



Republic of the Philippines  
**Supreme Court**  
 Manila

**FIRST DIVISION**

**FE U. QUIJANO ,**  
 Petitioner,

**G.R. No. 164277**

Present:

- versus -

SERENO, C.J.,  
 LEONARDO-DE CASTRO,  
 BERSAMIN,  
 PEREZ, and  
 PERLAS-BERNABE, JJ.

Promulgated:

**ATTY. DARYLL A. AMANTE,**  
 Respondent.

**OCT 08 2014**

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**DECISION**

**BERSAMIN, J.:**

Where the plaintiff does not prove her alleged tolerance of the defendant's occupation, the possession is deemed illegal from the beginning. Hence, the action for unlawful detainer is an improper remedy. But the action cannot be considered as one for forcible entry without any allegation in the complaint that the entry of the defendant was by means of force, intimidation, threats, strategy or stealth.

**Antecedents**

The petitioner and her siblings, namely: Eliseo, Jose and Gloria, inherited from their father, the late Bibiano Quijano, the parcel of land registered in the latter's name under Original Certificate of Title (OCT) No. O-188 of the Registry of Deeds in Cebu City with an area of 15,790 square meters, more or less.<sup>1</sup> On April 23, 1990, prior to any partition among the heirs, Eliseo sold a portion of his share, measuring 600 square meters, to respondent Atty. Daryll A. Amante (respondent), with the affected portion

<sup>1</sup> *Rollo*, p. 73.

being described in the deed of absolute sale Eliseo executed in the following manner:

A portion of a parcel of land located at the back of the Pleasant Homes Subdivision and also at the back of Don Bosco Seminary, Punta Princesa, Cebu City, to be taken from my share of the whole lot; the portion sold to Atty. Amante is only 600 square meters which is the area near the boundary facing the Pleasant Homes Subdivision, Cebu City.<sup>2</sup>

On July 25, 1991, Eliseo, sickly and in need of money, sold an additional 1/3 portion of his share in the property to the respondent, with their deed of absolute sale stating that the sale was with the approval of Eliseo's siblings, and describing the portion subject of the sale as:

That the portion covered under this transaction is Specifically located right at the back of the seminary facing Japer Memorial School and where the fence and house of Atty. Amante is located.<sup>3</sup>

On September 30, 1992, Fe, Eliseo, Jose and Gloria executed a deed of extrajudicial partition to divide their father's estate (consisting of the aforementioned parcel of land) among themselves.<sup>4</sup> Pursuant to the deed extrajudicial partition, OCT No. O-188 was cancelled, and on July 12, 1994 the Register of Deeds issued Transfer Certificate of Title (TCT) No. 6555, TCT No. 6556, TCT No. 6557 and TCT No. 6558<sup>5</sup> to the petitioner, Gloria, Jose, and Eliseo, respectively. The partition resulted in the portions earlier sold by Eliseo to the respondent being adjudicated to the petitioner instead of to Eliseo.<sup>6</sup>

Due to the petitioner's needing her portion that was then occupied by the respondent, she demanded that the latter vacate it. Despite several demands, the last of which was by the letter dated November 4, 1994,<sup>7</sup> the respondent refused to vacate, prompting her to file against him on February 14, 1995 a complaint for ejectment and damages in the Municipal Trial Court in Cities of Cebu City (MTCC), docketed as Civil Case No. R-34426.<sup>8</sup> She alleged therein that she was the registered owner of the parcel of land covered by TCT No. 6555, a portion of which was being occupied by the respondent, who had constructed a residential building thereon by the mere tolerance of Eliseo when the property she and her siblings had inherited from their father had not yet been subdivided, and was thus still co-owned by them; and that the respondent's occupation had become illegal following his refusal to vacate despite repeated demands.

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<sup>2</sup> Id. at 61, 64.

<sup>3</sup> Id. at 61, 65.

<sup>4</sup> Id. at 51-52.

<sup>5</sup> Id. at 54-57.

<sup>6</sup> Id. at 26.

<sup>7</sup> Id. at 59.

<sup>8</sup> Id. at 46-50.

The respondent denied that his possession of the disputed portion had been by mere tolerance of Eliseo. He even asserted that he was in fact the owner and lawful possessor of the property, having bought it from Eliseo; that the petitioner and her siblings could not deny knowing about the sale in his favor because they could plainly see his house from the road; and that the deed of absolute sale itself stated that the sale to him was with their approval, and that they had already known that his house and fence were existing; that before he purchased the property, Eliseo informed him that he and his co-heirs had already orally partitioned the estate of their father, and that the portion being sold to him was Eliseo's share; and that with his having already purchased the property before the petitioner acquired it under the deed of extrajudicial partition, she should respect his ownership and possession of it.<sup>9</sup>

### **Judgment of the MTCC**

On February 5, 1996, the MTCC rendered its decision in favor of the petitioner,<sup>10</sup> ruling that the deeds of sale executed by Eliseo in favor of the respondent did not have the effect of conveying the disputed property to him inasmuch as at the time of the sale, the parcel of land left by their father, which included the disputed property, had not yet been partitioned, rendering Eliseo a mere co-owner of the undivided estate who had no right to dispose of a definite portion thereof; that as a co-owner, Eliseo effectively conveyed to the respondent only the portion that would ultimately be allotted to him once the property would be subdivided; that because the disputed property was adjudicated to the petitioner under the deed of extrajudicial settlement and partition, she was its owner with the consequent right of possession; and that, as such, she had the right to demand that the respondent vacate the land.

The MTCC disposed as follows:

WHEREFORE, in view of all the foregoing premises, and on the basis thereof, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the defendant; to:

1) vacate from the portion, presently occupied by him and whereon his building stands, of that parcel of land located in Cebu City covered by TCT No. 6555 and registered in the name of the plaintiff; and to remove and/or demolish the building and all the structures that may have been built on said portion;

2) pay the plaintiff the rental of ₱1,000.00 a month for the portion in litigation from November 21, 1994 until such time that the defendant

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<sup>9</sup> Id. at 61-63.

<sup>10</sup> Id. at 80-87; penned by Presiding Judge Amado B. Bajarías, Sr.

shall have vacated, and have removed all structures from said portion, and have completely restored possession thereof to the plaintiff; and

3) pay unto the plaintiff the sum of ₱10,000.00 as attorney's fees; and the sum of P5,000.00 for litigation expenses; and

4) to pay the costs of suit.

SO ORDERED.<sup>11</sup>

### Decision of the RTC

On appeal, the Regional Trial Court (RTC) reversed the judgment of the MTCC, and dismissed the complaint,<sup>12</sup> holding that the summary proceeding for ejectment was not proper because the serious question of ownership of the disputed property was involved, *viz*:

In the case at bar, by virtue of the deed of absolute sale executed by Eliseo Quijano, one of the co-heirs of Fe Quijano, in 1990 and 1991, the defendant Atty. Amante took possession of the portion in question and built his residential house thereat. It was only in 1992 that the heirs of Bibiano Quijano executed the deed of extrajudicial partition, and instead of giving to Eliseo Quijano the portion that he already sold to the defendant, the same was adjudicated to plaintiff, Fe Quijano to the great prejudice of the defendant herein who had been in possession of the portion in question since 1990 and which possession is not possession de facto but possession de jure because it is based on 2 deeds of conveyances executed by Eliseo Quijano. There is, therefore, a serious question of ownership involved which cannot be determined in a summary proceeding for ejectment. Since the defendant is in possession of the portion in question where his residential house is built for several years, and before the extrajudicial partition, the possession of the defendant, to repeat, is one of possession de jure and the plaintiff cannot eject the defendant in a summary proceeding for ejectment involving only possession de facto. What the plaintiff should have done was to file an action publiciana or action reivindicatoria before the appropriate court for recovery of possession and ownership. However, since there is a pending complaint for quieting of title filed by the defendant against the plaintiff herein before the Regional Trial Court, the matter of ownership should be finally resolved in said proceedings.<sup>13</sup>

Undaunted, the petitioner moved for reconsideration, but the RTC denied her motion on November 13, 1996.<sup>14</sup>

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<sup>11</sup> Id. at 87.

<sup>12</sup> Id. at 92-94; penned by Judge Rodolfo B. Gandionco.

<sup>13</sup> Id. at 93-94.

<sup>14</sup> Id. at 102-103.

### Decision of the CA

The petitioner appealed to the CA by petition for review.

On May 26, 2004, the CA promulgated its decision,<sup>15</sup> affirming the decision of the RTC, and dismissing the case for ejectment, but on the ground that the respondent was either a co-owner or an assignee holding the right of possession over the disputed property.

The CA observed that the RTC correctly dismissed the ejectment case because a question of ownership over the disputed property was raised; that the rule that inferior courts could pass upon the issue of ownership to determine the question of possession was well settled; that the institution of a separate action for quieting of title by the respondent did not divest the MTCC of its authority to decide the ejectment case; that Eliseo, as a co-owner, had no right to sell a definite portion of the undivided estate; that the deeds of sale Eliseo executed in favor of the respondent were valid only with respect to the alienation of Eliseo's undivided share; that after the execution of the deeds of sale, the respondent became a co-owner along with Eliseo and his co-heirs, giving him the right to participate in the partition of the estate owned in common by them; that because the respondent was not given any notice of the project of partition or of the intention to effect the partition, the partition made by the petitioner and her co-heirs did not bind him; and that, as to him, the entire estate was still co-owned by the heirs, giving him the right to the co-possession of the estate, including the disputed portion.

### Issues

The petitioner has come to the Court on appeal by *certiorari*,<sup>16</sup> contending that the CA grossly erred in holding that the respondent was either a co-owner or an assignee with the right of possession over the disputed property.<sup>17</sup>

The petitioner explains that the respondent, being a lawyer, knew that Eliseo could not validly transfer the ownership of the disputed property to him because the disputed property was then still a part of the undivided estate co-owned by all the heirs of the late Bibiano Quijano; that the respondent's knowledge of the defect in Eliseo's title and his failure to get the co-heirs' consent to the sale in a registrable document tainted his acquisition with bad faith; that being a buyer in bad faith, the respondent necessarily became a possessor and builder in bad faith; that she was not

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<sup>15</sup> Id. at 8-18; penned by Associate Justice Mercedes Gozo-Dadole (retired) and concurred in by Associate Justice Monina Arevalo-Zenarosa (retired) and Associate Justice Seseinando E. Villon.

<sup>16</sup> Id. at 22-32.

<sup>17</sup> Id. at 28.

aware of the sale to the respondent, and it was her ignorance of the sale that led her to believe that the respondent was occupying the disputed property by the mere tolerance of Eliseo; that the partition was clearly done in good faith; and that she was entitled to the possession of the disputed property as its owner, consequently giving her the right to recover it from the respondent.<sup>18</sup>

To be resolved is the issue of who between the petitioner and the respondent had the better right to the possession of the disputed property.

### **Ruling**

The petition for review on *certiorari* lacks merit.

An ejectment case can be either for forcible entry or unlawful detainer. It is a summary proceeding designed to provide expeditious means to protect the actual possession or the right to possession of the property involved.<sup>19</sup> The sole question for resolution in the case is the physical or material possession (*possession de facto*) of the property in question, and neither a claim of juridical possession (*possession de jure*) nor an averment of ownership by the defendant can outrightly deprive the trial court from taking due cognizance of the case. Hence, even if the question of ownership is raised in the pleadings, like here, the court may pass upon the issue but only to determine the question of possession especially if the question of ownership is inseparably linked with the question of possession.<sup>20</sup> The adjudication of ownership in that instance is merely provisional, and will not bar or prejudice an action between the same parties involving the title to the property.<sup>21</sup>

Considering that the parties are both claiming ownership of the disputed property, the CA properly ruled on the issue of ownership for the sole purpose of determining who between them had the better right to possess the disputed property.

The disputed property originally formed part of the estate of the late Bibiano Quijano, and passed on to his heirs by operation of law upon his death.<sup>22</sup> Prior to the partition, the estate was owned in common by the heirs, subject to the payment of the debts of the deceased.<sup>23</sup> In a co-ownership, the

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<sup>18</sup> Id. at 29-30.

<sup>19</sup> *Barrientos v. Rapal*, G.R. No. 169594, July 20, 2011, 654 SCRA 165, 170.

<sup>20</sup> *Pengson v. Ocampo, Jr.*, G.R. No. 131968, June 29, 2001, 360 SCRA 420, 425.

<sup>21</sup> *Supra* note 19, at 171.

<sup>22</sup> Article 774, *Civil Code*.

<sup>23</sup> Article 1078, *Civil Code*.

undivided thing or right belong to different persons, with each of them holding the property *pro indiviso* and exercising her rights over the whole property. Each co-owner may use and enjoy the property with no other limitation than that he shall not injure the interests of his co-owners. The underlying rationale is that until a division is actually made, the respective share of each cannot be determined, and every co-owner exercises, together with his co-participants, joint ownership of the *pro indiviso* property, in addition to his use and enjoyment of it.<sup>24</sup>

Even if an heir's right in the estate of the decedent has not yet been fully settled and partitioned and is thus merely inchoate, Article 493<sup>25</sup> of the *Civil Code* gives the heir the right to exercise acts of ownership. Accordingly, when Eliseo sold the disputed property to the respondent in 1990 and 1991, he was only a co-owner along with his siblings, and could sell only that portion that *would be* allotted to him upon the termination of the co-ownership. The sale did not vest ownership of the disputed property in the respondent but transferred only the seller's *pro indiviso* share to him, consequently making him, as the buyer, a co-owner of the disputed property until it is partitioned.<sup>26</sup>

As Eliseo's successor-in-interest or assignee, the respondent was vested with the right under Article 497 of the *Civil Code* to take part in the partition of the estate and to challenge the partition undertaken without his consent.<sup>27</sup> Article 497 states:

Article 497. The creditors or assignees of the co-owners may take part in the division of the thing owned in common and object to its being effected without their concurrence. But they cannot impugn any partition already executed, unless there has been fraud, or in case it was made notwithstanding a formal opposition presented to prevent it, without prejudice to the right of the debtor or assignor to maintain its validity.

The respondent could not deny that at the time of the sale he knew that the property he was buying was not exclusively owned by Eliseo. He knew, too, that the co-heirs had entered into an oral agreement of partition vis-à-vis the estate, such knowledge being explicitly stated in his answer to the complaint, to wit:

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<sup>24</sup> *Aleandrino v. Court of Appeals*, G.R. No. 114151, September 17, 1998, 295 SCRA 536, 548.

<sup>25</sup> Article 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

<sup>26</sup> *Paulmitan v. Court of Appeals*, G.R. No. 61584, November 25, 1992, 215 SCRA 866, 872.

<sup>27</sup> See: *Panganiban v. Oamil*, G.R. No. 149313, January 22, 2008, 542 SCRA 166, 176; *Vda. de Figuracion v. Figuracion-Gerilla*, G.R. No. 151334, February 13, 2013, 690 SCRA 495, 510.

12. That defendant, before he acquired the land from Eliseo Quijano was informed by the latter that the portion sold to him was his share already; that they have orally partitioned the whole lot before defendant acquired the portion from him.<sup>28</sup>

His knowledge of Eliseo's co-ownership with his co-heirs, and of their oral agreement of partition notwithstanding, the respondent still did not exercise his right under Article 497. Although Eliseo made it appear to the respondent that the partition had already been completed and finalized, the co-heirs had not taken possession yet of their respective shares to signify that they had ratified their agreement, if any. For sure, the respondent was no stranger to the Quijanos, because he himself had served as the lawyer of Eliseo and the petitioner herself.<sup>29</sup> In that sense, it would have been easy for him to ascertain whether the representation of Eliseo to him was true. As it turned out, there had been no prior oral agreement among the heirs to partition the estate; otherwise, Eliseo would have questioned the deed of extrajudicial partition because it did not conform to what they had supposedly agreed upon. Had the respondent been vigilant in protecting his interest, he could have availed himself of the rights reserved to him by law, particularly the right to take an active part in the partition and to object to the partition if he wanted to. It was only on September 30, 1992, or two years and five months from the time of the first sale transaction, and a year and two months from the time of the second sale transaction, that the co-heirs executed the deed of extrajudicial partition. Having been silent despite his ample opportunity to participate in or to object to the partition of the estate, the respondent was bound by whatever was ultimately agreed upon by the Quijanos.

There is no question that the holder of a Torrens title is the rightful owner of the property thereby covered and is entitled to its possession.<sup>30</sup> However, the Court cannot ignore that the statements in the petitioner's complaint about the respondent's possession of the disputed property being by the mere tolerance of Eliseo could be the basis for unlawful detainer. Unlawful detainer involves the defendant's withholding of the possession of the property to which the plaintiff is entitled, after the expiration or termination of the former's right to hold possession under the contract, whether express or implied. A requisite for a valid cause of action of unlawful detainer is that the possession was originally lawful, but turned unlawful only upon the expiration of the right to possess.

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<sup>28</sup> *Rollo*, p. 62.

<sup>29</sup> *Id.* at 77, 89.

<sup>30</sup> *Beltran v. Nieves*, G.R. No. 175561, October 20, 2010, 634 SCRA 242, 248; *Pascual v. Coronel*, G.R. No. 159292, July 12, 2007, 527 SCRA 474, 484; *Manila Electric Company v. Heirs of spouses Dionisio Deloy and Praxedes Martonito*. G.R. No. 192893, June 5, 2013, 697 SCRA 486, 504.



To show that the possession was initially lawful, the basis of such lawful possession must then be established. With the averment here that the respondent's possession was by mere tolerance of the petitioner, the acts of tolerance must be proved, for bare allegation of tolerance did not suffice. At least, the petitioner should show the overt acts indicative of her or her predecessor's tolerance, or her co-heirs' permission for him to occupy the disputed property.<sup>31</sup> But she did not adduce such evidence. Instead, she appeared to be herself not clear and definite as to his possession of the disputed property being merely tolerated by Eliseo, as the following averment of her petition for review indicates:

**6.9. Their ignorance of the said transaction of sale, particularly the petitioner, as they were not duly informed by the vendor-co[-]owner Eliseo Quijano, [led] them to believe that the respondent's occupancy of the subject premises was by mere tolerance of Eliseo, so that upon partition of the whole property, said occupancy continued to be under tolerance of the petitioner when the subject premises became a part of the land adjudicated to the latter;**<sup>32</sup> (emphasis supplied)

In contrast, the respondent consistently stood firm on his assertion that his possession of the disputed property was in the concept of an owner, not by the mere tolerance of Eliseo, and actually presented the deeds of sale transferring ownership of the property to him.<sup>33</sup>

Considering that the allegation of the petitioner's tolerance of the respondent's possession of the disputed property was not established, the possession could very well be deemed illegal from the beginning. In that case, her action for unlawful detainer has to fail.<sup>34</sup> Even so, the Court would not be justified to treat this ejectment suit as one for forcible entry because the complaint contained no allegation that his entry in the property had been by force, intimidation, threats, strategy or stealth.

Regardless, the issue of possession between the parties will still remain. To finally resolve such issue, they should review their options and decide on their proper recourses. In the meantime, it is wise for the Court to leave the door open to them in that respect. For now, therefore, this recourse of the petitioner has to be dismissed.

**WHEREFORE**, the Court **AFFIRMS** the decision promulgated on May 26, 2004 subject to the **MODIFICATION** that the unlawful detainer

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<sup>31</sup> *Carbonilla v. Abiera*, G.R. No. 177637, July 26, 2010, 625 SCRA 461, 469-470.


<sup>32</sup> *Rollo*, p. 30.

<sup>33</sup> *Id.* at 61-62; 64-65; 75-76; 88-89.

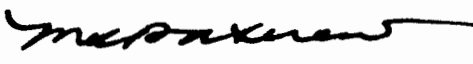
<sup>34</sup> *Ten Forty Realty and Development Corp. v. Cruz*, G.R. No. 151212, September 10, 2003, 410 SCRA 484, 491.

action is dismissed for being an improper remedy; and **ORDERS** the petitioner to pay the costs of suit.

**SO ORDERED.**


  
LUCAS P. BERSAMIN  
Associate Justice

**WE CONCUR:**

  
MARIA LOURDES P. A. SERENO  
Chief Justice

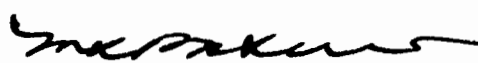
  
TERESITA J. LEONARDO-DE CASTRO  
Associate Justice

  
JOSE PORTUGAL PEREZ  
Associate Justice

  
ESTELA M. PERLAS-BERNABE  
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.

  
MARIA LOURDES P. A. SERENO  
Chief Justice