



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

**LORETA SAMBALILO,
 SALVADOR SAMBALILO,
 ZOILO SAMBALILO, JR. and
 RENANTE SAMBALILO,**
 Petitioners,

G.R. No. 222685

Present:

CARPIO, * J.,
 PERALTA, ** *Acting Chairperson*,
 MENDOZA,
 LEONEN, *** and
 MARTIRES, JJ.

- versus -

**SPOUSES PABLO LLARENAS
 AND FE LLARENAS,**
 Respondents.

Promulgated:

21 JUN 2017

X ----- *Atty. Cabalag P. Reyes* ----- X

DECISION

MENDOZA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the January 30, 2014 Decision¹ and the December 4, 2015 Resolution² of the Court of Appeals, Cebu City (CA) in CA-G.R. SP No. 05120, which reversed the May 6, 2010 Decision³ of the Regional Trial Court, Branch 32, Calbayog City (RTC). The RTC overruled the January 12, 2009 Decision⁴ of the Municipal Trial Court in Cities, Calbayog City (MTCC) in a special civil action for forcible entry.

* On Official Leave.

** Per Special Order No. 2445 dated June 16, 2017.

*** On Leave.

¹ Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justice Gabriel T. Ingles and Associate Justice Ma. Luisa Quijano-Padilla, concurring; *rollo* (Vol. I), pp. 89-104.

² *Id.* at 46-48.

³ Penned by Presiding Judge Romeo Dizon Tagra; *id.* at 195-206.

⁴ Penned by Presiding Judge Filemon A. Tandinco, Jr.; *id.* at 270-284.

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The Antecedents

This case originated from a complaint for forcible entry, with prayer for the issuance of a temporary restraining order and preliminary injunction, filed by Spouses Pablo Llarenas and Fe Llarenas (*Sps. Llarenas*) against Loreta Sambalilo and her children, Salvador, Zoilo, Jr., and Renante (*the Sambalilos*), before the MTCC, docketed as Special Civil Action No. 1506.

Sps. Llarenas, in their complaint, alleged that they were the owners of a parcel of land with an area of 120 square meters, located in Barrio Matobato, Calbayog City, having acquired it by purchase under a deed of sale, dated April 17, 1972, from Zoilo Sambalilo (*Zoilo*), late husband of petitioner Loreta Sambalilo (*Loreta*), with the following adjoining boundaries: on the north – by the remaining portion of Zoilo; east – by the land of Ricardo Delgado; south – by the seashore; and west – by the remaining portion of Zoilo. Subsequently, or on November 23, 1981, Sps. Llarenas acquired another parcel of land, by purchase from the same vendor, consisting of 176 square meters, bounded as follows: on the north – by the provincial road; east – by the land of Conrado Ignacio and Jurado Sarmiento; south – by the seashore; and west by the land of Tiburcio Chan. Immediately thereafter, they occupied and took possession of the said properties by introducing improvements, such as the construction of a septic tank, a piggery building, a house rented to Spouses Cabuenas, the house of their caretaker, a steel gate, a fence made of coco lumber, and another house where they allowed their daughter to stay. On August 20, 2004, under the pretext of inspecting their septic tank, the petitioners suddenly entered their property, forcibly removed the steel gate from its concrete mounting and, with the assistance of several helpers, began constructing a concrete fence within the premises of their property.

In their answer, the Sambalilos contended that Loreta was, and had always been, in possession of the property where the concrete fence and framework of a future house had been erected because that area was within the portion of their land, left unsold, and where her residential house had been standing.⁵

During the hearing on the application for injunction, Sps. Llarenas presented a sketch plan depicting the location of the properties described in the complaint and various pictures showing the constructed structures erected by the Sambalilos. On September 22, 2005, the MTCC issued a writ of preliminary injunction enjoining the Sambalilos and their successors-in-interest from entering the disputed premises and to refrain from continuing with their construction or to desist from introducing any improvement pending the final resolution of the main action.⁶

⁵ Id. at 196.

⁶ Id.

Thereafter, the parties submitted their respective position papers. Sps. Llarenas attached the tax declarations of their properties and those of the adjoining owners. The Sambalilos, on the other hand, appended several documents like the sketch plan of Lot 2692 of the Calbayog Cadastre, prepared by Geodetic Engineer Joel S. Ungab; the joint affidavit of *Barangay* Captain Sisenio Santiago (*Brgy. Capt. Santiago*), and *Barangay* Kagawad Manuel Caber, Jr. (*Brgy. Kag. Caber*); Minutes of the conciliation proceeding conducted by the Office of the *Barangay* Captain of Matobato, Calbayog City; and the affidavit of Primitiva Ignacio (*Primitiva*), daughter of the late Bonifacio Ignacio (*Bonifacio*), the owner of Lot 2692-E, among others.⁷

In their position paper,⁸ the Sambalilos alleged that Loreta was the widow of the late Zoilo; and Salvador, Zoilo, Jr. and Renante were the children of Zoilo and Loreta; that Zoilo and Loreta owned a parcel of residential lot with an area of 640 square meters, more or less, designated in the survey as Lot No. 2692, CAD 422, located along Maharlika Highway in *Barangay* Matobato, Calbayog City; that during his lifetime, Zoilo, together with Loreta, sold portions of Lot 2692 to various persons; that among the buyers were Tiburcio Chan, Bonifacio, and Sps. Llarenas, who were able to buy two separate portions; that as a result of the sales, Lot 2692 was subsequently subdivided into eight (8) parcels of land, from Lot 2692-A to Lot 2692-H; that the portion bought by Bonifacio was designated as Lot 2692-E, while the portions purchased by Sps. Llarenas were designated as Lot 2692-C and Lot 2692-F, respectively; and that the remaining portion still owned by the Sambalilos was designated as Lot 2692-G.

They also claimed that they had allowed a pathway to be constructed within Lot 2692 from the Maharlika Highway to the seashore (or the Samar Sea) which was used by the people as ingress and egress to the sea from Maharlika Highway and vice-versa; that Loreta used the pathway to access her residential house constructed in Lot 2692-G; that a conciliation proceedings involving Loreta and Pablo Llanares was conducted before the *barangay* officials of *Brgy. Matobato*, Calbayog City, headed by *Brgy. Capt. Santiago* because of the complaint of Loreta against Pablo who put up a gate shutter in a steel gate constructed across the pathway, which obstructed passage from the Maharlika Highway to the seashore and also towards the house of Loreta; that during the said conciliation proceedings, Loreta and Pablo agreed, among others, that (1) the lots would be relocated by a geodetic engineer with the expenses equally shared by the parties; and (2) the *barangay* officials would remove the gate shutter. Eventually, the said gate shutter was removed with the help of *barangay* officials and in the presence of Pablo.

⁷ Id. at 196-197.

⁸ Id. at 285-294.

It was further averred that Lot 2692-C and Lot 2692-F of Pablo were distinct, separate and different from Lot 2692-G owned by the Sambalilos; that Sps. Llarenas never stayed or occupied these lots because they actually resided in their house along Umbria Street, Brgy. Balud, Calbayog City, as alleged in their complaint; and that it was only Loreta who had a residential house in Lot 2692-G where she had been living openly up to the present time.

The Ruling of the MTCC

In its January 12, 2009 Decision, the MTCC ruled in favor of Sps. Llarenas. It explained that Sps. Llarenas were able to prove prior physical possession of the contested property and that the Sambalilos were guilty of forcible entry by removing the steel gate and constructing concrete fences on the said property. The MTCC explained that the improvements disturbed Sps. Llarenas' possession of their adjoining properties near the seashore. It did not give credence to the conciliation proceedings because the same were conducted after the commission of the forcible entry. The MTCC disposed the case as follows:

WHEREFORE, this Court finds preponderant evidence for the plaintiffs and renders judgment as follows: a) Making permanent the preliminary injunction; b) Ordering the defendants to demolish and remove at their expense all structures they made or cause to be made inside the premises of plaintiffs' property covered by their Exh. "A" and Exh. "B;" c) Ordering the defendants, jointly and severally, to pay plaintiffs ₱35,000.00 for their attorney's acceptance fee, plus ₱3,000.00 for the latter's appearance fee for three hearings; d) Ordering the defendants, jointly and severally, to pay the plaintiffs ₱50,000.00 for moral damages; and e) Ordering the defendants, jointly and severally, to pay the costs of this suit.

SO ORDERED.⁹

Aggrieved, the Sambalilos appealed to the RTC.

The Ruling of the RTC

In its May 6, 2010 Decision, the RTC *reversed* the MTCC decision. It pointed out that based on the respective sketch plans of the parties, there was a consensus that the alleged illegal structures were located on the western side of the pathway when facing the seashore. The RTC noted that based on the evidence on record, it was shown that the concrete fences, built as improvements, were made on Lot 2692-G, where Loreta's house was located, and not on Lot 2692-C. It stated that the area actually occupied by Sps. Llarenas after the sale at the western side of the pathway (Lot 2692-C) did not actually reach the side of the seashore where the structures in

⁹ Id. at 284.

question stood because Lot 2692-H and Lot 2692-G, under the name of the Sambalilos, existed in between. The RTC wrote that this was in consonance with the boundaries stated in the tax declaration for Lot 2692-C and supported by the witnesses of the Sambalilos.

The RTC belied Sps. Llarenas' claim that the Sambalilos forcibly removed the steel gate along the pathway because based on the minutes of the mediation conference at the barangay level, the steel gate was removed pursuant to the voluntary agreement of the parties. The dispositive portion of the decision reads:

WHEREFORE, the appealed decision dated January 12, 2009 is hereby reversed and set aside, and the Injunction issued therein is likewise hereby dissolved and lifted.

SO ORDERED.¹⁰

Undeterred, Sps. Llarenas appealed before the CA.

The Ruling of the CA

In its assailed January 30, 2014 Decision, the CA *overruled* the RTC decision and *reinstated* the MTCC decision. It held that Sps. Llarenas were able to establish that they were in prior physical possession of Cadastral Lot 2692-F. Moreover, the CA gave more credence to their photographs which showed that the steel gate was removed and a concrete fence was constructed. Further, even if it was agreed that the steel gate was to be removed, the CA said that there was no excuse for the Sambalilos to erect the said concrete fences within the premises possessed by Sps. Llarenas. It disposed the case as follows:

WHEREFORE, the petition for review is **GRANTED**. The May 6, 2010 Decision of the RTC, Branch 32, Calbayog City in Special Civil Action No. 117 is **REVERSED and SET ASIDE**. The January 12, 2009 Decision of the MTCC, Calbayog City in Special Civil Action No. 1506 is **REINSTATED** with **MODIFICATIONS** that the awards for moral damages, attorney's acceptance fee, appearance fee and costs of the suit are **DELETED**.

SO ORDERED.¹¹

The Sambalilos moved for reconsideration, but the CA denied their motion in its assailed December 4, 2015 Resolution.

Hence, this petition.

¹⁰ Id. at 206.

¹¹ Id. at 104.

GROUND

1. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT FOUND THAT THE CONTROVERSY AROSE IN LOT 2692-F, WHICH IS DECLARED IN THE NAME OF THE RESPONDENTS, ALTHOUGH THE EVIDENCE AT HAND, AS CORRECTLY FOUND BY THE RTC BRANCH 32, WOULD INDUBITABLY POINT THAT THE IMPROVEMENTS MADE BY PETITIONERS WERE ON THEIR OWN LOT WHICH IS LOT 2692-G.
2. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT HELD THAT PETITIONERS HAVE NO PRIOR PHYSICAL POSSESSION ON THE LOT WHERE THE IMPROVEMENTS WERE MADE.
3. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT FOUND THAT THE STEEL GATE OF RESPONDENTS WERE FORCIBLY REMOVED BY PETITIONERS THUS DISREGARDING THE EVIDENCE AT HAND WHICH POINTED TO RESPONDENT HAVING VOLUNTARILY AGREED FOR ITS REMOVAL BY THE BARANGAY AUTHORITIES.¹²

The Sambalilos agree that only questions of law are allowed in the present action. The petition, however, falls within the exception considering that the findings of the CA are contrary to those of the RTC and contradicted by the evidence on record, and that its judgment is based on misapprehension of facts.

Moreover, petitioners insist that the concrete fences they built were introduced within the premises of Lot 2692-G, which they owned. Thus, there can be no forcible entry. The respondents Sps. Llarenas (*respondents*) possessed Lot 2692-F, and not the lot where they built the structures which was Lot 2692-G. Further, petitioners claim that the steel gate was removed because of the agreement of the parties during the conciliation proceedings before the barangay.

On June 23, 2016, respondents filed their Comment.¹³ They asserted that they were able to establish, by preponderance of evidence, the identities of the two parcels of land they bought from Zoilo and his wife Loreta measuring 120 and 176 square meters (*sq.m.*), respectively. The testimonies of respondents and their witnesses clearly and preponderantly established their prior physical possession of the same parcels of land up to, and until, August 20, 2004 when petitioners forcibly entered the said land. Respondents argued that forcible entry was committed not only with the use

¹² Id. at 17 & 31.

¹³ Id. at 485-523.

of force, but also by means of strategy and/or stealth, because, petitioners had convinced respondents' daughter to let them in on the pretext of just inspecting the land and the septic tank. Respondents asserted that this conclusion of fact by the MTCC could not be overturned by the RTC.

On October 3, 2016, petitioners filed their Reply¹⁴ stressing that they never contested that respondents bought two (2) parcels of land from Zoilo, their predecessor, and that they were in prior possession of these two (2) parcels, Lot 2692-C and Lot 2692-F. What was being contested, according to them, was the actual area where these two (2) lots were located. Petitioners insisted that, as correctly found by the RTC, the area which respondents had improved by August 20, 2004, the alleged date of forcible entry, was their lot, Lot 2692-G, and not the portions bought by respondents.

The issue for the Court's resolution is whether the improvements, specifically the concrete fence and the framework of a future house, introduced by the petitioners disturbed respondents' possession of the land in question.

The Court's Ruling

The Court finds merit in the petition.

Considering that the CA and the RTC arrived at different factual findings and conclusions, the Court is constrained to depart from the general rule that only errors of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, and to review the evidence presented.¹⁵

For a forcible entry case to prosper, the plaintiffs must allege and prove: (a) that they have prior physical possession of the property; (b) that they were deprived of possession either by force, intimidation, threat, strategy, or stealth; and (c) that the action was filed within one year from the time the owners or legal possessors learned of their deprivation of the physical possession of the property.¹⁶ The only purpose of a forcible entry suit is to protect the person who had prior physical possession against another who unlawfully entered the property and usurped possession.¹⁷ Hence, in this case, it is imperative that respondents establish that the improvements introduced by petitioners dispossessed them of the land they owned.

¹⁴ *Rollo* (Vol. II), pp. 786-807.

¹⁵ *MOF Company, Inc. v. Shin Yang Brokerage Corporation*, 623 Phil. 424, 433 (2009).

¹⁶ *Mangaser v. Ugay*, G.R. No. 204926, December 3, 2014, 744 SCRA 13, 23-24, citing *DeLa Cruz v. Court of Appeals*, 539 Phil. 158, 170 (2006).

¹⁷ *Apostolic Vicar of Tabuk, Inc. v. Spouses Sison*, G.R. No. 191132, January 27, 2016.

It is undisputed that petitioners had constructed a concrete fence and a framework of a future house, the very structures complained of, as the direct result of the alleged illegal intrusion of petitioners on the disputed lots.

In this case, it was shown that the structures were introduced on the lot west of the pathway when facing the seashore. The Court agrees with the RTC that the evidence on record show that the said lot was Lot 2692-G, which was under the name of petitioners, and not Lot 2692-F as found by the CA. Neither were the constructions made on Lot 2692-C owned by respondents. As correctly found by the RTC:

Now then, considering the common consensus of the parties, as culled from their respective sketch plans, that the alleged illegal structures were located on the western side of the pathway, if one is facing against the Samar Sea, and that this area is adjacent to the seashore, on the southern side, the task of determining who is actually in prior physical possession of this area becomes relatively easier.

As shown in the appellants' sketch plan, the lot on the western side of the pathway and adjacent to the seashore, if one is facing against the Samar Sea, is Lot 2692-G/Lot 2692-H. Unfortunately for the appellees, Lot 2692-G and Lot 2692-H are the properties of the appellants as shown in their Tax Declaration No. 99 01016 00929 (Appellees' Exhibit "V"), and Tax Declaration No. 99 01016 00928 (Appellees' Exhibit "T").

Appellees' property (Lot 2692-F) declared under Tax Declaration No. 99 01016 00478 (Appellees' Exhibit "S") while bounded by the seashore on its southern side could not have been the area where the illegal structure is located because as shown on the sketch plan of the appellants, it is located along the Eastern side of the pathway, not on the Western side where the disputed property is situated.

As regards the appellees' other property, (Lot 2692-C) per Tax Declaration No. 99 01016 00406 (Appellees' Exhibit "R"), which is located at the western side of the pathway, if one is facing against the Samar Sea, the location of the contested structures could not have also been inside this property because as shown in the same sketch plan, its southern side is not bounded by the seashore but by Lot 2692-G/Lot 2692-H, which, to repeat, are properties declared in the name of the appellants.

Consequently, from the foregoing presentation and analysis, it is clear that the contested structures are located within the area of Lot 2692-H (Appellees' Exhibit "T") and Lot 2692-G (Appellees' Exhibit "V"), both of which belong to the appellants.¹⁸

¹⁸ *Rollo* (Vol. I), p. 201.

The RTC was correct in giving more credence to the sketch plan of petitioners. Although respondents' sketch plan,¹⁹ relied upon by the MTCC and the CA, showed the area containing the constructions as located on the western side of what appeared to be a pathway, when facing the seashore, this pathway which divided the two parcels of land, the 176 and 117 sq. m. lots, traversed from the northern side up to only the edge of the 117 sq. m. lot. The said sketch plan, as properly argued by petitioners, was relatively limited as it did not depict the adjoining properties after the subdivision of the entire Lot 2692 into various sub-lots. Indeed, the sketch plan was insufficient because it did not even identify the exact location of the properties, Lot 2692-C and Lot 2692-F, actually possessed by respondents based on their own tax declarations.

Quite the contrary, the sketch plan of petitioners²⁰ showed an existing pathway (Lot 2692-I) that traversed the entire Lot 2692 from its northern side along the Maharlika Highway, all the way up to the seashore of the Samar Sea to the northern side. This sketch plan was consistent with the statement made by the *barangay* officials in their joint-affidavit²¹ that there was a pathway along the said lot used by the people in going to and from the highway to the seashore.

This Court cannot subscribe to respondents' claim that the disputed structures were erected on their property as their two lots were adjoining each other as shown in their sketch plan. A perusal of both the deeds of absolute sale²² as well as the tax declarations²³ pertaining to the two parcels of land, however, shows that the two portions were *not adjacent* to each other. Thus, the theory of respondents that it was through their lot with 120 sq. m. (Lot-C) that their lot with 176 sq. m. (Lot-F) was entered by petitioners on August 20, 2004 deserves scant consideration.

The Court, thus, shares the view of petitioners that their sketch plan was more credible than that of respondents inasmuch as the former was consistent with the boundaries of the parcels of land as depicted in respondents' own documentary evidence.²⁴

Having established that the improvements made by petitioners were in Lots 2692-G and H, the next issue to address is whether petitioners were in actual physical possession of these lots.

The MTCC found that respondents were in physical possession of the contested area by virtue of the instruments of sale that transferred the

¹⁹ Id. at 480.

²⁰ Id. at 295.

²¹ Id. at 296.

²² Id. at 335-336.

²³ Id. at 601-612.

²⁴ *Rollo* (Vol. II), pp. 795-796.

property to them. It may be true that the deeds of conveyances covering respondents' acquisition of the 120 and 176 sq. m. lots from Zoilo have the seashore as their common boundaries. It bears to emphasize that petitioners disputed the correctness of the area sold to respondents although they admitted the sale. Indeed, petitioners vehemently denied the seashore as the south boundary of Lot 2692-C, and contended that the deed of sale for the said land contained erroneous boundaries. The MTCC, however, overlooked the fact that after the sale, the area occupied by respondents at the western side of the pathway, Lot 2692-C, did not actually reach the side of the seashore where the structures stood because, as aptly noted by the RTC, Lot 2692-H and Lot 2692-G, in the name of petitioners, existed in between. Records show that Tax Declaration No. 99 01016 00406,²⁵ indicated that the adjoining boundary on the south towards the direction of Samar Sea were Lots 2692-H and Lot 2692-G, and not the seashore.

This finding is further confirmed by the sketch plan of petitioners showing that the extent of the property occupied by respondents on the western side of the pathway (Lot 2692-C) was only up to the property of petitioners (Lots 2692-H and 2692-G), and did not reach the seashore.

The flimsy excuse of respondents that the boundaries on the tax declarations for the two parcels, Lots 2692-C and 2692-F, were altered by the Office of the City Assessor of Calbayog City, explaining why the two parcels were not adjoining each other, fails to persuade. For one, if indeed the boundaries were altered, they should have filed an action or protest before the City Assessor's Office to have them corrected from the time they discovered the same. Unfortunately, they did not. The same is true with respect to Tax Declaration No. 99 01016 00406²⁶ for Lot 2692-C. When the said lot was transferred in their names, the declaration contained an area of 120 sq. m. with the boundaries indicated in the south as 05-103 (2692 H) 102 (2692 G), and not the seashore. Their acquiescence for the longest time indicated their conformity to the said declaration of boundaries. As correctly pointed out by the RTC, respondents' declaration before the City Assessor's Office on the extent of the area they actually occupied, as the basis for the issuance of the corresponding tax declaration of the property, was an admission against their interest. The rationale for the rule is based on the presumption that no man would declare anything against himself unless such declaration was true. Thus, it is fair to presume that the declaration corresponds with the truth, and it is his fault if it does not.²⁷

The RTC was also correct when it held that the tax declaration enjoys the presumption of regularity, and must be respected, unless rebutted by

²⁵ *Rollo* (Vol. I), p. 600.

²⁶ *Id.* at 308.

²⁷ *Manila Electric Company v. Heirs of Spouses Deloy*, 710 Phil. 427, 441 (2013), citing *Heirs of Bernardo Ulep v. Ducat*, 597 Phil. 5, 16 (2009), citing *Rufina Patis Factory v. Alusitain*, 478 Phil. 544, 558 (2004).

contrary evidence which, in this case, respondents miserably failed to adduce.

Even assuming that the tax declarations were not reliable as to the true and correct boundaries of the two parcels of land, the deeds of sale of the said properties which were even marked as exhibits for respondents, also *failed to show that the two lots were adjacent to each other.*

Further, petitioners' stance that they had a house in Lot 2692-G where they had been living until the present and that the improvements had been made thereon was bolstered by the affidavit²⁸ of their neighbor Primitiva and the joint affidavit²⁹ of *Brgy. Capt. Santiago and Brgy. Kag. Caber*. Primitiva affirmed that her house was adjacent to respondents' house and across was the house of Loreta in Lot 2692-G. Further, they stated that respondents placed a steel gate, at the corner of the house of Bonifacio and the lot of Pablo, along the pathway obstructing the general public in going to the seashore from the highway or vice-versa, and which caused Loreta to complain before the barangay. Primitiva and the barangay officials narrated that during the proceedings before the barangay, Loreta and Pablo agreed that the steel gate should be removed and that the same was done in their presence and in the presence of petitioners and Pablo.

Thus, respondents' claim of actual physical possession of the questioned land has no leg to stand. It must be noted that aside from their self-serving assertions, respondents did not adduce evidence of their actual possession of the disputed area. Interestingly, respondents made reference to people who allegedly occupied their Lots 2692-C and 2692-F, Mr. and Mrs. Cabuenos, Marisa Cabuenos, Rolando Pua and the like, but surprisingly none of them executed corroborative affidavits to support their position. Obviously, it was only their daughter, Marie Effie L. Becerrel, whom they were able to present as their witness. On the contrary, their own documentary exhibits belie their claim that they physically possessed that portion of the lot where the improvements were made.

After having proven that the improvements were made on Lot 2692-G, the testimonies of respondents as to their physical possession of Lots 2692-C and 2692-F become irrelevant. The CA, therefore, erred in affirming the MTCC finding that petitioners had no prior physical possession on the lot where the improvements were made.

Anent the issue of forcible entry, to repeat, the only witness presented by respondents to show that petitioners were guilty of committing forcible entry was their daughter. Her claim of stealthy intrusion of petitioners over their land by forcibly removing the steel gate, as aptly concluded by the

²⁸ *Rollo* (Vol. I), p. 301.

²⁹ *Id.* at 296.

RTC, was debunked by the Minutes³⁰ of conciliation meeting before the Office of the Barangay of Matobato, Calbayog City, and the joint affidavit of the Barangay Captain and Kagawad of the place. The barangay officials stated that the steel gate along the pathway was dismantled and removed by them, upon voluntary agreement of the parties, and not by petitioners alone as falsely claimed by respondents.

On this point, the Court agrees with petitioners' view that their witnesses were more credible, being impartial with no proven ill motive to testify against respondents, than respondents' lone witness, their daughter who, as expected, had all the reasons to testify in their favor.

Basic is the rule in evidence that the burden of proof rests upon the party who asserts, not upon him who denies, because, by the nature of things, the one who denies a fact cannot produce any proof of it.³¹ In this case, the burden to prove that they were in prior physical possession of the property and that they were deprived of possession thereof by force and/or stealth lies with respondents. The Court holds that respondents failed to carry out this burden because, as already stated, even their own evidence belied their assertions.

In view of the foregoing, the Court finds sufficient justification to reverse the assailed CA decision.

On a final note, the Court cautions that the ruling in this case is limited only to the issue of possession *de facto* or material possession. This adjudication is not a final determination on the issue of ownership and, thus, without prejudice to any party's right to file action on the matter of ownership.

WHEREFORE, the petition is **GRANTED**. The January 30, 2014 Decision and the December 4, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 05120 are hereby **REVERSED** and **SET ASIDE**. The May 6, 2010 Decision of the Regional Trial Court, Branch 32, Calbayog City, is **REINSTATED**.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

³⁰ Id. at 299-300.

³¹ *C.I.C.M. Mission Seminaries School of Theology, Inc. v. Perez*, G.R. No. 220506, January 18, 2017, citing *Acabal v. Acabal*, 494 Phil. 528, 541 (2005).

WE CONCUR:

(On Official Leave)
ANTONIO T. CARPIO
Associate Justice


DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson

(On Leave)
MARVIC M.V.F. LEONEN
Associate Justice


SAMUEL R. MARTIRES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice