



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

FLORITA B. VIRAY,
 Petitioner,

G.R. No. 252325

Present:

PERALTA, C.J.,
Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA,
GAERLAN, JJ

- versus -

HEIRS OF MILAGROS A. VIRAY,
 represented by **JOHN A. VIRAY,**
 Respondents.

Promulgated:

MAR 18 2021

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DECISION

CARANDANG, J.:

Assailed in this Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court is the Resolution² dated September 10, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 148926, which granted Florita B. Viray's (petitioner) Manifestation with Motion to Dismiss Appeal³ and deemed the case closed and terminated. Likewise assailed is the Resolution⁴ dated March 3, 2020, which denied petitioner's motion for reconsideration.

¹ *Rollo*, pp. 3-16.

² Penned by Associate Justice Myra V. Garcia-Fernandez, with the concurrence Associate Justices Apolinario D. Bruselas, Jr. and Ronaldo Roberto B. Martin; *id.* at 20-21.

³ *Id.* at 175-176.

⁴ Penned by Associate Justice Myra V. Garcia Fernandez, with the concurrence of Associate Justices Apolinario D. Bruselas Jr. and Ronaldo Roberto B. Martin; *id.* at 24-25.

Facts of the Case

This case stemmed from a complaint for unlawful detainer⁵ filed by Milagros A. Viray (now substituted by respondents heirs) against petitioner before the Metropolitan Trial Court (METC) of Mandaluyong City, Branch 60.⁶

Milagros A. Viray (Milagros) alleged that she is the lawful owner of a stall space in a commercial building located at 427 Barangka Drive corner Tanglaw St., Mandaluyong City built on the land covered by Transfer Certificate of Title (TCT) No. 25216⁷ registered in her name and declared for taxation⁸ purposes. In July 1993, Milagros verbally leased the said stall to petitioner, her daughter-in-law, the wife of her son, Julito Viray (Julito). The daily rent was ₱400.00. On May 1, 2013, petitioner failed to pay the daily rental, and as of May 1, 2014, petitioner had arrears amounting to ₱73,000.00.⁹

It was agreed upon by the parties that petitioner will use the stall for selling dressed chicken only. However, in 2010, Milagros claimed that petitioner violated the terms of the lease when the latter started to use the stall as storage facility and for dressing live chicken. Petitioner also used gas stove emitting foul odor affecting the health of Milagros whose room is adjacent to the stall. Milagros, being bedridden, needs expansion of her room for ventilation and the stall space is needed for such improvement.¹⁰ Settlement before the barangay failed.¹¹ A demand to pay the rentals in arrears and to vacate the stall was sent to petitioner on May 20, 2014 to no avail.¹² Hence, this complaint.

In her Answer, petitioner countered that the lot is co-owned by Milagros and her children as heirs to the estate of Chan Lee a.k.a. Jose Viray, Milagros' late husband, who died on January 22, 1995.¹³ The lot used to be part of a bigger lot covered by TCT No. 2870,¹⁴ a conjugal property of Chan Lee and Milagros. After the death of Chan Lee, Milagros, without settling the estate of her husband, subdivided the lot resulting in the issuance of three separate titles one of which is TCT No. 25216. Petitioner occupied the stall not as lessee but as wife of Julito, co-owner of the said property. The amount being paid is not rent but financial aid or assistance to show gratitude to Milagros. Petitioner used the stall so that she and her husband would have a means of livelihood. The stall is being used to sell dressed and live chicken which is known to Milagros. The noise coming therefrom is normal and the place is clean, fit for selling poultry meat. Petitioner averred that Milagros owns a place that could

⁵ Id. at 26-29.
⁶ Id.
⁷ Id. at 30-31.
⁸ Id. at 32.
⁹ Id. at 26.
¹⁰ Id.
¹¹ Id. at 36.
¹² Id. at 33.
¹³ Id. at 91.
¹⁴ Id. at 98-100.



be her residence other than the room near the stall. Her husband's condition is even worse than Milagros, as he has been bedridden after an accident and is immobile. Selling dressed chicken in the stall is petitioner's only source of income to make a living and to support the medical needs of her husband. Petitioner claimed that she is not legally bound to pay rental since the property is partly owned by her husband; hence, she could not be ejected therefrom.¹⁵

Ruling of the Metropolitan Trial Court

After submission of their respective position papers, the METC rendered a Decision¹⁶ dated August 11, 2015 granting the complaint, ordering petitioner and all persons claiming rights under her to vacate the stall and restore its possession to Milagros; to pay the amount of ₱400.00 daily reckoned from July 23, 2014 until they have vacated the premises; to pay ₱10,000.00 as and by way of attorney's fees; and the cost of suit. While petitioner avers that there is no lease to speak of since what she is giving Milagros is in the form of financial assistance, said financial assistance started from the time they occupied the place; therefore, petitioner's occupation of the stall is merely tolerated and Milagros has the right to demand that petitioner vacate the same.¹⁷

Petitioner filed an appeal to the Regional Trial Court (RTC) of Mandaluyong City, Branch 211.

Ruling of the Regional Trial Court

On August 22, 2016, the RTC affirmed *in toto* the decision of the METC.¹⁸ It ruled that being a torrens title holder, Milagros is entitled to all the attributes of property ownership, which necessarily includes possession. As to the issue of title raised by petitioner that she co-owns the property in representation of her husband, the RTC declared that said issue should be properly ventilated in an appropriate legal proceeding and not in the instant case where the issue pertains only to possession. Milagros has sufficiently alleged in her complaint that petitioner was allowed to use the subject premises only to sell dress chicken for a daily rental of ₱400.00 which was the subject of an oral contract. Petitioner's possession became illegal when Milagros sent her demand letter to pay the unpaid rental and vacate the subject property which petitioner failed to heed.¹⁹

Petitioner moved for reconsideration but it was denied in the Order²⁰ dated November 16, 2016.

¹⁵ Id. at 139.

¹⁶ Penned by Acting Presiding Judge Norma M. Ramos; id. at 131-136.

¹⁷ Id. at 135-136.

¹⁸ Penned by Presiding Judge Ofelia I. Calo; id. at 137-142.

¹⁹ Id. at 141-142.

²⁰ Id. at 151-152.



A petition for review under Rule 42 was thereafter filed by petitioner to the CA.²¹

During the pendency of the case in the CA, Milagros died on July 18, 2017. She was substituted by her heirs, John, Julito, and Marcelino, Jr., as represented by John A. Viray.²²

Thereafter, petitioner filed a Manifestation with Motion to Dismiss Appeal²³ praying that the ejectment case be dismissed. Petitioner claimed that since the property is now under co-ownership and one of its co-owners is Julito, her husband, a situation arises where a co-owner becomes a party against his wife which is a strange case. Petitioner claimed that a co-owner cannot be ejected from a portion of an undivided property.²⁴

Respondents filed a comment objecting to dismiss the case and that the case be resolved by the CA on the merits “to educate the parties” on the issues raised in the petition.²⁵

Ruling of the Court of Appeals

In the Resolution²⁶ dated September 10, 2018, the CA granted petitioner’s Manifestation with Motion to Dismiss Appeal and considered the case closed and terminated. It directed the Division Clerk of Court to issue an Entry of Judgment. Citing Section 3, Rule 50 of the Revised Rules of Court, the CA stated that the filing of the manifestation with motion to dismiss appeal has the effect of withdrawal of petitioner’s petition for review. Records show that petitioner aims to put an end to the subject ejectment case in order to avoid conflict between her and Julito, her husband.²⁷

Petitioner moved for reconsideration asserting that she never intended to have her petition dismissed, but the original ejectment case. While she erroneously titled it as Manifestation with Motion to Dismiss Appeal, it should have been manifestation with motion to dismiss case, referring to the ejectment case, which is the subject of her pending petition.²⁸

In the Resolution²⁹ dated March 3, 2020, the CA denied the motion. It ruled that the Decision dated September 10, 2018 has attained finality; thus, immutable and unalterable.

Hence, this petition for review on certiorari under Rule 45 filed by petitioner.³⁰

²¹ Id. at 153-165.
²² Id. at 170-172.
²³ Id. at 175-176.
²⁴ Id.
²⁵ Id. at 177-179.
²⁶ Supra note 1.
²⁷ *Rollo*, p. 21.
²⁸ Id. at 197-198.
²⁹ Supra note 4.
³⁰ *Rollo*, p. 316.



During the pendency of the case before the Court, respondent filed a Motion for Issuance of Writ of Execution,³¹ which was granted by the METC in its Order³² dated February 7, 2020. A writ of execution³³ and notice to vacate³⁴ was issued.

Petitioner moved to recall/quash the writ of execution and notice to vacate before the METC; however, it was not acted upon. Hence, petitioner filed a petition for mandamus under Rule 65 with preliminary injunction³⁵ before the RTC of Mandaluyong City, Branch 208. She sought to enjoin the implementation of the writ of execution and notice to vacate because of a change of the situation of the parties, claiming that petitioner is now a part owner of the property upon the death of her husband.³⁶

On September 22, 2020, the RTC, Branch 208 issued temporary restraining order (TRO) enjoining the Judge and Sheriff of the METC, Branch 60, from implementing the writ of execution and notice to pay and vacate within 72-hours.³⁷ Petitioner asked for an extension of the TRO for 17 days, which was denied by the RTC in its Order dated September 24, 2020.³⁸

Issue

The issue in this case is whether the CA correctly resolved that petitioner's Manifestation with Motion to Dismiss Appeal has the effect of withdrawal of petitioner's petition for review.

Petitioner's Arguments

Petitioner argues that while she mistakenly filed a Manifestation with Motion to Dismiss Appeal, she was asking for the dismissal of the ejectment complaint, and not her petition for review. In every pleading or motion, the allegations therein control and should prevail over the caption or title.³⁹ Petitioner claims that the CA erred in declaring the dismissal order as final and executory and beyond recall. Petitioner timely filed a motion for reconsideration to assail the Resolution dated September 10, 2018. With the death of Milagros, Julito became the owner of 1/3 of the subject property. It is a portion of this property where she earns by selling meat products which she uses to defray the monthly expenses of around ₱80,000.00 for the subsistence of her husband. To eject petitioner is in effect to deprive her husband of his right to continue utilizing the place for business, whose income assures him of daily survival and violates his right as an owner.⁴⁰

³¹ Id. at 204-206.

³² Id. at 210-211.

³³ Id. at 220-221.

³⁴ Id. at 219.

³⁵ Id. at 461-467.

³⁶ Id. at 165.

³⁷ Id. at 458-460.

³⁸ Id. at 468-472.

³⁹ Id. at 11-12.

⁴⁰ Id. at 13-15.



Respondents' Comment

Respondents aver that the CA did not err when it dismissed the appeal. Petitioner is the party being ejected and not her husband. Petitioner is allowed to engage in business and can enter into contract independent of her husband. According to respondents, petitioner's contention that she cannot be ejected since her husband is a co-owner of the property and the absurdity that a husband will eject his wife from the premises should not be considered. Respondents' cause of action to file the ejectment case already existed at the time when the demand to pay and vacate the premises was made on May 20, 2014.⁴¹

Further, respondents contend that petitioner's Manifestation with Motion to Dismiss Appeal is a clear abandonment and waiver of her right to appeal to the CA the decision of the RTC.⁴² Contrary to petitioner's assertion, respondents argue that there is no co-ownership between respondents and petitioner's husband since Milagros had already sold the property to her son, respondent John A. Viray, as evidenced by a Deed of Absolute Sale⁴³ dated November 16, 2015. Said sale is a supervening event that erased her husband's claim of co-ownership. Finally, when petitioner agreed to leased the property in January 1993, she recognized the rights of Milagros as lessor and owner thereof.⁴⁴

Ruling of the Court

The petition is meritorious.

After a judicious review of the records of the case, the Court finds that the CA erred in ruling that the filing of the Manifestation with Motion to Dismiss Appeal has the effect of withdrawal of petitioner's petition for review under Rule 42. When the CA considered the case closed and terminated and directed the Division Clerk of Court to issue an Entry of Judgment, the CA in effect affirmed the ruling of the METC and the RTC ordering petitioner and all persons claiming rights under her to vacate the stall and restore its possession to Milagros. This is the basis of the final and executory judgment against petitioner, which is clearly erroneous.

The CA misunderstood the import of the Manifestation with Motion to Dismiss Appeal filed by petitioner. A simple reading thereof simply means that petitioner seeks to dismiss the ejectment case, and not her petition for review with the CA. What matters is not the caption of the pleading but the allegations contained therein. It is clear that in view of the death of Milagros,

⁴¹ Id. at 239-240.

⁴² Id. at 241.

⁴³ Id. at 254-256. TCT No 008-2016000213 has been issued in the name of John A. Viray married to Rosie Galaura Viray entered at Mandaluyong on January 26, 2016.

⁴⁴ *Rollo*, p. 242.

her husband as son of the registered owner Milagros, becomes a co-owner of the property, and cannot be ejected from a portion of the undivided property.

For an unlawful detainer action to prosper, the plaintiff must allege and establish the following key jurisdictional facts: (1) initially, possession of property by the defendant was by contract with, or by tolerance of, the plaintiff; (2) eventually, such possession became illegal upon notice by the plaintiff to the defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on the defendant to vacate the property, the plaintiff instituted the complaint for ejectment.⁴⁵

Under the circumstances of this case, it is reasonable for the Court to consider that there was neither an oral lease between Milagros and petitioner, nor was there tolerance from the beginning of petitioner's possession of the property in 1993. The court is more inclined to believe that the amount given by petitioner to Milagros was in the form of a financial assistance given to Milagros, and not payment of rentals.

The TCT No. 25216 was registered in the name of Milagros on December 10, 2009. The complaint for unlawful detainer was filed in July 2014. Milagros alleged in the complaint that the tolerance started in 1993 when she verbally leased the stall to petitioner.

In 1993, the subject property was still part of the conjugal properties of spouses Chan Lee a.k.a. Jose Viray and Milagros.⁴⁶ Even assuming that petitioner's possession of the property in 1993 was by tolerance of Milagros, Julito became a co-owner of the property upon the death of her father, Chan Lee, on January 22, 1995.⁴⁷ From 1995 to 2009, before the title was registered in the name of Milagros, petitioner's possession of the subject property was by virtue of co-ownership. In an unlawful detainer case, the key jurisdictional fact that should be proved is that the acts of tolerance should have been present right from the very start of possession, and We may hasten to add, that such nature of possession by tolerance shall continue up to the filing of the ejectment complaint. When Milagros filed a complaint for unlawful detainer in 2014, she failed to establish that petitioner's possession of the subject property was tolerated all the way from the very beginning. In the absence of proof of tolerated possession up to the filing of the complaint for unlawful detainer, the jurisdictional element of an illegal detainer case is not satisfied.

Assuming that tolerance was given to the couple by Milagros when she became the registered owner of the property in 2009. This is not the basis of the cause of action because the complaint alleges that she tolerated petitioner's occupation of the premises since 1993.

⁴⁵ *Dela Cruz v. Court of Appeals*, 539 Phil. 158 (2006).

⁴⁶ *Rollo*, p. 89. Chan Lee and Milagros Curato were married on June 20, 1954.

⁴⁷ *Id.* at 91.


There is no need to discuss the legal consequences of the Deed of Sale executed by Milagros to John Viray in November 16, 2015, since it is not a material issue litigated in this ejectment case.

WHEREFORE, premises considered, the instant petition is **GRANTED**. The Resolutions dated September 10, 2018 and March 3, 2020 of the Court of Appeals in CA-G.R. SP No. 148926 are **SET ASIDE**. The complaint for unlawful detainer in Civil Case No. 23256 is hereby **DISMISSED** for lack of cause of action.

SO ORDERED.


ROMARI D. CARANDANG
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Chief Justice

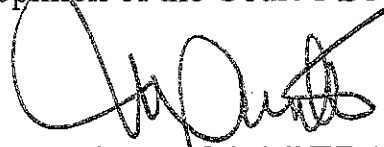

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RODIL N. ZALAMEDA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



DIOSDADO M. PERALTA
Chief Justice