMBODIED IN ITS DECISION DATED MAY 27, 2011;

C) IN DENYING FOR LACK OF MERIT THE MOTION FOR RECONSIDERATION OF THE PETITIONERS AS STATED IN THE ORDER DATED MAY 15, 2013;

D) IN AWARDING ATTORNEY'S FEES AND LITIGATION EXPENSES IN FAVOR OF THE RESPONDENTS EVEN WITHOUT FACTUAL AND LEGAL BASIS AND WAS NOT DISCUSSED IN THE BODY OF THE DECISION.”^[25]

Petitioners aver in their Petition that Lot No. 1973-A-6-D is registered in the name of Felisa Danao under TCT No. T-32512 and this fact is never disputed in the lower courts, thus being the lawful owners, petitioners are entitled to possession of the property. They impute error on the RTC, which found that they were not able to prove their and their predecessors' tolerance despite petitioner Felisa Danao's statement in her affidavit that respondents themselves told her that Saturnina Custodio, her grandmother, allowed the respondents to stay in the subject Lot, and despite her statement that she actually granted the requests of respondents to stay on the said property. Petitioners also aver that respondents' claim of ownership is untenable since the portion of Lot No. 1973, which respondents alleged to have inherited from Quintin Sanico, cannot be identified as evidenced by the Relocation Survey Report of the court-appointed commissioner.

Respondents in their Comment^[26], as already intimated, assert their right of possession over the subject Lot as they have been in open, notorious and exclusive possession of the same in the concept of an owner by virtue of the registered Deeds of Sale which transferred a portion of Lot No. 1973 from Saturnina Custodio to Spouses Arboleda, then to their father Quintin Sanico. Such portion bought by Quintin Sanico includes the subject Lot which petitioners are claiming. Thus, respondents conclude that petitioners could not have allowed former's occupation of the property by mere tolerance since they, the respondents, are occupying the same as owners since 1962.

The Issue

Based on the above assignment of errors and contentions, the main issue to be resolved is who has better right of physical possession over Lot No. 1973-A-6-D.

The resolution of this main issue necessarily will answer the sub-issues raised by herein petitioners in their petition for review.

Our Ruling

We find for the petitioners.

We observe in this case that both parties assert their right to possess Lot No. 1973-A-6-D by virtue of their claim of ownership. The petitioners anchor their claim of ownership by virtue of the TCT No. T-32512, while respondents trace their ownership by virtue of Deed of Sale dated September 3, 1977, which sold a portion of Lot No. 1973 to Quintin Sanico, and registered under Act No. 3344.

Noteworthy is the rule in our jurisdiction that in an unlawful detainer case, the sole issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. However, where the issue of ownership is raised, the courts may pass upon the issue of ownership in order to determine who has the right to possess the property. However, this adjudication is only an initial determination of ownership for the purpose of settling the issue of possession, the issue of ownership being inseparably linked thereto.^[27]

We observe that the MCTC actually noted the issue of ownership raised by the parties but concluded that the issue of possession cannot be decided without deciding the issue on ownership, so it dismissed the case. Meanwhile, the RTC noted that petitioners' complaint makes out a case for unlawful detainer. However, the RTC failed to provisionally rule on who has a better right of possession of the property based on ownership. The RTC simply concluded that petitioners failed to prove their act of tolerance.

Thus, We opine that the issue of ownership must be passed upon provisionally before the issue of possession is determined.

Petitioners are armed with a transfer certificate of title as evidence of their ownership. It has been consistently held that Torrens System was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized.^[28] Thus, a title issued under the Torrens System is entitled to all the attributes of property ownership, which necessarily includes possession.^[29] Petitioner, having a Torrens title over the subject Lot, is the rightful owner and is entitled to possession thereof.

In the case of *Heirs of Maligaso v. Sps. Encinas*,^[30] the Supreme Court held that a certificate of title gives rise to a reasonable presumption that a party occupying a property as against the holder of the title is staying therein only by mere tolerance, to wit:

“The respondents’ title over such area is evidence of their ownership thereof. That a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein and that a person who has a Torrens title over a land is entitled to the possession thereof are fundamental principles observed in this jurisdiction. **Alternatively put, the respondents’ title and that of their predecessors-in-interest give rise to the reasonable presumption that the petitioners have no right over**