Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PHILIPPINE TOURISM AUTHORITY (Now known as TOURISM INFRASTRUCTURE AND ENTERPRISE ZONE AUTHORITY), Petitioner,	**G.R. No. 196741** Present: CARPIO, *J.*, Chairperson, DEL CASTILLO, PEREZ, MENDOZA,* and PERLAS-BERNABE, *JJ.*
- versus -	
MARCOSA A. SABANDAL-HERZENSTIEL, PEDRO TAPALES, LUIS TAPALES, and ROMEO TAPALES, Respondents.	Promulgated: JUL 17 2013

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RESOLUTION

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the January 11, 2011 Decision[2] and April 14, 2011 Resolution[3] of the Court of Appeals, Cebu City (CA) in CA-G.R. SP No. 03888 which declared respondent Marcosa A. Sabandal-Herzenstiel (Sabandal-Herzenstiel) as the lawful possessor of Lot No. 2574, situated in Brgy. Basdiot, Moalboal, Cebu (subject property).

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* Designated Acting Member per Special Order No. 1484 dated July 9, 2013.

1 *Rollo*, pp. 11-30.

2 Id. at 35-46. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Ramon A. Cruz and Myra V. Garcia-Fernandez, concurring.

3 Id. at 68-69. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Myra V. Garcia-Fernandez and Ramon Paul L. Hernando, concurring.

The Facts

Petitioner Philippine Tourism Authority (now Tourism Infrastructure and Enterprise Zone Authority) (petitioner) is the owner of the subject property and other parcels of land located in Brgy. Basdiot, Moalboal, Cebu since February 12, 1981 when it bought the same from Tri-Island Corporate Holdings, Inc. (Tri-Island).[4] It had then been in actual, physical, continuous, and uninterrupted possession of the subject property and had declared the same for taxation purposes. Sometime in 1997, however, respondents Pedro Tapales, Luis Tapales, Romeo Tapales (Tapaleses), and Sabandal-Herzenstiel (respondents) by force, strategy and stealth entered into the 2,940 square meter portion of the subject property, on which they proceeded to cut down some coconut trees, introduced improvements and fenced the area. Petitioner made demands to vacate, the last of which was through a letter[5] dated January 5, 1998, which respondents ignored, prompting the filing of a forcible entry complaint[6] against them before the 12th Municipal Circuit Trial Court of Moalboal-Alcantara-Badian-Alegria, Cebu (MCTC), docketed as Civil Case No. 118, on March 18, 1998.

In their Answer with Counterclaim, the Tapaleses acknowledged that the subject property had already been sold by its administrator, Josefina Abrenica, to Tri-Island.[7] They, however, claimed that the sale was tainted with force and intimidation and hence void, including the subsequent transactions covering the same property.[8] Notwithstanding the sale, they remained in actual and physical possession of the subject property and even introduced improvements thereon. Consequently, absent any proof of prior possession on the part of petitioner, they claimed that the forcible entry complaint must necessarily be dismissed.[9]

The MCTC Ruling

On April 13, 2007, the MCTC rendered a Decision[10] (MCTC Decision) ordering respondents to: (a) vacate the subject property and remove all the improvements introduced therein; (b) pay petitioner, jointly and severally, the amount of ₱2,000.00 as monthly rental from the date of judicial demand, *i.e.*, March 18, 1998, until they have effectively vacated the premises; and (c) pay the costs of suit.

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4 Id. at 71-72 and 118-120.
5 Id. at 96.
6 Id. at 87-91.
7 Id. at 114.
8 Id. at 98-99.
9 Id. at 99-100.
10 Id. at 168-173. Penned by Acting Judge Anacleto G. Debalucos.

The MCTC declared that petitioner is the lawful owner of the subject property and had been in prior possession thereof as shown by the following: (a) the deed of sale dated February 12, 1981; (b) the tax declarations issued in its name; and (c) its act of leasing portions of the subject property to others in the exercise of its right of ownership and possession.[11] In contrast, respondents failed to substantiate their claim of ownership and possession. Neither have they established any relationship with Abrenica, the previous owner of the subject property.[12] On the other hand, Sabandal-Herzenstiel never claimed to be the owner of the same and even acknowledged petitioner's ownership when she offered to buy back the land. [13]

The RTC Ruling

On January 30, 2008, respondents' appeal to the RTC was dismissed for their failure to file a memorandum on appeal as required under Section 7(b), Rule 40 of the Rules of Court (Rules). [14] Their motion for reconsideration was similarly denied in an Order dated April 23, 2008.[15]

Only Sabandal-Herzenstiel elevated the matter before the CA via a petition for review under Rule 42 of the Rules.

The CA Ruling

On January 11, 2011, the CA rendered the assailed Decision, [16] nullifying and setting aside the rulings of both the MCTC and RTC, and declaring Sabandal-Herzenstiel as the lawful possessor of the subject property.[17]

It held that while the RTC correctly dismissed respondents' appeal for failure to submit their memorandum on appeal within the prescribed period, it should have relaxed the rules on procedure in the interest of substantial justice and for a full determination of the rights of the parties taking into account the subsequent compliance of the respondents. [18]

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11 Id. at 170-171.
12 Id. at 171.
13 Id.
14 Id. at 174. Penned by Assisting Judge Geraldine Faith A. Econg.
15 Id. at 175-176.
16 Id. at 35-46.
17 Id. at 45.
18 Id. at 40-42.

On the merits, the CA found petitioner to have failed to establish prior possession of the subject property [19] and rebut respondents' claim of continued physical possession in spite of the sale of the subject property to Tri-Island during which, Sabandal-Herzenstiel leased and converted the property into a resort.[20]

Petitioner moved for reconsideration[21] which was, however, denied in a Resolution[22] dated April 14, 2011.

Hence, the instant petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the respondents may be lawfully ejected from the subject property.

The Court's Ruling

The petition is meritorious.

In an action for forcible entry, the plaintiff must prove that he was in prior possession of the disputed property and that the defendant deprived him of his possession by any of the means provided for in Section 1, Rule 70 of the Rules, namely: force, intimidation, threats, strategy, and stealth.[23]

In this case, respondents failed to establish their prior and continued possession of the subject property after its sale in favor of petitioner in 1981. On the contrary, they even admitted in their answer to the complaint that petitioner exercised dominion over the same by instituting caretakers and leasing portions thereof to third persons.[24] Suffice it to state that possession in the eyes of the law does not mean that a man has to have his feet on every square meter of the ground before he is deemed in possession.[25] Thus, finding petitioner's assertion to be well-founded, the MCTC properly adjudged petitioner to have prior possession over the subject property as

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19 Id. at 43-44.
20 Id. at 45.
21 Id. at 49-53.
22 Id. at 68-69.
23 *Estel v. Heirs of Recaredo P. Diego, Sr.*, G.R. No. 174082, January 16, 2012, 663 SCRA 17, 25.
24 *Rollo*, pp. 101, 162-163, and 201.
25 *Yu v. Pacleb*, G.R. No. 130316, January 24, 2007, 512 SCRA 402, 408.

against Sabandal-Herzenstiel, who never claimed ownership or possession thereof. [26]

Petitioner's supposed failure to describe in detail the manner of respondents' entry into the subject property is inconsequential. [27] Jurisprudence states that proving the fact of unlawful entry and the exclusion of the lawful possessor – as petitioner had sufficiently demonstrated – would necessarily imply the use of force. As held in *Estel v. Heirs of Recaredo P. Diego, Sr.*:[28]

> x x x Unlawfully entering the subject property and excluding therefrom the prior possessor would necessarily imply the use of force and this is all that is necessary. In order to constitute force, the trespasser does not have to institute a state of war. No other proof is necessary. In the instant case, it is, thus, irrefutable that respondents sufficiently alleged that the possession of the subject property was wrested from them through violence and force.[29]

And in *David v. Cordova*:[30]

> x x x [T]he foundation of a possessory action is really the forcible exclusion of the original possessor by a person who has entered without right. The words "by force, intimidation, threat, strategy or stealth" include every situation or condition under which one person can wrongfully enter upon real property and exclude another, who has had prior possession therefrom. If a trespasser enters upon land in open daylight, under the very eyes of the person already clothed with lawful possession, but without the consent of the latter, and there plants himself and excludes such prior possessor from the property, the action of forcibly entry and detainer can unquestionably be maintained, even though no force is used by the trespasser other than such as is necessarily implied from the mere acts of planting himself on the ground and excluding the other party.[31]

Similarly, in *Arbizo v. Santillan*,[32] it has been held that the acts of unlawfully entering the disputed premises, erecting a structure thereon, and excluding therefrom the prior possessor would necessarily imply the use of force, as in this case.

In fine, the Court upholds the findings and conclusions of the MCTC, adjudging petitioner to be the lawful possessor of the subject property, square as they are with existing law and jurisprudence. Accordingly, the CA's ruling on the merits must perforce be reversed and set aside.

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26 *Rollo*, p. 171.
27 Id. at 44.
28 Supra note 23, at 26.
29 Id.
30 G.R. No. 152992, July 28, 2005, 464 SCRA 384.
31 Id. at 399-400.
32 G.R. No. 171315, February 26, 2008, 546 SCRA 610, 624-625.

WHEREFORE, the petition is **GRANTED**. The January 11, 2011 Decision and April 14, 2011 Resolution of the Court of Appeals, Cebu City, in CA-G.R. SP No. 03888 are hereby **REVERSED** and **SET ASIDE**. The April 13, 2007 Decision of the 12th Municipal Circuit Trial Court of Moalboal-Alcantara-Badian-Alegria, Cebu in Civil Case No. 118 is **REINSTATED.**

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution 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