



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

**JUANITA ERMITAÑO**, represented  
by her Attorney-in-Fact, **ISABELO**  
**ERMITAÑO**,

Petitioner,

- versus -

G.R. No. 174436

Present:

VELASCO, JR., *J.*, Chairperson,  
PERALTA,  
ABAD,  
MENDOZA, and  
LEONEN, *JJ.*

Promulgated:

**LAILANIE M. PAGLAS**,

Respondent.

January 23, 2013

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DECISION

**PERALTA, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision<sup>1</sup> and Resolution<sup>2</sup> dated September 8, 2004 and August 16, 2006, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 77617.

On November 5, 1999, herein respondent and petitioner, through her representative, Isabelo R. Ermitaño, executed a Contract of Lease wherein petitioner leased in favor of respondent a 336 square meter residential lot and a house standing thereon located at No. 20 Columbia St., Phase 1, Doña Vicenta Village, Davao City. The contract period is one (1) year, which commenced on November 4, 1999, with a monthly rental rate of ₱13,500.00. Pursuant to the contract, respondent paid petitioner ₱27,000.00 as security deposit to answer for unpaid rentals and damage that may be caused to the leased unit.

<sup>1</sup> Penned by Associate Justice Arturo G. Tayag, with Associate Justices Estela M. Perlas-Bernabe (now a member of this Court) and Edgardo A. Camello concurring; Annex "A" to Petition, *rollo*, pp. 39-59.

<sup>2</sup> Penned by Associate Justice Edgardo A. Camello, with Associate Justices Ricardo R. Rosario and Mario V. Lopez concurring; Annex "B" to Petition, *rollo*, pp. 60-61.

Subsequent to the execution of the lease contract, respondent received information that sometime in March 1999, petitioner mortgaged the subject property in favor of a certain Charlie Yap (Yap) and that the same was already foreclosed with Yap as the purchaser of the disputed lot in an extra-judicial foreclosure sale which was registered on February 22, 2000. Yap's brother later offered to sell the subject property to respondent. Respondent entertained the said offer and negotiations ensued. On June 1, 2000, respondent bought the subject property from Yap for ₱950,000.00. A Deed of Sale of Real Property was executed by the parties as evidence of the contract. However, it was made clear in the said Deed that the property was still subject to petitioner's right of redemption.

Prior to respondent's purchase of the subject property, petitioner filed a suit for the declaration of nullity of the mortgage in favor of Yap as well as the sheriff's provisional certificate of sale which was issued after the disputed house and lot were sold on foreclosure.

Meanwhile, on May 25, 2000, petitioner sent a letter demanding respondent to pay the rentals which are due and to vacate the leased premises. A second demand letter was sent on March 25, 2001. Respondent ignored both letters.

On August 13, 2001, petitioner filed with the Municipal Trial Court in Cities (MTCC), Davao City, a case of unlawful detainer against respondent.

In its Decision dated November 26, 2001, the MTCC, Branch 6, Davao City dismissed the case filed by petitioner and awarded respondent the amounts of ₱25,000.00 as attorney's fees and ₱2,000.00 as appearance fee.

Petitioner filed an appeal with the Regional Trial Court (RTC) of Davao City.

On February 14, 2003, the RTC rendered its Decision, the dispositive portion of which reads as follows:

WHEREFORE, PREMISES CONSIDERED, the assailed Decision is AFFIRMED with MODIFICATION. AFFIRMED insofar as it dismissed the case for unlawful detainer but modified in that the award of attorney's fees in defendant's [herein respondent's] favor is deleted and that the defendant [respondent] is ordered to pay plaintiff [herein petitioner] the equivalent of ten months unpaid rentals on the property or the total sum of ₱135,000.00.

SO ORDERED.<sup>3</sup>

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*Rollo*, p. 66.

The RTC held that herein respondent possesses the right to redeem the subject property and that, pending expiration of the redemption period, she is entitled to receive the rents, earnings and income derived from the property.

Aggrieved by the Decision of the RTC, petitioner filed a petition for review with the CA.

On September 8, 2004, the CA rendered its assailed Decision disposing, thus:

**WHEREFORE**, premises considered, the assailed Decision of the Regional Trial Court, Branch 16, 11<sup>th</sup> Judicial Region, Davao City is **AFFIRMED** with the **MODIFICATIONS** as follows:

(a) Private respondent's obligation to pay the petitioner the amount of ONE HUNDRED THIRTY-FIVE THOUSAND PESOS (₱135,000.00) equivalent of ten (10) months is hereby **DELETED**;

(b) Attorney's fees and litigation expenses were correctly awarded by the trial court having compelled the private respondent to litigate and incur expenses to protect her interests by reason of the unjustified act of petitioner (*Producers Bank of the Philippines vs. Court of Appeals*, 365 SCRA 326), Thus: litigation expenses of only TEN THOUSAND PESOS (₱10,000.00) not TWENTY-FIVE THOUSAND PESOS (₱25,000.00); and

(c) Attorney's fees **REINSTATED** in the amount of TEN THOUSAND PESOS (₱10,000.00) instead of only TWO THOUSAND PESOS (₱2,000.00).

**SO ORDERED.**<sup>4</sup>

Quoting extensively from the decision of the MTCC as well as on respondent's comment on the petition for review, the CA ruled that respondent did not act in bad faith when she bought the property in question because she had every right to rely on the validity of the documents evidencing the mortgage and the foreclosure proceedings.

Petitioner filed a Motion for Reconsideration, but the CA denied it in its Resolution dated August 16, 2006.

Hence, the instant petition for review on *certiorari* raising the following assignment of errors:

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*Id.* at 57-58. (Emphasis in the original)

A. WHETHER OR NOT THE COURT OF APPEALS ERRED IN DISMISSING THE UNLAWFUL DETAINER CASE BY RULING THAT A SHERIFF'S FINAL CERTIFICATE OF SALE WAS ALREADY ISSUED WHICH DECISION IS NOT BASED ON THE EVIDENCE AND IN ACCORDANCE WITH THE APPLICABLE LAWS AND JURISPRUDENCE.

B. WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RULED THAT PRIVATE RESPONDENT WAS A BUYER IN GOOD FAITH EVEN IF SHE WAS INFORMED BY PETITIONER THROUGH A LETTER ADVISING HER THAT THE REAL ESTATE MORTGAGE CONTRACT WAS SHAM, FICTITIOUS AS IT WAS A PRODUCT OF FORGERY BECAUSE PETITIONER'S PURPORTED SIGNATURE APPEARING THEREIN WAS SIGNED AND FALSIFIED BY A CERTAIN ANGELA CELOSIA.

C. WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT AWARDED ATTORNEY'S FEES WHICH WAS DELETED BY RTC-BRANCH 16 OF DAVAO CITY DESPITE THE ABSENCE OF ANY EXPLANATION AND/OR JUSTIFICATION IN THE BODY OF THE DECISION.<sup>5</sup>

At the outset, it bears to reiterate the settled rule that the only question that the courts resolve in ejectment proceedings is: who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*.<sup>6</sup> It does not even matter if a party's title to the property is questionable.<sup>7</sup> In an unlawful detainer case, the sole issue for resolution is the physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants.<sup>8</sup> Where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property.<sup>9</sup> The adjudication is, however, merely provisional and would not bar or prejudice an action between the same parties involving title to the property.<sup>10</sup>

In the instant case, pending final resolution of the suit filed by petitioner for the declaration of nullity of the real estate mortgage in favor of Yap, the MTCC, the RTC and the CA were unanimous in sustaining the presumption of validity of the real estate mortgage over the subject property in favor of Yap as well as the presumption of regularity in the performance of the duties of the public officers who subsequently conducted its foreclosure sale and issued a provisional certificate of sale. Based on the presumed validity of the mortgage and the subsequent foreclosure sale, the MTCC, the RTC and the CA also sustained the validity of respondent's purchase of the disputed property from Yap. The Court finds no cogent

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<sup>5</sup> *Id.* at 21.

<sup>6</sup> *Barrientos v. Rapal*, G.R. No. 169594, July 20, 2011, 654 SCRA 165, 170.

<sup>7</sup> *Id.* at 170-171.

<sup>8</sup> *Id.* at 171.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

reason to depart from these rulings of the MTCC, RTC and CA. Thus, for purposes of resolving the issue as to who between petitioner and respondent is entitled to possess the subject property, this presumption stands.

Going to the main issue in the instant petition, it is settled that in unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied.<sup>11</sup> In such case, the possession was originally lawful but became unlawful by the expiration or termination of the right to possess; hence, the issue of rightful possession is decisive for, in such action, the defendant is in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.<sup>12</sup>

In the instant petition, petitioner's basic postulate in her first and second assigned errors is that she remains the owner of the subject property. Based on her contract of lease with respondent, petitioner insists that respondent is not permitted to deny her title over the said property in accordance with the provisions of Section 2 (b), Rule 131 of the Rules of Court.

The Court does not agree.

The conclusive presumption found in Section 2 (b), Rule 131 of the Rules of Court, known as *estoppel* against tenants, provides as follows:

Sec. 2. *Conclusive presumptions.* – The following are instances of conclusive presumptions:

x x x x

(b) The tenant is not permitted to deny the title of his landlord *at the time of the commencement of the relation of landlord and tenant* between them. (Emphasis supplied).

It is clear from the abovequoted provision that what a tenant is estopped from denying is the title of his landlord at the time of the commencement of the landlord-tenant relation.<sup>13</sup> If the title asserted is one that is alleged to have been acquired subsequent to the commencement of that relation, the presumption will not apply.<sup>14</sup> Hence, the tenant may show that the landlord's title has expired or been conveyed to another or himself; and he is not estopped to deny a claim for rent, if he has been ousted or evicted by title paramount.<sup>15</sup> In the present case, what respondent is claiming

<sup>11</sup> *Union Bank of the Philippines v. Maunlad Homes, Inc.*, G.R. No. 190071, August 15, 2012.

<sup>12</sup> *Malabanan v. Rural Bank of Cabuyao, Inc.*, G.R. No. 163495, May 8, 2009, 587 SCRA 442, 448.

<sup>13</sup> *Santos v. National Statistics Office*, G.R. No. 171129, April 6, 2011, 647 SCRA 345, 357.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

is her supposed title to the subject property which she acquired subsequent to the commencement of the landlord-tenant relation between her and petitioner. Hence, the presumption under Section 2 (b), Rule 131 of the Rules of Court does not apply.

The foregoing notwithstanding, even if respondent is not estopped from denying petitioner's claim for rent, her basis for such denial, which is her subsequent acquisition of ownership of the disputed property, is nonetheless, an insufficient excuse from refusing to pay the rentals due to petitioner.

There is no dispute that at the time that respondent purchased Yap's rights over the subject property, petitioner's right of redemption as a mortgagor has not yet expired. It is settled that during the period of redemption, it cannot be said that the mortgagor is no longer the owner of the foreclosed property, since the rule up to now is that the right of a purchaser at a foreclosure sale is merely inchoate until after the period of redemption has expired without the right being exercised.<sup>16</sup> The title to land sold under mortgage foreclosure remains in the mortgagor or his grantee until the expiration of the redemption period and conveyance by the master's deed.<sup>17</sup> Indeed, the rule has always been that it is only upon the expiration of the redemption period, without the judgment debtor having made use of his right of redemption, that the ownership of the land sold becomes consolidated in the purchaser.<sup>18</sup>

Stated differently, under Act. No. 3135, the purchaser in a foreclosure sale has, during the redemption period, only an inchoate right and not the absolute right to the property with all the accompanying incidents.<sup>19</sup> He only becomes an absolute owner of the property if it is not redeemed during the redemption period.<sup>20</sup>

Pending expiration of the period of redemption, Section 7 of Act No. 3135,<sup>21</sup> as amended, provides:

Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount

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<sup>16</sup> *Serrano v. Court of Appeals*, G.R. No. 133883, December 10, 2003, 417 SCRA 415, 428; 463 Phil. 77, 91 (2003); *Medida v. Court of Appeals*, G.R. No. 98334, May 8, 1992, 208 SCRA 887, 897.

<sup>17</sup> *Medida v. Court of Appeals*, *supra*.

<sup>18</sup> *St. James College of Parañaque v. Equitable PCI Bank*, G.R. No. 179441, August 9, 2010, 627 SCRA 328, 348-349.

<sup>19</sup> *Sta. Ignacia Rural Bank, Inc. v. Court of Appeals*, G.R. No. 97872, March 1, 1994, 230 SCRA 513, 524.

<sup>20</sup> *Id.*

<sup>21</sup> *An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages.*

equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in [the] form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

Thus, it is clear from the abovequoted provision of law that, as a consequence of the inchoate character of the purchaser's right during the redemption period, Act. No. 3135, as amended, allows the purchaser at the foreclosure sale to take possession of the property only upon the filing of a bond, in an amount equivalent to the use of the property for a period of twelve (12) months, to indemnify the mortgagor in case it be shown that the sale was made in violation of the mortgage or without complying with the requirements of the law. In *Cua Lai Chu v. Laqui*,<sup>22</sup> this Court reiterated the rule earlier pronounced in *Navarra v. Court of Appeals*<sup>23</sup> that the purchaser at an extrajudicial foreclosure sale has a right to the possession of the property even during the one-year redemption period **provided the purchaser files an indemnity bond**. That bond, nonetheless, is not required after the purchaser has consolidated his title to the property following the mortgagor's failure to exercise his right of redemption for in such a case, the former has become the absolute owner thereof.<sup>24</sup>

It, thus, clearly follows from the foregoing that, during the period of redemption, the mortgagor, being still the owner of the foreclosed property, remains entitled to the physical possession thereof subject to the purchaser's right to petition the court to give him possession and to file a bond pursuant to the provisions of Section 7 of Act No. 3135, as amended. The mere purchase and certificate of sale alone do not confer any right to the possession or beneficial use of the premises.<sup>25</sup>

In the instant case, there is neither evidence nor allegation that respondent, as purchaser of the disputed property, filed a petition and bond

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<sup>22</sup> G.R. No. 169190, February 11, 2010, 612 SCRA 227, 233.

<sup>23</sup> G.R. No. 86237, December 17, 1991, 204 SCRA 850, 856.

<sup>24</sup> *Sta. Ignacia Rural Bank, Inc. v. Court of Appeals*, *supra* note 19, at 525.

<sup>25</sup> *Gonzales v. Calimbas*, G.R. No. L-27878, December 31, 1927, 51 SCRA 355, 358; 51 Phil. 355, 358 (1927).

in accordance with the provisions of Section 7 of Act No. 3135. In addition, respondent defaulted in the payment of her rents. Thus, absent respondent's filing of such petition and bond prior to the expiration of the period of redemption, coupled with her failure to pay her rent, she did not have the right to possess the subject property.

On the other hand, petitioner, as mortgagor and owner, was entitled not only to the possession of the disputed house and lot but also to the rents, earnings and income derived therefrom. In this regard, the RTC correctly cited Section 32, Rule 39 of the Rules of Court which provides as follows:

*Sec. 32. Rents, earnings and income of property pending redemption.* – The purchaser or a redemptioner shall not be entitled to receive the rents, earnings and income of the property sold on execution, or the value of the use and occupation thereof when such property is in the possession of a tenant. **All rents, earnings and income derived from the property pending redemption shall belong to the judgment obligor until the expiration of his period of redemption.** (Emphasis supplied)

While the above rule refers to execution sales, the Court finds no cogent reason not to apply the same principle to a foreclosure sale, as in this case.

The situation became different, however, after the expiration of the redemption period on February 23, 2001. Since there is no allegation, much less evidence, that petitioner redeemed the subject property within one year from the date of registration of the certificate of sale, respondent became the owner thereof. Consolidation of title becomes a right upon the expiration of the redemption period.<sup>26</sup> Having become the owner of the disputed property, respondent is then entitled to its possession.

As a consequence, petitioner's ejectment suit filed against respondent was rendered moot when the period of redemption expired on February 23, 2001 without petitioner having redeemed the subject property, for upon expiration of such period petitioner lost his possessory right over the same. Hence, the only remaining right that petitioner can enforce is his right to the rentals during the time that he was still entitled to physical possession of the subject property – that is from May 2000 until February 23, 2001.

In this regard, this Court agrees with the findings of the MTCC that, based on the evidence and the pleadings filed by petitioner, respondent is liable for payment of rentals beginning May 2000 until February 2001, or for a period of ten (10) months. However, it is not disputed that respondent

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<sup>26</sup> *GC Dalton Industries, Inc. v. Equitable PCI Bank*, G.R. No. 171169, August 24, 2009, 596 SCRA 723, 730.

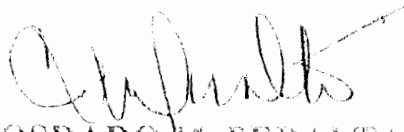


already gave to petitioner the sum of ₱27,000.00, which is equivalent to two (2) months' rental, as deposit to cover for any unpaid rentals. It is only proper to deduct this amount from the rentals due to petitioner, thus leaving ₱108,000.00 unpaid rentals.

As to attorney's fees and litigation expenses, the Court agrees with the RTC that since petitioner is, in fact, entitled to unpaid rentals, her complaint which, among others, prays for the payment of unpaid rentals, is justified. Thus, the award of attorney's and litigation expenses to respondent should be deleted.


**WHEREFORE**, the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 77617, dated September 8, 2004 and August 16, 2006, respectively, are **AFFIRMED** with the following **MODIFICATIONS**: (1) respondent is **ORDERED** to pay petitioner ₱108,000.00 as and for unpaid rentals; (2) the award of attorney's fees and litigation expenses to respondent is **DELETED**.

**SO ORDERED.**




**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**




**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**ROBERTO A. ABAD**  
Associate Justice




**JOSE CATRAL MENDOZA**  
Associate Justice



**MARVIC MARIO VICTOR F. LEONEN**  
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

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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