

TWENTIETH DIVISION

[CA-G.R. SP NO. 07609, December 17, 2014]

**ATTY. NICOMEDES T. TUPAS JOINED BY HER SPOUSE
GUADALUPE MONTILLA, PETITIONERS, VS. PAULINO B. SILLEZA,
WILFREDO PEDRIGUEZ, FREDO DUMAGUING, ERWIN BISNAR,
NALDO VALLEJOS AND ALIAS ADONIS, RESPONDENTS.**

D E C I S I O N

QUIJANO-PADILLA, J.:

This is a Petition for Review^[1] under Rule 42 of the Rules of Court assailing the January 3, 2011 Decision^[2] and the March 6, 2013 Order^[3] of the Regional Trial Court (RTC), Branch 10, Abuyog, Leyte, in Civil Case No. 606. The assailed decision reversed the March 29, 2010 Decision^[4] of the Municipal Circuit Trial Court (MCTC), Abuyog-Javier, Abuyog, Leyte, in the forcible entry case docketed as Civil Case No. 3736 filed by petitioner against respondents while the questioned order denied the petitioner's Motion for Reconsideration^[5] for lack of merit.

The Antecedents

On January 12, 2009, petitioners, Atty. Nicomedes T. Tupas (Atty. Tupas) joined by his wife Guadalupe Montilla, filed a Complaint^[6] for Forcible Entry with Damages and Preliminary Mandatory Injunction against respondents Paulino B. Sillez (Silleza), Wilfredo Pedriguez (Pedriguez), Fredo Dumaguing (Dumaguing), Erwin Bisnar (Bisnar), Naldo Vallejos (Vallejos) and alias Adonis before the MCTC of Abuyog-Javier, Abuyog, Leyte.

In the Complaint, petitioner Atty. Tupas alleged that he is the owner and possessor of three (3) parcels of agricultural land from Asencio Maico through a Deed of Absolute Sale of Real Properties^[7] executed on November 6, 1969. The 3 parcels of agricultural land are particularly described and bounded as follows:

"An agricultural land located at Brgy. Balocawe, Abuyog, Leyte, which has an area of about 700 square meters and is declared for taxation purposes under TDN 11200^[8] in the name of 'Asencio Maico'. This land is bounded on the N. by the Provincial Road; E. by the land of the Heirs of Arcadia Ruales/Share of Julia Trilles and the Balocawe River, and; S. and W. by the Balocawe River.

Some 1/3 portion of that 22,500 square-meter parcel of an agricultural land located at Brgy. Balocawe, Abuyog, Leyte, which is declared for taxation purposes under TDN 8030^[9] in the name of 'Fausto Ruales'. The entire parcel is bounded on the N. by the land of Juana Alera; S. by the land of Paulino Ruales; E. by the land of Leoncio Verra, and; W. by

Balocawe River.

Some ½ portion of that 12,900 square-meter parcel of an agricultural land located at Brgy. Barayong (now part of Brgy. Balocawe), Abuyog, Leyte, which is declared for taxation purposes under TDN 11201^[10] in the name of 'Pascuala Trilles and Agripina Trilles'. The entire parcel is bounded on the N. by the Provincial Road; S. by the land of Juana Alera; E. by the land of Paulino Ruales, and; W. by the Balocawe River.” ^[11]

That since the said sale, petitioner Atty. Tupas occupied the above-described parcels peacefully, publicly, adversely, continuously and in the concept of an owner. That shortly after his purchase and occupancy, petitioner Atty. Tupas installed spouses Zosimo and Adelaida Realino as its tenants as evidenced by the Affidavit of the latter spouses recognizing such fact of tenancy.^[12] Over the years, petitioner Atty. Tupas likewise leased the portions of the subject parcels for a minimal amount to those who could not afford to buy a home lot of their own.^[13] According to petitioner Atty. Tupas, he had not only performed possessory acts but likewise managerial or supervisory acts and that he never parted with the possession of the properties but only its beneficial use when he leased the same to various individuals throughout the years.^[14]

However, on or about May 19, 2008, petitioners' nearly forty (40) years of peaceful possession was rudely interrupted when respondent Silleza included the subject parcels in a survey and immediately planted *mohon* (posts) thereon establishing his claim of ownership over the said areas. Thereafter, petitioner Atty. Tupas and respondent Silleza had a series of confrontations before the Barangay Lupon where respondent Silleza threatened petitioners to vacate the subject premises, otherwise, they will enter the subject parcels without restraint as he allegedly is the real owner thereof. In response thereto, petitioner Atty. Tupas informed respondent Silleza that he has acquired the subject parcels in 1969 in good faith and for value and had been in peaceful and public possession thereof for almost forty (40) years.^[15]

On November 27, 2008, respondent Silleza with the aid of hired assailants, namely: co-respondents Pedriguez, Dumaguing, Bisnar, Vallejos and alias Adonis, entered the subject parcels using force and intimidation and immediately fenced the same with bamboo and wire which hindered the petitioners to stop them because they were armed with long bolos signifying their preparedness to fight. Petitioners tried all diplomatic means to demand and persuade the respondents not to take the law in their own hands and to cease and desist from their acts of dispossession and unlawful occupation of the subject parcels but such demand fell on respondents' deaf ears.^[16]

Petitioner Atty. Tupas then summoned respondents at the Barangay Lupon demanding that he be restored to his possession of the subject parcels but such demand was once again ignored by the respondents. There being no settlement arrived at, this prompted the Barangay Lupon to issue a Certificate to File Action.^[17]

In their Answer, respondents denied the material allegations in the complaint and averred that petitioners' land and respondent Silleza's land are adjacent/adjoining each other and are part of Cadastral Lot No. 3584, containing a total area of 16,867

square meters, of which only 3,967 square meters thereof belong to petitioner Atty. Tupas while the remaining 12,900 square meters belong to him and which respondent Silleza, through his predecessor-in-interest, had been in peaceful and physical possession since time immemorial. That the lessees or occupants of the subject parcels had their houses erected in respondent Silleza's land without his consent and their continued stay therein was due to his tolerance. Respondent Silleza claimed that what he surveyed was his own land which he bought in 1995 and had been in physical possession of the same since then until now and had not included or encroached the land owned by petitioner Atty. Tupaz. Respondent Silleza likewise denied being summoned by petitioner Atty. Tupas before the Barangay Lupon and that petitioner Atty. Tupas never made a hint to file the instant case. Respondent Silleza explained that his co-respondents herein are not goons but were hired laborers who only constructed a perimeter fence surrounding his land and that in fact herein co-respondents are tanod members and living in the neighborhood. Respondent Silleza averred further that he was not doing any injustice to the petitioners but merely exercising his rights as lawful owner and physical possessor of his own property.^[18]

By way of affirmative defense, respondent Silleza averred the following: the averments in the complaint does not qualify for forcible entry case or lack of cause of action; that respondent Silleza is the owner of the fenced property having bought the same from its previous owners Marilou and Juanita De Veyra, as evidenced by a Deed of Absolute Sale dated May 30, 1995 and Tax Declaration No 15811, and that Marilou and Juanita De Veyra bought the same from Pascuala Trilles and Agripina Trilles, as evidenced by a Deed of Sale and Tax Declaration Nos. 15743 & 8030; and that petitioner is a buyer in bad faith having allegedly bought the disputed property from Asencio Maico who is not the true owner thereof but Pascuala and Agripina Trilles.

The Decisions of the MCTC and RTC

On March 29, 2010, the MCTC ruled in favor of petitioners. The dispositive portion^[19] of the Decision reads:

Wherefore judgment is hereby rendered in favor of the plaintiff Atty. Nicomedes T. Tupas against defendant Paulino Silleza, ordering the defendant

A) To restore plaintiff possession of the property in dispute and to remove any and all constructions they had placed thereon;

B) To deter defendant, their privies and successor in interest from entering the premises of the area in issue;

C) To compensate plaintiff's the attorney's fees in the sum of P20,000.00 plus P2,000.00 per court appearance; and to pay moral damages in the sum of P30,000.00 and further to pay the litigation expenses in the amount of P2,525.00 in filing this case including the Mediation fee.

In ruling favorably for the petitioners, the MCTC held that petitioners enjoyed prior physical possession over the subject parcels from the time they purchased the same from Asencio Maico in 1969 and for nearly 40 years, petitioners have been

exercising acts of ownership and had been in continuous and adverse possession of the subject parcels until their possession of the same had been forcibly interrupted by respondents through force and intimidation on November 27, 2008. The MCTC likewise ruled that even if petitioners leased portions of the subject parcels, they never lost possession thereof.

Aggrieved by the aforesaid ruling, respondents appealed to the RTC. On appeal, the RTC reversed or set aside^[20] the MCTC's Decision and dismissed the instant complaint for failure to sufficiently prove tenancy and lease relationship. The dispositive portion of the January 3, 2011 RTC Decision reads:

WHEREFORE, in view of the foregoing considerations, let the instant appeal be GRANTED and the assailed Decision of the Municipal Circuit Trial Court of Abuyog-Javier, is hereby REVERSED and SET ASIDE.

Hereby ordering the DISMISSAL of Plaintiff/Appellee's Complaint upon failure to sufficiently establish preponderance of evidence, without pronouncement as to cost. ^[21]

Petitioners moved for reconsideration^[22] but the RTC denied the same in its assailed March 6, 2013 Order.^[23]

Undeterred, petitioners filed the present petition raising the following assigned errors:

I.

THE HONORABLE COURT ERRED IN CONCLUDING PETITIONERS' FAILURE TO ESTABLISH PRIOR PHYSICAL POSSESSION.

II.

THE HONORABLE COURT ERRED IN CONCLUDING THE PETITIONERS' FAILURE TO ESTABLISH THE BURDEN OF PROOF BY PREPONDERANCE OF EVIDENCE TO SUPPORT THEIR CLAIM.

III.

THE HONORABLE COURT ERRED IN REQUIRING PETITIONERS TO PROVE THE EXISTENCE OF TENANCY AND LEASE BY AND BETWEEN THEM AND THEIR WITNESSES. ^[24]

This Court's Ruling

The petition is meritorious.

There is forcible entry or *desahucio* when one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy or stealth. In such cases, the possession is illegal from the beginning and the basic inquiry centers on who has the prior possession *de facto*. Jurisprudence also teaches us that the possession required in forcible entry cases is nothing more than actual physical possession, not legal possession in the sense contemplated in civil law.^[25] Thus, in

filing forcible entry cases, the law tells us that two allegations are mandatory for the municipal court to acquire jurisdiction: first, the plaintiff must allege prior physical possession of the property, and second, he must also allege that he was deprived of his possession by any of the means provided for in Section 1, Rule 70 of the Rules of Court, *i.e.*, by force, intimidation, threat, strategy, or stealth.^[26]

It is also settled that in the resolution of forcible entry cases, what is important is determining who is entitled to the physical possession of the property. This rule holds true regardless of the character of a party's possession, provided that he has in his favor priority in time.^[27] Indeed, any of the parties who can prove prior possession *de facto* may recover such possession even from the owner himself since such cases proceed independently of any claim of ownership.^[28] Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him. The party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror.^[29]

Bearing these principles in mind, this Court examined the records and found reversible error in the assailed decision of the RTC.

Respondents' prior physical possession sufficiently proven

Based on the evidence on record, this Court is convinced that petitioners have in their favor prior possession in time. As aptly observed by the MCTC, petitioners were able to establish prior possession over the disputed property on the basis of their testimonial and documentary evidence. The affidavits of their witnesses had clearly established that they, through their tenants or lessees, had been in possession of the disputed property before they were forcibly ousted by respondents. As particularly stated in witnesses' affidavits, they are residing on the said premises with the permission of petitioner Atty. Tupas and continued to reside thereat and at some point even cultivated the land and harvested the fruits thereof until they were ousted by respondents. Their pieces of documentary evidence,^[30] particularly the documents consisting of the proof of sharing in the tenancy and the receipts of payments, adequately creates the presumption of tenancy/leasehold relationship between them and petitioners and sufficiently proved their possession of the said property.

On the other hand, petitioners based their claim on the alleged ownership of the disputed property. However, their evidence on record belied their claim of prior possession. As described by the MCTC, respondents had only acquired the disputed property on May 30, 1995 while the petitioners acquired the same way back in the year 1969. This scenario clearly shows that a comparison of the documents of sale presented by the contending parties in support of their respective claims of prior possession would yield a result favoring the petitioners considering that the latter's acquisition of the disputed property preceded that of the respondents.

This Court also notes that except for their bare allegations, respondents failed to present evidence to show that they have been in possession of the disputed property ahead of petitioners and neither did they refute the declarations of petitioners' witnesses as to their continued possession over the disputed property. As compared to respondents' unsubstantiated claim of possession, petitioners' claim