

FIRST DIVISION

[CA – G.R. SP No. 127475, December 15, 2014]

**ANNETTE SUNGDUAN, PETITIONER, VS. JULIE R. SUNGDUAN,
RESPONDENT.**

D E C I S I O N

BRUSELAS, JR. J.:

The petitioner instituted this petition for review to reverse and set aside the 27 June 2012 Decision^[1] rendered by the Regional Trial Court (RTC) which denied the appeal of the petitioner and affirmed with modification the Judgment^[2] of the Municipal Trial Court in Cities (MTCC) thus:

"WHEREFORE, the appealed Decision of the MTCC BRANCH I, Baguio City is hereby **AFFIRMED** with Modification, as to the rent of Php15,000, which is REDUCED to a reasonable amount of Php5,000.00 rental per month, from the time of the filing of this action on September 5, 2008 up to the time possession is returned to plaintiff.

Costs against defendant-appellant.

SO ORDERED.^[3]

The material and relevant facts are as follows:

Respondent Julie Sungduan ("Julie"), Eugenio Sungduan and Lourdes Sungduan-Bibit were the children of Soledad Rullamas from her first marriage with Gilbert Sungduan. When the latter died, Soledad remarried to Maximino (or Maximo) Belleza ("Belleza") in 1953. They settled, together with their children, in a parcel of land located at Lot 28, Block 25, Baguio Workingmen's Village, Aurora Hill, Baguio City. In 1968, the said lot was awarded to Belleza by virtue of Resolution No. 289-68^[4] adopted by the Baguio City Council. As a prospective awardee, Belleza was required to introduce an improvement (particularly a house), or the award would be canceled; thus, Belleza and Soledad constructed a two-storey house on the said lot. Sometime in 1971, Soledad died. Belleza decided to transfer to Balaoan, La Union and resided permanently there. He later remarried to a certain Zenaida Belleza.

On 23 December 1989, Belleza sold to Julie the subject two-storey house in the amount of P65,000.00 as evidenced by a receipt^[5] shown by Julie. Subsequently, an Affidavit of Waiver of Rights^[6] ("waiver") was executed and signed by Belleza on 01 March 1990 transferring, conveying and waiving all his rights including the improvements on the subject property in favor of Julie. He declared in his waiver

that he could not continue to perfect his rights over the subject lot as an awardee. By virtue of the waiver executed by Belleza, Julie applied for and had been granted the transfer of award of the subject lot by the Baguio City Council through a Resolution No. 074 adopted on 23 April 2003.^[7]

Julie averred that sometime in 1990, her niece, petitioner herein Annette Sungduan ("Annette"), daughter of her brother Eugenio Sungduan, begged her to be allowed to occupy the basement of the subject house. Julie granted Annette's request on the condition that the latter should return possession thereof upon her demand. Thereafter, Annette again asked permission to put up a store on the subject lot which she again granted out of generosity on the same condition that the possession should be surrendered to her upon her demand. Julie claimed that she could not tolerate the dirty state that had become of the premises occupied by Annette; thus, she decided to evict Annette from the premises. Julie claimed that Annette had become disrespectful and ungrateful to her in spite of her generosity and even refused to heed her requests. Sometime in June 2008, Julie decided to terminate Annette's possession of the premises and demanded the latter to also remove the store set up by her on the subject lot. Because Annette disregarded her repeated oral and written demands, she referred the matter to the *Lupong Tagapagpamayapa* of Barangay Brookspoint. The parties failed to arrive at an amicable settlement, hence, Julie formally filed an ejectment suit before the MTCC.

For her part, Annette asserted that the subject two-storey house and lot were conjugal property of the spouses Belleza and Soledad because these were acquired during their marriage. When Belleza left for La Union, Eugenio, Lourdes and Julie assumed co-ownership over the said property as the remaining heirs of Soledad. Annette further asserted that, the subject lot was first applied for by her father Eugenio in 1968 but because of Eugenio's love and gratitude to Soledad and Belleza, he decided to withdraw the said application in their favor, who, by then had already erected the two-storey house within the said lot. When she married and had her own family, she asked her father and aunt Lourdes to stay in the basement of the subject house. As regards the store, Annette insisted that it was already existing since 1968 and had been put up by her father Eugenio himself. Annette claimed that she took over the store only in 1995, and, when she got a job in 2005, Eugenio regained management of the store. Annette thus assailed the authenticity of the waiver on the ground that the signatures therein had been forged. She presented the affidavits of Belleza's second wife Zenaida Belleza and son Jessie Belleza assailing the due execution and validity of the waiver. Annette stressed also that Julie had misled the Baguio City Council into awarding the subject lot to her by representing to them that Belleza was already dead at the time that she applied for the transfer of an award when in fact Belleza was still alive then and died only in November 2006.

Whether Julie had a cause of action against Annette and whether she was entitled to damages were the issues resolved by the MTCC. Via its 29 December 2009 judgment, the court held that Julie had a cause of action for unlawful detainer against Annette. The MTCC gave credence to the documentary evidence presented by Julie, such as, the receipt^[8] issued by Belleza in her favor for the sale of the subject lot in the sum of P65,000.00; the waiver^[9], a notarized document, executed by Belleza transferring, conveying and waiving all his rights over the subject lot including the two-storey house in favor of Julie; the Resolution No. 074 series of

2003^[10] issued by the City Council of Baguio which approved the transfer of award of the subject lot to Julie; the Tax Declaration No. 01-02006-020716 issued in the name of Julie; and the Miscellaneous Sales Application No. 131102-1373^[11] filed by Julie before the Department of Environment and Natural Resources (DENR)-Cordillera Administrative Region (CAR). The said documents were considered by the lower court collectively as an *indicia* of possession which sufficiently showed better right of possession by Julie in the concept of an owner as against Annette. The lower court consequently ruled that Julie was able to show by preponderance of evidence her possession and ownership of the subject property. Although the issue of ownership was passed upon by the court, it stressed that the adjudication was merely provisional and an initial determination of who had the right to possess the subject properties. The MTCC further held that the possession of Annette was legal from the beginning but became illegal from the time Julie asked her to vacate the premises and when Annette refused to heed such demand.

On appeal, Annette argued that the subject house and lot were conjugal property of the spouses Belleza and Soledad because these were acquired during their marriage; thus, Eugenio, Lourdes and Julie retain the said property as co-owners thereof. Annette and Eugenio had no knowledge of the sale and waiver entered into and executed by Belleza in favor of Julie and it was only in 2008 that Julie started declaring that she exclusively owned the said property and that they should vacate the premises. Annette further argued that Belleza's conveyance of the subject property was prohibited by the same resolution^[12], that awarded him the lot. The said resolution proscribed Belleza from disposing or encumbering the subject lot without prior approval by the City Council. Because of the said prohibition, the Baguio City Council resolved to re-open the proceedings that led to the issuance of the resolution approving the transfer of award of the subject lot to Julie.^[13] Annette claimed that the MTCC erred in adjudicating the ejectment suit in favor of Julie while disregarding the fact that the DENR-CAR, CENRO and PENRO held in abeyance the further processing of Julie's sales application because the Baguio City Council still has to resolve to whom the subject lot would be awarded.

In the assailed 27 June 2012 decision, the RTC upheld the MTCC's ruling. The RTC also found that Julie is entitled to the physical possession of the subject house and lot. It ratiocinated as follows:

“Without going into details of the allegation of fraud and co-ownership to rebut the right of Julie Sungduan in the subject property, and to justify the possession of Annette, this Court agrees with the MTCC which properly adjudicated ownership of the property to plaintiff. It is settled that the sole issue in ejectment case is physical or material possession. Neither assertion of co-ownership or fraud can deprive the Court to decide the question of possession just because the defendant asserts ownership over the disputed property.

In this appealed case, it was duly proven that Julie was in possession of the property since 1970 and Annette merely occupied the basement of the subject property in 1990. To admit the position of defendant in her answer that permission was obtained from her father Eugenio and aunt Lourdes, is illogical considering Julie is the occupant of the property since

1970. Granting there was co-ownership, the same has not yet accrued absolutely in 1994 when Maximo (Maximino) was still alive. In fact, not even one among the alleged co-owners laid claim on their successional rights to attest to the issue of co-ownership by asking for partition which could constitute a legal basis for Julie's adverse and exclusive character of her possession. The contention that the possession of defendant-appellant in the property is not by mere tolerance, but, by virtue of her father's right as co-owner of the property, must fail.

In order for the defendant to acquire any whiff of merit, she is obliged to establish a legal basis for her continued occupancy of the property. Granting there was co-ownership, the mere tolerance of one of the co-owners, would not suffice to establish such a right because tolerance in itself does not bear any legal fruit, and it can easily be supplanted by a sudden change of heart on the part of the owner. The defendant has not adduced any convincing evidence that she somehow became a successor-in-interest as her alleged right would still be even inchoate. It is a well-settled rule that a person who occupies a property of another at the latter's tolerance or permission without any contract between them is necessarily bound by an implied promise that she will vacate upon demand, failing which, a summary action for ejectment may be filed against her. (Pengson vs. Ocampo, Jr. 360 SCRA 420)"

Undaunted, Annette filed a petition for review before us assigning the following errors:

"I.

SINCE THE SUBJECT HOUSE AND LOT WERE ACQUIRED BY MAXIMINO AND SOLEDAD DURING THEIR MARRIAGE, THEN THE SAME ARE THEIR CONJUGAL PROPERTIES. HENCE, THE RTC ERRED IN AFFIRMING THE DECISION OF THE MTC AND IN HOLDING THAT THERE IS NO CO-OWNERSHIP BETWEEN JULIE AND HER SIBLINGS EUGENIO AND LOURDES SUNGDUAN WHO ARE ALSO CHILDREN AND HEIRS OF SOLEDAD RULLAMAS.

II.

SINCE THE HOUSE AND LOT ARE THE PROPERTIES OF MAXIMINO AND SOLEDAD, THEN THE HEIRS OF SOLEDAD, INCLUDING EUGENIO AND HER DAUGHTER ANNETTE (PETITIONER HEREIN), ARE ENTITLED TO OWNERSHIP AND POSSESSION THEREOF. HENCE, THE RTC ERRED IN NOT HOLDING THAT PETITIONER IS EQUALLY ENTITLED TO THE POSSESSION AND OCCUPATION OF THE HOUSE AND LOT.

III.

SINCE PETITIONER IS ENTITLED TO THE POSSESSION AND OCCUPATION OF THE HOUSE AND LOT, THEN THE RTC ERRED IN HOLDING THAT