



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NEMESIO V. SAYCON (deceased),
substituted by his heirs, JOVEN V.
SAYCON and SPOUSE EILLEN G.
SAYCON; REY V. SAYCON and
SPOUSE PACITA S. SAYCON;
ARNOLD V. SAYCON and SPOUSE
EVANGELINE D. SAYCON;
JEOFFREY V. SAYCON and
SPOUSE ROCHEL M. SAYCON;
and CHARLIE V. SAYCON,
Petitioners,

G.R. No. 172418

Present:

VELASCO, JR., J., Chairperson,
PERALTA,
MENDOZA,
REYES,* and
PERLAS-BERNABE, JJ.

- versus -

ANACLETA BAROT VDA. DE
TULABING, DIONISIO B.
TULABING, ARCADIA B.
TULABING, BALDOMERO B.
TULABING, CARMEN TULABING,
JULIA B. TULABING, HILARION
BELIDA, JOEL B. TULABING,
PACITA TULABING, NICOLAS B.
TULABING, HENIA TULABING,
VICTORIA B. TULABING,
ARMANDO DEVIRA and BENITA
B. TULABING,

Promulgated:

09 July 2012

Alcopiani

Respondents.

X-----X

* Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1244 dated June 26, 2012.

DECISION

PERALTA, J.:

This is a petition for review on *certiorari*¹ of the Court of Appeals' Resolutions dated August 11, 2005 and March 23, 2006 in CA-G.R. CV No. 23221, which denied petitioners' Omnibus Motion dated September 15, 2004.

The facts, as stated by the Court of Appeals and the trial court, are as follows:

Respondents, the heirs of the late Alejandro Tulabing, alleged that since 1950, Alejandro Tulabing had been in peaceful, open, actual and continuous possession of a fishpond situated at Dunguan, Sta. Cruz, Tanjay, Negros Oriental, containing an area of 12 hectares, declared and described under Tax Declaration No. 14663² as well as described under Fishpond Application No. 10852,³ and Tulabing had been continuously paying taxes thereon.⁴

On February 9, 1970, Alejandro Tulabing leased to petitioner Nemesio Saycon a portion of the fishpond measuring four (4) hectares for a period of eight years, or from March 1, 1970 to March 31, 1978, at a yearly rental of ₱400.00.⁵ On March 8, 1977, before the term of the first contract of lease expired, the same was renewed for another four years to commence on March 1, 1979 up to March 31, 1982, this time, at a yearly rental of ₱1,000.00.⁶

¹ Under Rule 45 of the Rules of Court.

² Exhibit "A," records, vol. I, p. 134.

³ Exhibit "G," *id.* at 148.

⁴ Exhibits "K" to "K-14," *id.* at 175-190.

⁵ Contract of Lease, Exhibit "D," *id.* at 45.

⁶ Contract of Lease, Exhibit "E," *id.* at 47.

On March 17, 1980, Alejandro Tulabing sold to Lawrence Teves seven (7) hectares of his fishpond.⁷

On November 18, 1980, Alejandro Tulabing died in Ipil, Zamboanga del Sur.

Upon termination of the second contract of lease, respondents heirs of Alejandro Tulabing approached the Barangay Captain of Canlargo, Bais City for the purpose of having a dialogue with petitioner Nemesio Saycon who failed to pay rentals during the term of the second lease. The barangay captain later issued a certification attesting to the failure of Nemesio Saycon to appear before him.

Due to the continued failure of petitioners to deliver the possession of the four-hectare portion of the fishpond that they leased from Alejandro Tulabing, respondents filed a Complaint dated August 26, 1983 for ejectment and recovery of possession of fishpond area and damages with the Regional Trial Court (RTC) of Dumaguete City, Branch 42 (trial court).

On the other hand, petitioner Nemesio Saycon claimed that he had been in possession of the fishpond they were occupying since 1969, and he had applied with the Bureau of Fisheries and Aquatic Resources (BFAR) for a Fishpond Lease Agreement⁸ in 1982. Although Nemesio Saycon admitted having leased from 1980 to 1986 a portion of Alejandro Tulabing's fishpond consisting of four hectares, he claimed that this portion was included in the property sold by Alejandro Tulabing to Lawrence Teves in 1981. Petitioners alleged that Alejandro Tulabing's fishpond was only seven hectares and was adjacent to their fishpond on the north.

⁷ Deed of Absolute Sale, Exhibit "L," *id.* at 59.

⁸ Exhibit "1," *id.* at 288.

The issue that was resolved before the trial court was whether or not the fishpond in question was the very same fishpond subject of the lease contract executed between Alejandro Tulabing as lessor and Nemesio Saycon as lessee.⁹

On August 3, 1989, the trial court rendered a Decision¹⁰ in favor of plaintiffs, respondents herein, the dispositive portion of which reads:

In the light of the foregoing, plaintiffs have established, by preponderance of evidence their case, judgment is hereby rendered in favor of plaintiffs and against defendants, as follows:

1. Defendants, their heirs, assigns, agents and representatives are ordered to vacate from the premises of the fishpond in question and deliver possession thereof to plaintiffs;
2. To pay rentals of the fishpond in question from 1979 up to the time possession thereof is delivered to plaintiffs the sum of ₱1,000.00 a year; [and]
3. To pay reasonable attorney's fees in the sum of ₱3,000.00 and cost.¹¹

The trial court ruled in favor of respondents based on respondents' documentary evidence,¹² which showed that the boundary of Alejandro Tulabing's fishpond on the south is a fishpond claimed by Hipolito Tobias and Juanito Violeta, and these boundaries are the same boundaries since 1960, long before Nemesio Saycon allegedly started to take possession of his fishpond in 1969. According to the trial court, respondents' evidence, taken in context, clearly showed that the fishpond subject matter of the case is the very same fishpond leased to Nemesio Saycon by the late Alejandro Tulabing. Moreover, in Civil Case No. 6859,¹³ Nemesio Saycon sought to enjoin Alejandro Tulabing from taking possession of the fishpond he was

⁹ Exhibits "D" and "E," *id.* at 45, 47.

¹⁰ *Rollo*, pp. 42-49.

¹¹ *Id.* at 48-49.

¹² Exhibits "A" & "B," Tax Declaration No. 14663 for the year 1974 and Tax Declaration No. 22-349 for the year 1980, records, vol. I, pp. 134, 139.

¹³ Complaint for Injunction and Damages with Preliminary Injunction dated April 3, 1978, Exhibit "O," *id.* at 62.

occupying on the ground that his lease contract with Tulabing had not yet expired. Further, Nemesio Saycon filed his fishpond application with the BFAR only on January 25, 1982,¹⁴ just immediately before the expiration of the lease, which showed his intention to retain possession of the fishpond in question in spite of the expiration of the lease contract.

Petitioners appealed the trial court's decision to the Court of Appeals.

On September 26, 1995, the Court of Appeals rendered a Decision,¹⁵ the dispositive portion of which reads:

WHEREFORE, the case is hereby ordered remanded to the court of origin for further trial and for whatever proceedings which may be necessary and appropriate for the sole and exclusive purpose of determining with definiteness the identity of the property claimed by appellees *vis-à-vis* the property claimed by the appellants so that the proper amendment or supplement to the decision may be arrived at, identifying therein the property which should be vacated by defendants-appellants and delivered to plaintiffs-appellees.¹⁶

The Court of Appeals stated that respondents failed to prove the identity of the property they seek to recover, as their Complaint and other documents submitted in evidence did not contain a definitive description of the property. The Court of Appeals cited *Laluan v. Malpaya*,¹⁷ which held that the prudent course was for the trial court to conduct an investigation to enable it to identify positively the land in litigation.¹⁸ Hence, the Court of Appeals remanded the case to the trial court for further proceedings for the sole and exclusive purpose of determining the identity of the property claimed by respondents in relation to the property claimed by petitioners, so that the proper supplement to the decision would be arrived at, identifying therein the property which should be vacated by petitioners and delivered to respondents.

¹⁴ Exhibit "1," *id.* at 288.

¹⁵ *Rollo*, pp. 51-56.

¹⁶ *Id.* at 56.

¹⁷ No. L-21231, July 30, 1975, 65 SCRA 494.

¹⁸ *Laluan v. Malpaya*, *supra*, at 503.

On July 15, 1996, the trial court issued an Order¹⁹ for the ocular and relocation survey of the subject properties, and subpoenas were issued to Engineer Constancio Silva of CENRO II of Dumaguete City and others, directing them to appear and go with the trial court Judge and his staff for the ocular and relocation survey in the morning and afternoon of September 18, 1996. All parties were duly served with copies of the said order, especially the counsel for herein petitioners, Atty. Filemon M. Repollo, who received the notice on July 29, 1996.²⁰ However, petitioners and their counsel did not appear despite notices to them, but the ocular inspection proceeded.

On May 4, 2004, the trial court rendered a Supplemental Decision,²¹ the dispositive portion of which reads:

WHEREFORE, supplemental judgment is hereby rendered ordering the Defendants in this case to deliver and vacate the premises of the Fishpond described in Exhibit “C-4” of plaintiffs (p. 399 of Expediente), specifically with a perimeter from points 1, 2, 3, 4, 5, 6, 13, 14, 15 and 16 in a red line thereof.²²

The trial court stated that the fishpond application of Nemesio Saycon had an area of 57,878 square meters. However, the trial court found that 43,465 square meters of the said area is part of the fishpond application of Alejandro Tulabing.²³ Hence, segregating and deducting the area of 43,465 square meters from the fishpond application of Nemesio Saycon with an area of 57,878 square meters, the balance is 14,413 square meters, which is not a contested area and belongs to Nemesio Saycon.²⁴ The trial court held:

Defendant Nemesio Saycon asserted that his fishpond is his own application (Exhs. “3” and “3-a”) and ADJACENT to the fishpond applied by Alejandro Tulabing. But his assertion is not the whole truth because actual relocation survey of the fishponds reveals that only the aforesaid

¹⁹ Records, Vol. II, p. 375.

²⁰ Supplemental Decision (RTC), *rollo*, pp. 70-71.

²¹ *Rollo*, pp. 70-78.

²² *Id.* at 78.

²³ *Id.* at 77.

²⁴ *Id.*

14,413 square meters is adjacent and outside the fishpond application of Alejandro Tulabing. Obviously, the 43,465 square meters (Exh. "C-4"), which is part of the application of Alejandro Tulabing, has been included in the application of Nemesio Saycon which has a total area of 57,878 square meters. The application of Nemesio Saycon has been substantially overlapping the area which has long been already applied by Alejandro Tulabing as per communications in the BFAR or exhibits of plaintiffs.

Nemesio Saycon admitted to have leased about four (4) hectares from Alejandro Tulabing, to which leased area he allegedly returned already to Alejandro Tulabing or to the herein plaintiffs. The aforesaid earlier Decision which is already final and executory, mandated that Nemesio Saycon has to return the leased premises and the only issue now is to identify or determine which area is to be returned and vacated.

From the foregoing illucidation and findings of facts, it clearly appears that defendant Nemesio Saycon has to vacate and be ejected from a portion of his fishpond application and present occupation as described in Exhibit "C-4" of plaintiffs and as per Sketch Plan (Exhibit "C-2", p. 399 of Expediente), specifically from points 1, 2, 3, 4, 5, 6, 13, 14, 15 and 16 with a red connecting line in said sketch plan. The "dotted" or broken blue line in the said sketch Plan (Exhibit "C-2"), which is outside Exhibit "C-4," is the remaining fishpond of Nemesio Saycon.²⁵

On May 18, 2004, petitioners filed a Notice of Appeal²⁶ from the Supplemental Decision dated May 4, 2004, which was granted on May 28, 2004.²⁷

On May 26, 2004, respondents filed a *Motion for Execution Pending Appeal*²⁸ praying that a writ of execution pending appeal be issued pursuant to Section 2, Rule 39 and Section 9, Rule 41 of the 1997 Rules of Civil Procedure. As grounds for the motion, respondents stated that the appeal was dilatory because the earlier decision that mandated Nemesio Saycon to return the leased premises had become final and executory, and the only issue resolved in the Supplemental Decision was the identity of the area to be returned or vacated; that delaying the execution would prejudice them (respondents), as they have been deprived of possession for a long time, and the original parties were already dead; and they (respondents) were willing to

²⁵ *Id.*

²⁶ *Id.* at 79.

²⁷ *Id.* at 80.

²⁸ *Id.* at 81-82.

put up a bond to answer for damages in the remote possibility of reversal of judgment.

On June 2, 2004, petitioners filed an Opposition²⁹ to the motion for execution pending appeal and a Reply thereto was filed by respondents on June 7, 2004. The motion was submitted for resolution after its scheduled hearing.

In a Special Order³⁰ dated June 22, 2004, the trial court ordered the issuance of a writ of execution in favor of respondents, the dispositive portion of which reads:

WHEREFORE, premises considered, let a writ of execution be issued in favor of plaintiffs and against the defendants in accordance with the Decision of the Court of Appeals promulgated on September 26, 1995 and the Supplemental Decision dated May 4, 2004, pending appeal.³¹

The trial court opined that a writ of execution in this case could be issued principally per the Court of Appeals' Decision which already became final and executory as of October 19, 1995, and the Supplemental Decision already specifically determined the property to be vacated by petitioners and to be delivered to respondents.

On September 15, 2004, petitioners filed an Omnibus Motion³² before the Court of Appeals, contending that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Special Order dated June 22, 2004, considering that (1) Rule 70 of the Rules of Court governs forcible entry and unlawful detainer cases filed in the inferior courts, but not an ejectment case filed directly in the RTC like the instant case; (2) if the ejectment case is filed in the RTC as what happened here, the duty of the RTC is to dismiss the case due to lack of jurisdiction

²⁹ *Id.* at 83-84.

³⁰ *Id.* at 85-86.

³¹ *Id.* at 86.

³² *Id.* at 92-100.

because ejectment and forcible entry cases are within the exclusive jurisdiction of the Municipal Trial Court where the property is located (Section 33, Batas Pambansa [BP] No. 129); and (3) Section 21, Rule 70 of the Rules of Court applied by the trial court in its Special Order is wrong as the rule applies only in cases of ejectment originally filed in the inferior court (MTCC) and its decision is affirmed by the RTC.

Petitioners prayed that the Special Order dated June 22, 2004, granting respondents' motion for execution pending appeal, and the Order dated August 25, 2004, denying their (petitioners) motion for reconsideration, be reversed and set aside; that the trial court be ordered to forward the entire records of the case to the Court of Appeals; and that they (petitioners) be granted 30 days from receipt of resolution within which to file a Brief.

In a Resolution³³ dated August 11, 2005, the Court of Appeals denied the Omnibus Motion on the ground that it no longer had jurisdiction to rule on their motion as an incident of a supposed pending appeal. It stated that the proceedings in this case have long been terminated with the promulgation of its decision way back on September 26, 1995 and the consequent issuance of the Entry of Judgment on March 12, 1996. On April 17, 1996, the Court of Appeals ordered the records of the case remanded to the court of origin.

The Court of Appeals stated that herein petitioners should have questioned the Special Order through a special civil action for *certiorari* under Rule 65 of the Rules of Court, more so that they contended that grave abuse of discretion amounting to lack or excess of jurisdiction attended the issuance thereof by the lower court.

The Court of Appeals further stated that since the Notice of Appeal had been approved on May 28, 2004, petitioners could have filed in the same

³³ *Id.* at 102-107.

appeal a motion for the issuance of a temporary restraining order or a writ of preliminary injunction, which the Court could have acted upon as an incident of the appeal.

The dispositive portion of the Court of Appeals Resolution dated August 11, 2005 reads:

WHEREFORE, in view of the foregoing, the Omnibus Motion dated September 15, 2004 is hereby DENIED.³⁴

Petitioners' motion for reconsideration was denied for lack of merit by the Court of Appeals in a Resolution³⁵ dated March 23, 2006.

Petitioners filed this petition for review on *certiorari* of the Court of Appeals' Resolutions dated August 11, 2005 and March 23, 2006 on the ground that the RTC of Dumaguete City, Branch 42 had no jurisdiction over the causes of action of the case for ejectment and recovery of possession of property, as the first level courts had jurisdiction over the same. Petitioners contend that since the RTC had no jurisdiction over the case docketed as Civil Case No. 8251, its Decision dated August 3, 1989 and Supplemental Decision dated May 4, 2004 are null and void. Consequently, the Court of Appeals had no jurisdiction over the case on appeal, and its Decision dated September 26, 1995 and Resolutions dated August 11, 2005 and March 23, 2006 are also fatally infirm and must be set aside.

The main issue to be resolved is whether or not the Court of Appeals did not err in denying petitioners' Omnibus Motion, which sought the reversal of the trial court's Special Order dated June 22, 2004 ordering the issuance of a writ of execution in favor of respondents.

³⁴ *Id.* at 107.

³⁵ *Id.* at 114-115.

The Court upholds the Court of Appeals' Resolutions denying petitioners' Omnibus Motion.

As stated by the Court of Appeals, petitioners' Omnibus Motion dated September 15, 2004 was filed under the mistaken belief that the Court of Appeals still had jurisdiction on their motion as an incident of a supposed pending appeal. However, the Court of Appeals already resolved the case brought up on appeal by petitioners in its Decision promulgated on September 26, 1995, and entry of judgment was made on March 12, 1996,³⁶ while the records of the case was ordered remanded to the trial court on April 17, 1996.³⁷ Hence, the Court of Appeals correctly denied petitioners' Omnibus Motion dated September 15, 2004 on the ground that it no longer had jurisdiction over the same.

Consequently, this Court cannot review the same issues raised by petitioners in their Omnibus Motion as the same was not passed upon by the Court of Appeals, since it had no jurisdiction over the Omnibus Motion.

Moreover, this petition was filed out of time.

Petitioners received a copy of the Court of Appeals' Resolution dated August 11, 2005 on August 23, 2005. On September 7, 2005, petitioners filed a Motion for Reconsideration of the said Resolution, which motion was denied by the Court of Appeals in a Resolution dated March 23, 2006. The 15-day reglementary period within which to appeal the Resolution dated March 23, 2006 would end on April 14, 2006 (Good Friday). On April 17, 2006, the first working day from April 14, 2006, petitioners filed a Motion for Extension of 15 days within which to file a petition for review on *certiorari*. On May 15, 2006, they again filed a motion for extension of another 15 days within which to file their petition.

³⁶ CA *rollo*, p. 141.

³⁷ *Id.* at 140.

The Court granted petitioners' first and second motions for extension of time to file their petition, which extension of time totaled 45 days from the expiration of the reglementary period, and the extension was reckoned from April 14, 2006 (not April 17, 2006), with a warning that no further extension would be given.³⁸ Counting the given 45-day extension from April 14, 2006, the last day for filing this petition fell on May 29, 2006, a Monday. However, petitioners filed their petition one day late on May 30, 2006.

WHEREFORE, the petition is **DENIED**. The Resolutions of the Court of Appeals dated August 11, 2005 and March 23, 2006 in CA-G.R. CV No. 23221 are hereby **AFFIRMED**.


Costs against petitioners.

SO ORDERED.




DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.


Associate Justice
Chairperson



JOSE CATRAL MENDOZA
Associate Justice




BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
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.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

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.


ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)