



Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

NOTICE

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Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **August 26, 2020**, which reads as follows:*

*“G.R. No. 235002 (Heirs of Jose Dumaguing, namely: Prescilia Dumaguing, Lolita Dumaguing, Lydia Dumaguing, Elsa Dumaguing, Espina and Allan Dumaguing, represented by Allan Dumaguing v. Republic of the Philippines, represented by the Philippine Army). – This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court (Rules) assails the Decision² dated March 16, 2017 and the Resolution³ dated September 12, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 07050-MIN, which granted respondent’s petition for review⁴ (Rule 42) and denied petitioners’ motion for reconsideration.*

Facts of the Case

This case originated from a complaint for recovery of possession and Ownership⁵ filed by petitioners Heirs of Jose Dumaguing against Major Segfred Espina (Major Espina) of the Philippine Army before the Municipal Trial Court in Cities (MTCC) of Iligan City.

Petitioners are the children of the late Jose Dumaguing, from whom they inherited the subject property⁶ – an unregistered parcel of land described as Lot 5258-W, being a portion of Lot No. 5258, Iligan Cad. 292, containing an area of 1,435 square meters located at Suarez, Iligan City.⁷ Petitioners alleged that they and their predecessor-in-interest have been in long, peaceful, public, and open possession of the subject property. On October 27, 2005, however, Major Espina, through a hired laborer, unlawfully caused the installation of a barb wire fence over the subject property, depriving petitioners of the possession and enjoyment of the fruits harvested therein.

¹ Rollo, pp. 12-26.

² Penned by Associate Justice Ruben Reynaldo G. Roxas, with the concurrence of Associate Justices Edgardo A. Camello and Rafael Antonio M. Santos; id. at 41-52.

³ Id. at 37-39.

⁴ Id. at 186-207.

⁵ Id. at 112-114.

⁶ Id. at 14.

⁷ Id. at 17.

Petitioner Allan Dumaguing tried to settle the dispute with the *Lupon Tagapamayapa*, but no settlement was reached. Hence, petitioners filed this complaint.⁸

Major Espina, in his capacity as Camp Commander of the Camp Pintoy of Iligan City, through the Office of the Solicitor General (OSG), countered in his Answer⁹ that the complaint should be dismissed for lack of jurisdiction, failure to state a cause of action and/or for lack of merit.¹⁰ Respondent averred that the complaint did not make out a case for forcible entry since there was no allegation on how petitioners were deprived of possession of the subject property and no clear allegations on whether they were in actual physical possession thereof. Neither can the complaint be considered as one for unlawful detainer, since there was no assertion that his possession of the subject property was valid from inception by reason of a contract or that he was merely tolerated by petitioners.¹¹ Major Espina, in representation of the Armed Forces of the Philippines (AFP) claimed that AFP has a right to possess the subject property by virtue of a Deed of Quit Claim dated May 5, 1976 executed by petitioners' father, Jose Dumaguing, with the marital consent of his wife, waiving all his rights, claims, and interests as owner, and/or possessor under any title in and any portion of Lot 5258, Iligan, Cad. 292 located in Suarez, Iligan City, in favor of the 119 Home Defense Center, 4th Infantry Division of the Philippine Army. The donated lot forms part of the military reservation of Camp Climaco Pintoy. Since the donation, the AFP has exclusively occupied and exercised physical possession of the subject property although it was just recently fenced through Major Espina's orders.¹² Lastly, Major Espina argued that he was being sued in his capacity as an officer of the AFP; hence, a suit against the State which could not prosper without the State's consent.¹³

Pedro Dumaguing filed a complaint-in-intervention.¹⁴

During the trial of the case, only petitioners' counsel presented evidence for the court's consideration. Respondent, despite opportunities given, failed to present his evidence.¹⁵

Ruling of the Municipal Trial Court in Cities

On August 13, 2014, the MTCC rendered a Decision¹⁶ declaring petitioners as owners of the subject property and ordering the Philippine Army, represented by Major Espina, his successors, assigns, or any persons

⁸ Id. at 53-54.

⁹ Id. at 93-101.

¹⁰ Id. at 94-97.

¹¹ Id.

¹² Id. at 98.

¹³ Id. at 98-100.

¹⁴ Id. at 134.

¹⁵ Id. at 135.

¹⁶ Penned by Presiding Judge Orlando C. Gallardo; id. at 133-136.

claiming under them to vacate the subject property and to peacefully restore and/or to return the possession thereof to petitioners within 30 days from receipt of the Decision. It also dismissed the complaint-in-intervention for lack of merit.¹⁷

The MTCC stated that the allegations in the complaint are sufficient to confer jurisdiction upon the court and that petitioners have a cause of action based on their allegation of ownership.¹⁸ In declaring that petitioners have a better right, the MTCC ruled that petitioners have proved both ownership and identity of the subject property.¹⁹ Petitioners have paid the real property taxes due on the subject property on a regular basis. While tax declarations or payment of real estate taxes are not conclusive of ownership, continuous payment of such taxes is evidence of great weight in favor of ownership. Further, petitioners have also established the metes and bounds or identity of the subject property as shown in the sketch plan surveyed and prepared by Geodetic Engineer Leodegario Vallecer (Engr. Vallecer), showing that the barb wire fence put up by the Philippine Army, encroached petitioners' property.²⁰

Respondent moved for reconsideration with motion to reopen the case for the presentation of evidence for defendant Major Espina.²¹ This motion was denied in the Resolution dated December 16, 2014 of the MTCC.²²

Respondent, through the OSG, appealed²³ to the Regional Trial Court (RTC) of Iligan City, Branch 1.

Ruling of the RTC

In the Decision²⁴ dated May 27, 2015, the RTC affirmed *in toto* the Decision of the MTCC. The RTC ruled that the MTCC has jurisdiction over the complaint, the assessed value of the subject property being ₱1,600.00 as shown in the tax declaration. The RTC declared that petitioners were able to prove their entitlement to the reliefs prayed for in their complaint. The identity of the land is not in dispute and its metes and bounds were properly delineated as reflected in the result of the survey. On the other hand, respondent and the intervenor failed to present their evidence despite the time granted to them. Their silence may be viewed as acquiescence or that they do not have evidence to support their claim.²⁵

Respondent sought for reconsideration²⁶ but was denied in the Order dated September 3, 2015 of the RTC.

¹⁷ Id. at 136.

¹⁸ Id. at 134.

¹⁹ Id. at 136.

²⁰ Id. at 135.

²¹ Id. at 137.

²² Id. at 143-144.

²³ Id. at 145.

²⁴ Penned by Presiding Judge Alberto P. Quinto; id. at 168-170.

²⁵ Id.

²⁶ Id. at 172.

A Petition for Review²⁷ under Rule 42 was, thereafter, filed by respondent to the CA.

Ruling of the CA

On March 16, 2017, the CA granted the petitions; set aside the Decision of the RTC and dismissed the complaint for recovery of possession and ownership.²⁸ From the facts alleged in the complaint, the CA ruled that the case was a forcible entry case, and not an *accion reivindicatoria*.²⁹ Although petitioners made no specific mention on the mode used to deprive possession, the purported fencing of Lot 5258-W without petitioners' consent hints at the exertion of force over the said lot and the entry of a person therein without any legal right.³⁰ The CA explained that petitioners failed to sufficiently establish their prior physical possession over Lot 5258-W. Hence, the MTCC had no jurisdiction over the action of petitioners as their complaint failed to establish a cause of action for forcible entry.³¹ Even if the CA will consider the allegations in the complaint as one for *accion reivindicatoria*, the same will still be dismissed. The CA ruled that the pieces of documentary evidence of petitioners, *i.e.*, Original Certificate of Title No. 0-594 and Transfer Certificate of Title No. T-51168, do not pertain to Lot 5258-W or its derivative lot. The tax declaration does not conclusively prove title since there is dearth of other competent evidence on records to show ownership.³²

Petitioners filed a motion for reconsideration but it was denied in the Resolution³³ dated September 12, 2017.

Issue

The pivotal issue to be resolved is whether the CA erred in dismissing petitioners' complaint for recovery of possession and ownership.

Petitioners' Arguments

Petitioners argue that they were able to substantiate with preponderance of evidence their claim of ownership and the identity of the subject property based on the evidence on record, as opposed to respondent which failed to present any evidence in its favor. Petitioners claim that when respondent fenced the property donated by their predecessor-in-interest, respondent did not observe the exact boundary agreed upon by the parties thereby depriving petitioners the right to enjoy and dispose said portion in excess of the area

²⁷ Id. at 186-207.

²⁸ Supra note 2.

²⁹ *Rollo*, p. 145.

³⁰ Id. at 47.

³¹ Id. at 50.

³² Id. at 50-51.

³³ Id. at 37-39.

donated.³⁴ Further, they aver that they tack their possession and ownership from their predecessor-in-interest, the owner of the subject property. They have introduced some improvements by planting fruit-bearing trees, proof that they are in prior ownership and possession of the property until disturbed by respondent. Petitioners, while claiming ownership, are seeking to recover full possession of that portion of the land in excess of what was donated unto respondent by petitioners' predecessor-in-interest.³⁵

Respondent's Comment

Respondent avers that the petition raises factual issues which are beyond the scope of a petition for review on *certiorari* under Rule 45. The CA did not err in ruling that the MTCC did not acquire jurisdiction over petitioners' action. The allegations in the petitioners' complaint established a case for forcible entry despite being captioned as one for *accion reivindicatoria*. What determines the nature of an action, as well as which court has jurisdiction over it, are the allegations of the complaint and the character of the relief sought. One cannot advert to anything not set forth in the complaint, such as evidence adduced at the trial, to determine the nature of the action thereby initiated.³⁶ Petitioners want a mere recovery of physical possession of the subject property. The material allegations in the complaint, however, failed to establish a cause of action for forcible entry. There was no clear allegation as to petitioners' actual physical possession and the manner by which they were divested of possession of the subject property. Even assuming that petitioners' action is an *accion reivindicatoria*, respondent contends that petitioners still failed to successfully prove both requisites of title to the subject property and the identity thereof by preponderance of evidence.³⁷

Ruling of the Court

We do not agree with the CA in treating the case as one for forcible entry, and dismissing the case will not resolve the issue of encroachment.

Petitioners attached in their complaint the Certification to File Action³⁸ issued by the Barangay showing that no settlement/conciliation was reached by the parties. A careful perusal of this certification would reveal that the case filed by petitioners in the Barangay was for "Encroachment."

This explains why there is nothing in petitioners' complaint alleging any means of dispossession that would constitute forcible entry under Section 1, Rule 70 of the Rules, nor is there any assertion of defendant's possession which was originally lawful but ceased to be so upon the expiration of the

³⁴ Id. at 20.

³⁵ Id. at 21.

³⁶ Id. at 76.

³⁷ Id. at 77-78.

³⁸ Id. at 92.

right to possess. The action is neither one for forcible entry nor for unlawful detainer but an action for recovery of possession and ownership (*accion reivindicatoria*) because it involves a boundary dispute.

As held in the case of *Manalang v. Bacani*:³⁹

x x x [A] boundary dispute must be resolved in the context of *accion reivindicatoria*, not an ejectment case. The boundary dispute is not about possession, **but encroachment**, that is, whether the property claimed by the defendant formed part of the plaintiff's property. A boundary dispute cannot be settled summarily under Rule 70 of the *Rules of Court*, the proceedings under which are limited to unlawful detainer and forcible entry. In unlawful detainer, the defendant unlawfully withholds the possession of the premises upon the expiration or termination of his right to hold such possession under any contract, express or implied. The defendant's possession was lawful at the beginning, becoming unlawful only because of the expiration or termination of his right of possession. In forcible entry, the possession of the defendant is illegal from the very beginning, and the issue centers on which between the plaintiff and the defendant had the prior possession *de facto*.⁴⁰ (Emphasis supplied)

Article 434 of the Civil Code provides that to successfully maintain an action to recover the ownership of a real property, the person who claims a better right to it must prove two things: (1) the identity of the land claimed; and (2) his title thereto.⁴¹ In an *accion reivindicatoria*, the person who claims that he has a better right to the property must first fix the identity of the land he is claiming by describing the location, area and boundaries thereof.

In this case, respondent claimed in its Answer that it has a right to possess the subject property by virtue of the donation made by petitioners' father in favor of the Philippine Army. Respondent averred that a Deed of Quit Claim dated May 5, 1976 was executed by petitioners' father, Jose Dumaguing, with the marital consent of his wife, waiving all his rights, claims, and interests as owner, possessor, and/or under any title in and any portion of Lot 5258, Iligan Cad. 292 located in Suarez, Iligan City, in favor of the 119 Home Defense Center, 4th Infantry Division of the Philippine Army. Since the donation, the AFP has exclusively occupied and exercised physical possession of the subject property although it was just recently fenced through Major Espina's orders. This shows that respondent acknowledges ownership of Jose Dumaguing, petitioners' predecessor-in-interest, over the subject property. Aside from the allegations in the Answer, respondent did not present its evidence. Allegations are not proof.

³⁹ 750 Phil. 25, 35 (2015).

⁴⁰ *Sps. Javier v. Sps. De Guzman*, 768 Phil. 210, 215-216 (2015).

⁴¹ *Sps. Hutchison v. Buscas*, 498 Phil. 257, 262 (2005)

Petitioners recognize the donation made by their father to the Philippine Army, but when the latter fenced the property donated by their predecessor-in-interest, respondent did not observe the exact boundary agreed upon by the parties thereby depriving petitioners of the right to enjoy and dispose said portion in excess of the area donated.

After a judicious examination of the records of the case, this Court finds that petitioner failed to convincingly establish the identity of the subject property. The Sketch Plan, as identified by Engr. Vallecer in his Judicial Affidavit,⁴² did not identify and define the exact metes and bounds of the alleged encroachment by respondent. In the Judicial Affidavit, Engr. Vallecer stated that respondent encroached 1,435 square meters of petitioners' land which was fenced by respondent with barbed wire, using as reference the tax declaration and Sketch Subdivision Plan. However, when asked to pinpoint the area encroached upon respondent, it was not accordingly marked in the Sketch Plan that was formally offered to the MTCC.⁴³ This Court cannot reasonably conclude that the **entire** 1,435 square meters of Lot 5258-W was the area being encroached by respondent. Be it noted that the donation made by petitioners' father covered Lot 5258, Iligan Cad. 292 located in Suarez, Iligan City, to which Lot 5258-W is a portion thereof.

The dismissal of the case will not resolve the issue of encroachment/boundary dispute. It is more practical to determine the exact area encroached by respondent considering that petitioners and respondent both admit and acknowledge the donation made by petitioners' father, Jose Dumaguing, in favor of respondent. There is no dispute that petitioners' father owned the property, which he donated to respondent. The only issue pertains to the area encroached by respondent in excess of the area donated by petitioners' father.

Hence, for judicial economy, this Court deems it just and proper to remand the case to the RTC, which has more competence to conduct a survey of the subject property to determine the area encroached by respondent in excess of the area donated.

WHEREFORE, premises considered, this case is **REMANDED** to the Regional Trial Court of Iligan City, Branch 1 for further proceedings. The said court is **DIRECTED** to order the conduct of a survey of the subject property at the expense of the parties and to resolve the complaint for recovery of possession and ownership.

⁴² *Rollo*, pp. 129-132.

⁴³ *Id.* at 130-131.

SO ORDERED.”

By authority of the Court:

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