



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 27 January 2021 which reads as follows:

“G.R. No. 221919 (*Primitivo Cordero, Jr. v. Sps. Walter Duque and Perlamar U. Duque*). – This is an appeal by *certiorari* seeking to reverse and set aside the June 17, 2015 Decision¹ and December 18, 2015 Resolution² of the Court of Appeals (*CA*) in CA-G.R. SP No. 127668. The *CA* affirmed the Decision³ rendered by the Regional Trial Court, Aparri, Cagayan, Branch 10 (*RTC*) on September 10, 2012, which reversed the December 2, 2011 Decision⁴ of the Municipal Trial Court of Gattaran, Cagayan (*MTC*). The *RTC* granted the complaint for forcible entry instituted by Spouses Walter and Perlamar Duque (*respondents*) against Primitivo Cordero, Jr. (*petitioner*).

Antecedents

Subject of the controversy is Lot 1-F of the subdivision plan, Psd-(af)-02-035938, being a portion of Lot No. 1 (LRC) Psd-216914 in Dummun, now Nagatutuan, Gattaran, Cagayan with an area of more or less 18,085 square meters.⁵

¹ *Rollo*, pp. 18-30; penned by Associate Justice Pedro B. Corales with Associate Justices Sesinando E. Villon and Rodil V. Zalameda (now a member of this Court), concurring.

² *Id.* at 31-32.

³ *CA rollo*, pp. 35-39; penned by Judge Pablo M. Agustin.

⁴ *Id.* at 24-34; penned by Presiding Judge Marcelo C. Cabalbag.

⁵ *Rollo*, p. 19; *CA rollo*, p. 35.

On July 29, 2001, Patricia, Feliciano, Elma, Renato, Belly, Rogelio, Maria, Nieves, and Edilberto, all surnamed Ursua, executed a Deed of Waiver of Rights⁶ covering said property in favor of respondent Perlamar.⁷

It appears, however, that Patricia, Elma, Renato, Belly, Daniel, Federico, Vicente, Feliciano, Nieves, all surnamed Ursua, and Ana Dela Cruz (*Ana*) registered the same realty under their names on May 12, 2008 as evidenced by Transfer Certificate of Title No. T-166045.⁸

On July 4, 2008, Elma, Renato, Belly, Maria, Edilberto, Federico, Daniel, Ana, and Eufemia Ursua sold the lot to petitioner through a Deed of Absolute Sale.⁹ Immediately thereafter, petitioner occupied and possessed the subject property. In the same month, respondents lodged a complaint before the *barangay* captain of Cullit, Gattaran alleging that petitioner forcibly took possession of the property. Efforts to reconcile proved futile, prompting the *barangay* captain to issue a certificate to file action on July 20, 2008.¹⁰

After respondents' demand letter dated September 2, 2008 went unheeded, they instituted a complaint for forcible entry before the MTC. In his answer with counterclaim, petitioner asserted his ownership based on the deed of absolute sale. He also claimed that the deed of waiver of rights executed in favor of respondents is fictitious or simulated, and that the registered owners had executed a Joint Affidavit¹¹ stating that respondents obtained said deed of waiver of rights through deceit.¹²

MTC Ruling

The MTC rendered a Decision on December 2, 2011 dismissing the complaint for forcible entry.¹³ The MTC held that respondents failed to prove their prior possession of the subject property as to warrant the grant of their complaint for forcible entry. The trial court noted that respondents' right of possession hinged on the deed of waiver of rights, which a majority of the registered owners repudiated. Due to the repudiation, respondents had

⁶ CA rollo, pp. 41-42.

⁷ Rollo, p. 19.

⁸ Id.; CA rollo, p. 66.

⁹ CA rollo, p. 43.

¹⁰ Rollo, p. 19.

¹¹ CA rollo, p. 44.

¹² Rollo, pp. 19-21.

¹³ CA rollo, pp. 24-34.

nothing to support their claim of ownership and their right to physical and *de jure* possession of the subject property.¹⁴

RTC Ruling

In its September 10, 2012 Decision,¹⁵ the RTC reversed and set aside the December 2, 2011 Decision of the MTC, and disposed in the following manner:

WHEREFORE, based on foregoing factual antecedents, there is cogent basis for this court to render judgment in favor of the plaintiffs-appellants, to wit:

1. The assailed decision of the Municipal Trial Court of Gattaran, Cagayan dated December 2, 2011 is hereby **REVERSED and SET ASIDE**;
2. The defendant-appellee and all persons claiming authority under them are ordered to vacate the land in suit and surrender possession thereof to the plaintiffs-appellants.

SO DECIDED.¹⁶

Resolving the issue on who between respondents and petitioner had prior possession of the contested land, the RTC held that the former were able to support their claim of prior possession by preponderance of evidence. The RTC found that respondents naturally took possession of the subject property by virtue of the deed of waiver of rights which stated that respondent Perlamar cultivated and possessed the same. Since the Deed of Absolute Sale was only executed in July 4, 2008, it would appear that respondents were in prior possession.¹⁷

The RTC did not accord weight to the joint affidavit repudiating the deed of waiver of rights as it was executed more than a month after the execution of the deed of absolute sale. The trial court also held that being a notarized document, the deed of waiver of rights may only be attacked by clear, convincing, and not merely preponderant, evidence. Unfortunately, the

¹⁴ Id. at 29-33.

¹⁵ Id. at 35-39.

¹⁶ Id. at 38-39.

¹⁷ Id. at 36-37.

evidence presented by herein petitioner failed to meet the required clear and convincing evidence to impugn the deed of waiver of rights.¹⁸

Petitioner moved for reconsideration which the RTC denied in its November 6, 2012 Order.¹⁹

CA Ruling

The CA affirmed the RTC in the now assailed decision. It found respondents to have established their prior possession since the deed of waiver of rights showed that as early as 2001, respondents were already cultivating the land. This was corroborated by the Affidavit²⁰ of a disinterested person, Simeon Rodrigo, Jr. (*Simeon*), who attested that as owner of the adjoining lot, he had always seen respondents and their agricultural worker tilling and cultivating the subject property. The appellate court also noted petitioner's admission that respondents were able to mortgage the subject property which indicated respondents' prior possession.

The appellate court also rejected petitioner's claim that upon the demise of the alleged mortgagee Eduardo²¹ Alawig (*Eduardo*), his wife returned the possession of the property to the Ursuas. The CA noted that there was no evidence to support this bare assertion. Thus, when petitioner cultivated the subject property without respondents' consent, he exerted force as contemplated by law.²²

Petitioner filed a motion for reconsideration but the CA denied the same in its December 18, 2015 Resolution.²³

Issue

In the instant petition for review, the lone issue submitted by petitioner is:

¹⁸ Id. at 37.

¹⁹ Id. at 40.

²⁰ Id. at 58.

²¹ The CA refers to him as "Edwin" (*rollo*, p. 27). However, review of petitioner's pleadings (*rollo*, p. 13) and evidence (*CA rollo*, p. 46) reveal that the actual first name of Alawig is Eduardo, not Edwin.

²² *Rollo*, pp. 25-29.

²³ Id. at 31-32.

WHETHER OR NOT RESPONDENTS WERE IN ACTUAL [PHYSICAL POSSESSION] AND CULTIVATION OF THE LAND IN SUIT AT THE TIME IT WAS DELIVERED TO THE PETITIONER BY THE URSUAS.²⁴

Petitioner assails the CA decision and resolution on the following grounds: (1) the reliance made by the CA on the deed of waiver of rights was misplaced because the document was fictitious and suffered from infirmities;²⁵ (2) Simeon's affidavit should not be given any weight because it was contradicted by the Affidavit²⁶ of Jerry C. Galiza (*Jerry*) who attested that respondents have not been in actual and continuous possession of the realty as it was the late Eduardo, with a certain helper named Bobby, who used to actually and physically work on the contested lot; and (3) after Eduardo's death, his wife and Bobby took over in cultivating the land.²⁷

In their August 10, 2016 Comment,²⁸ respondents insist on their actual cultivation and possession of the subject property even prior to the execution of the deed of waiver of rights. They claim that the deed expressly stated the fact of their possession, and the original owners of the property, Edilberto and Rodrigo, had affirmed the same; that Joel Pableo, the husband of the late Patricia, executed an affidavit stating that the deed of waiver of rights was signed by his wife and that she refused to sign the deed of absolute sale; and that their prior possession was also confirmed in the affidavit of Simeon. As to the force employed, respondents argue that when petitioner wrested possession of the subject property in July 2008, the deed of waiver of rights had yet to be repudiated because the Joint Affidavit was executed only on August 4, 2008. Thus, petitioner had no right to possess the subject property at the time he took possession thereof.²⁹

In his Reply,³⁰ petitioner insists that the provision in the deed of waiver of rights concerning respondents' alleged prior possession was not proof of such fact but was stated only to show the inapplicability of the Land Reform Code.³¹

²⁴ Id. at 9.

²⁵ Id. at 11-12.

²⁶ CA rollo, p. 46.

²⁷ Rollo, pp. 12-13.

²⁸ Id. at 39-47. Note that page 5 of the Comment is missing from the rollo.

²⁹ Id. at 41-46.

³⁰ Id. at 51-53.

³¹ Id. at 52-53.

Our Ruling

The appeal by *certiorari* is denied for lack of merit. Respondents were in prior physical possession of the subject property.

The matter of determining who between the parties had prior physical possession of the subject property is a question of fact. It will require the Court to examine the evidence on record.

Considering that this Court is not a trier of facts, the issue raised by petitioner is beyond the province of an appeal by *certiorari* under Rule 45 of the Rules of Court. It is settled that issues of facts may not be raised in a petition filed under Rule 45 because the Court is not a trier of facts. It is not to re-examine and assess the evidence on record, whether testimonial and documentary.³² While there are exceptions to this general rule,³³ none obtain in the instant case.

At any rate, We find that the CA did not err in finding that respondents had prior physical possession of the subject property. In *Mangaser v. Ugay*,³⁴ the Court held that possession over a property may be acquired by juridical act, thus:

There is only one issue in ejectment proceedings: who is entitled to physical or material possession of the premises, that is, to possession *de facto*, not possession *de jure*? Issues as to the right of possession or ownership are not involved in the action; evidence thereon is not admissible, except only for the purpose of determining the issue of possession.

As a rule, the word “possession” in forcible entry suits indeed refers to nothing more than prior physical possession or possession *de facto*, not possession *de jure* or legal possession in the sense contemplated

³² *Loadstar International Shipping, Inc. v. Erispe, Jr.*, G.R. No. 221227, February 19, 2020; *Litonjua Jr. v. Eternit Corp.*, 523 Phil. 588, 605 (2006).

³³ The following are the recognized instances where factual findings may be reviewed by this Court: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner’s main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. (*Pascual v. Burgos*, 776 Phil. 167, 182-183 [2016]).

³⁴ 749 Phil. 372 (2014).

in civil law. Title is not the issue, and the absence of it “is not a ground for the courts to withhold relief from the parties in an ejectment case.”

The Court, however, has consistently ruled in a number of cases that **while prior physical possession is an indispensable requirement in forcible entry cases, the dearth of merit in respondent’s position is evident from the principle that possession can be acquired not only by material occupation, but also by the fact that a thing is subject to the action of one’s will or by the proper acts and legal formalities established for acquiring such right.** The case of *Quizon v. Juan*, which surprisingly was relied on by the CA, also stressed this doctrine.

Possession can be acquired by juridical acts. These are acts to which the law gives the force of acts of possession. Examples of these are donations, succession, execution and registration of public instruments, inscription of possessory information titles and the like. **The reason for this exceptional rule is that possession in the eyes of the law does not mean that a man has to have his feet on every square meter of ground before it can be said that he is in possession. It is sufficient that petitioner was able to subject the property to the action of his will.**³⁵ (emphases supplied; citations omitted)

In the instant case, respondents established their prior possession by the juridical act of mortgaging the property to Eduardo.

Petitioner admitted in his pleadings that Eduardo had possession of the subject property.³⁶ He also quoted with approval Jerry’s affidavit, which stated that “the person who use[d] to actually and physically work on [the subject property] was the late Eduardo Alawig and a certain helper from Dummun, Gattaran, Cagayan named Bobby; and that after the death of Eduardo Alawig, his wife took over with the same helper.”³⁷ However, Eduardo was able to cultivate the land because respondent Perlamar mortgaged it to him. This was an express finding of the MTC,³⁸ which remains uncontested by petitioner.

Evidently, respondents were able to subject the property to the action of their will by way of mortgage. The Court reiterates the rule that possession can be acquired not only by material occupation, but also by the

³⁵ Id. at 381-383.

³⁶ *Rollo*, p. 13.

³⁷ Id.

³⁸ CA *rollo*, pp. 33-34.

fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right.³⁹

On this note, the Court agrees with the CA in not according weight to the assertion that Eduardo's wife turned over the property to the Ursuas. Aside from petitioner's bare allegation, there was nothing to support his claim. He even failed to present any statement from Eduardo's wife to confirm the said turn over. Hence, there can be no other conclusion except that respondents had prior possession of the subject property before petitioner wrested the same from them. This conclusion also conforms with the attestation made by Simeon that he always saw respondents and their agricultural worker tilling and cultivating the subject property.⁴⁰

Ineluctably, when petitioner entered and cultivated the contested lot without respondents' consent, he did so with force. *Spouses Bañes v. Lutheran Church in the Philippines*⁴¹ explained that "to constitute force that would justify a forcible entry case, the trespasser does not have to institute a state of war. **The act of going to the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property which is all that is necessary and sufficient** to show that the action is based on the provisions of Section 1, Rule 70 of the Rules of Court."⁴²

At this juncture, the Court reiterates that in an action for forcible entry, issues as to the right of possession or ownership are not involved in the action; evidence thereon is not admissible, except only for the purpose of determining the issue of possession.⁴³ For this reason, the Court refrains from discussing the issues concerning the validity and effect of the deed of waiver of rights, the deed of absolute sale, and the joint affidavit allegedly repudiating the deed of waiver of rights. The resolution of these issues is better left to an action instituted for such purpose and not in the present summary proceeding for forcible entry. The instant action only determines who had prior physical possession of the subject property. It does not bar or prejudice any action involving title to the subject property.

³⁹ *Municipal Rural Bank of Libmanan, Camarines Sur v. Ordoñez*, 818 Phil. 923, 931 (2017); *Mangaser v. Ugay*, supra note 34, at 382.

⁴⁰ CA rollo, p. 58.

⁴¹ 511 Phil. 458 (2005).

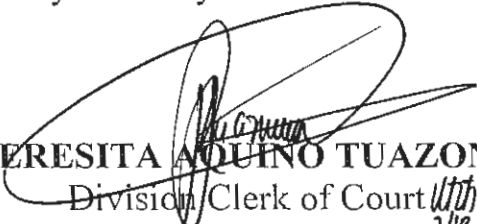
⁴² Id. at 480; emphasis supplied.

⁴³ *Mangaser v. Ugay*, supra note 34, at 381-382, citation omitted; *Lagazo v. Soriano*, 626 Phil. 518, 523 (2010), citing *De Grano v. Lacaba*, 607 Phil. 122, 132 (2009).

WHEREFORE, the petition is **DENIED**. The June 17, 2015 Decision and December 18, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 127668 are **AFFIRMED**.

SO ORDERED. (Lopez, J., *J.*, designated additional member per Special Order No. 2813 dated January 26, 2021)”

By authority of the Court:


TERESITA AQUINO TUAZON
 Division Clerk of Court *Utth*
2/18

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