



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

DIANA BARBER, REX JIMENO,
JACQUELYN BEADO, AND
ROCHELLE TAN,

G.R. No. 205630

Present:

Petitioners,

PERALTA, *CJ.*, Chairperson
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, *JJ.*

- versus -

ROLANDO CHUA,

Promulgated:

Respondent.

JAN 12 2021

X

X

DECISION

ZALAMEDA, J.:

A lawful owner has the right to fully enjoy possession over his entire property, not only over the land's surface but also over the structures built thereon, including everything underneath and the airspace above it up to a reasonable height. As such, a landowner has the right to eject those who unlawfully encroach and build upon not only on the lot itself, but as well as on the structures existing on his property.

The Case

Before this Court is a petition for review on *certiorari*¹ assailing the Decision² dated 09 October 2012 and Resolution³ dated 28 January 2013 of

¹ *Rollo*, pp. 37-61.

² *Id.* at 13-31; penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court) and concurred in by Associate Justices Francisco P. Acosta and Zenaida T. Gaipate-Laguilles of the Special Sixteenth Division, Court of Appeals, Manila.

³ *Id.* at 33.

the Court of Appeals (CA) in CA-G.R. SP No. 122303, which affirmed the Decision⁴ dated 24 January 2011 and Order⁵ dated 30 August 2011 of Branch 74, Regional Trial Court (RTC), Antipolo City, in Special Civil Case No. 09-912.

Antecedents

On 10 August 2007, Rolando Chua (respondent) filed a complaint⁶ for ejectment of extended structures that partly occupied the portion of firewall, damage to property with prayer for moral and exemplary damages with the Municipal Trial Court (MTC) of Cainta, Rizal, docketed as Civil Case No MTC-1259. He alleged that Diana Barber (Barber), his neighbor, built a portion of the second floor of her house on top of his firewall.

Barber, Rex Jimeno (Jimeno), and Jaquelyn Beado (Beado) (petitioners, collectively), filed a motion to dismiss,⁷ claiming that the MTC had no jurisdiction over the subject matter of the case and Barber's person. They claimed that the complaint did not raise the issue of material or physical possession of a property but the removal of certain structures that encroached upon respondent's property.⁸ The complaint referred to encroachment, not of a land or building, but of a firewall, which they claim cannot be a subject of an ejectment case.⁹ As such, the case is one for specific performance, which is within the RTC's jurisdiction.¹⁰

Petitioners also contend that the action being in *personam*, summons should have been personally served to Barber.¹¹ They alleged that at the time of service, on 16 August 2007, Barber was not in the Philippines as she is allegedly a citizen and permanent resident of the United States.¹² They argued that the server's return did not contain any explanation as to why substituted service was resorted to.¹³

In an Order¹⁴ dated 04 August 2009, the MTC dismissed respondent's complaint for lack of jurisdiction. It held that the complaint failed to allege stealth or tolerance, and that respondent's prayer seeking removal of petitioners' permanent structures on top of his firewall falls short of what is required in an ejectment complaint.

⁴ *Id.* at 189-193; penned by Presiding Judge Mary Josephine P. Lazaro.

⁵ *Id.* at 211-215.

⁶ *Id.* at 68-73.

⁷ *Id.* at 81-91.

⁸ *Id.* at 85.

⁹ *Id.* at 87.

¹⁰ *Id.* at 88.

¹¹ *Id.* at 84.

¹² *Id.* at 83.

¹³ *Id.* at 83-84.

¹⁴ *Id.* at 150; issued by Acting Presiding Judge Alberto L. Vizcocho.

Ruling of the RTC

Upon appeal, the RTC reversed the assailed Order and remanded the case to the MTC.¹⁵ It found that respondent's complaint sufficiently alleged a cause of action for forcible entry. Further, the RTC ruled that a firewall can be the subject of an ejectment case since it is an immovable property under Article 415 of the Civil Code.¹⁶

Aggrieved, petitioners brought the case to the CA.

Ruling of the CA

The CA affirmed the decision of the RTC. It held that the allegations of respondent's complaint involving his firewall make out a case for ejectment. It ruled that petitioners' act of taking full control of respondent's firewall by constructing part of Barber's second floor thereon without respondent's consent constitutes unlawful dispossession of his property.¹⁷

It also found that the MTC validly acquired jurisdiction over Barber's person and that the process server validly resorted to substituted service.¹⁸ Noting that Barbers regularly returned to her house in Cainta, Rizal, the CA found that she is a resident defendant who is temporarily out of the country. Hence, substituted service to a person of suitable age and discretion found in the premises was allowed.¹⁹

Arguments of the Petitioners

Petitioners insist that the MTC has no jurisdiction over respondent's complaint, which merely referred to his firewall and the inconveniences that he suffered as a result of petitioners' construction.²⁰ They argue that physical possession is a necessary requirement in an ejectment case. They contend that respondent's firewall is not capable of such physical possession, as it is not a land or building under Rule 70 of the Rules of Court. Finally, they also maintain that the trial court did not acquire jurisdiction over Barber's person, who they claim to be a non-resident defendant.²¹

¹⁵ *Id.* at 193.

¹⁶ *Id.* at 191-192.

¹⁷ *Id.* at 25.

¹⁸ *Id.* at 28.

¹⁹ *Id.* at 29-30.

²⁰ *Id.* at 46.

²¹ *Id.* at 58-59.

Issues

This Court is tasked to determine whether or not the MTC has jurisdiction over Barber's person and the subject matter of the complaint.

Ruling of the Court

The petition lacks merit.

The MTC has jurisdiction over respondent's complaint

The jurisdiction of the Court, as well as the nature of the action, are determined by the allegations in the complaint. In ejectment cases, the complaint should embody such statement of facts as to bring the party clearly within the class of cases for which Section 1, Rule 70 of the Rules of Court provides a summary remedy, and must show enough on its face to give the court jurisdiction without resort to parol evidence.²²

Section 1, Rule 70 of the Rules of Court requires that in actions for forcible entry, the plaintiff is deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth and that the action is filed any time within one year from the time of such unlawful deprivation of possession. This requirement implies that the possession of the land by the defendant is unlawful from the beginning as he acquires possession thereof by unlawful means.

While it is imperative that the complaint sufficiently allege a cause of action for ejectment, it is not essential for the complaint to expressly employ the language of the law. It is enough that facts are set up to show that dispossession took place under said conditions.²³

In this case, the pertinent allegations in the complaint before the MTC are as follows:

That sometime on November 1988, in plaintiff's 125 square meters property lot area, the plaintiff installed an approximately 6" thick concrete hollow blocks by 2.36 meters height by 15.69 meters length firewall adjacent to defendant's lot property, the said firewall remained standing for more than eighteen (18) years without any dispute or question from the defendants. [T]he problem came up when the [d]efendants start[ed] constructing the second-floor improvement of their house.

²² *Javier v. Lumontad*, G.R. No. 203760, 03 December 2014, 749 Phil. 360 (2014) [Per J. Peralas-Bernabe].

²³ *Id.*

The defendants also has (*sic*) an existing firewall opposite to the plaintiff's 15.69 meters length firewall its length is approximately half of plaintiff's firewall, because they did not install full firewall on their backyard part.

That sometimes (*sic*) on February 2007, when defendants start[ed] constructing the improvement of their second floor, **plaintiff knows fully well that defendant' (*sic*) laborers were made able to set foot on his existing firewall and roofs in order to layer concrete hollow blocks, finishing (*palitada*) and painting.**

From February to May 2007 of defendants' construction, the plaintiff was made to suffer noise of falling debris and residue of cement and heavy footsteps of defendants' laborers from his roof. The plaintiff just simply disregarded the noise on what was going on as **long as it will not damage the plaintiff's property**, especially his roof, and being the defendant's (*sic*) good neighbor, the plaintiff did not complain what he and his family experience during the entire construction of their house improvements.

However, some time of 13 July 2007, when heavy rain came, the plaintiff had experienced water downfall from his roofs (*sic*) causing flood and stains to his flooring, not to mention damage to his personal belongings. After the rain, he checked his roof on what caused the water downfall, **he noticed that his roofs (*sic*) were dilapidated causing to open all joints and crevice, and scattered residue of dry cement, he also notice[d] that the dowels from his existing firewall were cut off by defendants without his permission, they even put another layer of concrete hollow block to his existing firewall to make it level to the constructed second floor of their improvement. [L]ikewise, they put an iron grill that permanently occupied portion of his firewall, they also partly extended their structure (2nd floor) that occupy portion of plaintiff's firewall xxx**

Moreover, when defendants' partly deface[d] the concrete hollow block to his existing costura finish firewall for his further inspection of damages. The defendants' grandmother came in rushing and shouting, "*bakit mo pinupukpok ang pader? Bakit mo ginigiba pader namin?*" plaintiff nicely replied her "*tinitingnan ko lang po ang pader ko, nasakop pala ninyo ang pader ko, paano ko ngayon mapapalitan ang flushing ng bubong ko kung bahagyang nakapatong and second floor ng bahay nyo sa pader ko? At saka nayupi at nabutas ang mga bubong ko dahil sa ginawang xxx ng mga trabahador ninyo at sa mga natuyong semento.*"

x x x

Moreover, after the initial hearing, ocular inspection was made by the Office of Municipal City of Cainta and it was proven that the disputed existing firewall which the plaintiff installed eighteen (18) years ago was located and installed inside plaintiff's property lot area. Likewise, it [was] also proven that defendants were (*sic*) partly extended their permanent

structures that occupy portion of plaintiff's firewall property, and due to plaintiff's damaged roof and flashing caused by defendants during the entire construction of their house improvement[,] the plaintiff has experienced the suffering of pouring water from their roof during rainy days. **Consequently, plaintiff cannot replace nor remove his damaged flashing due to obstruction of defendants' permanent structure that permanently occupied the portion of his firewall and flashing.**²⁴ (Emphasis supplied)

This Court finds that respondent's complaint sufficiently alleges a cause of action for forcible entry. Respondent claimed that he is the owner of a house and lot with a firewall next to Barber's property. Further, he alleged that in building the second floor of Barber's house, hollow blocks and iron grills were placed on top in his firewall and the dowels thereof removed without his consent. Finally, he contended that by reason of petitioners' construction, respondent was deprived of the possession of part of his property.

From the allegations of his complaint, it is clear that he merely allowed petitioners' construction workers to use the firewall so that they can properly lay the foundation for Barber's second floor. He never consented to, and was surprised by, the intrusion or extension of Barber's property on top of his firewall. These allegations clearly qualify as dispossession by stealth, which is defined as any secret, sly, or clandestine act to avoid discovery and to gain entrance into, or to remain within residence of another without permission.²⁵

Given the sufficiency of the complaint, the RTC and CA correctly affirmed the MTC's jurisdiction over the complaint.

That respondent's complaint did not refer to dispossession of a parcel of land or a building does not mean that the remedy of ejectment is unavailable. In *Philippine Long Distance Telephone Company v. Citi Appliance M.C. Corporation*,²⁶ the Court upheld the remedy of ejectment for dispossession of the subterranean portion of a titled property, noting that rights over lands are indivisible. The owner of a parcel of land has rights not only to the land's surface, but also to everything underneath and the airspace above it up to a reasonable height.

By parity of reasoning, an aggrieved owner/possessor of a property can properly resort to a case for ejectment in order to remove structures

²⁴ *Rollo*, pp. 68-71.

²⁵ *Diaz v. Spouses Punzalan*, G.R. No. 203075, 16 March 2016 [Per J. Peralta].

²⁶ G.R. No. 214546, 09 October 2019 [Per J. Leonen].

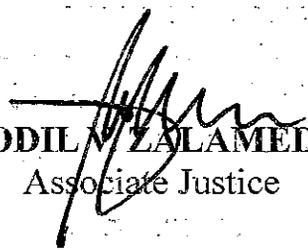
affecting his right to possess the entirety of his property, including his firewall.

MTC acquired jurisdiction over the person of petitioner Barber

While service of summons should generally be effected on the defendant herself, case law allows resort to substituted service for defendants who are residents but are temporarily out of the country.²⁷ Despite Barber's allegation that she is now an American citizen, the Court agrees with the CA that she is likewise a Philippine resident who is temporarily out of the country. Jurisprudence²⁸ has defined a dwelling, house, or residence as the place where the person named in the summons is living at the time when the service is made, even though he may be temporarily out of the country at the time. Indeed, it remains undisputed that Barber stays in the house adjacent to respondent's property whenever she returns to the Philippines. Under Section 7, Rule 14 of the Rules of Court, service of summons may properly be made to a person of suitable age and discretion found at defendant's residence. In the case of *Pavlow v. Mendenilla*,²⁹ this Court also upheld the resort to substituted service of summons upon an American citizen who maintained a residence in Makati but was out of the country at the time of service. Guided by the foregoing, the service of summons to Barber's aunt Norma Balmastro should be deemed sufficient to clothe the RTC jurisdiction over Barber's person.

WHEREFORE, in view of the foregoing, the petition is hereby **DENIED**. The Decisión dated 09 October 2012 and Resolución dated 28 January 2013 of the Court of Appeals in CA-G.R. SP No. 122303 are **AFFIRMED**. The Municipal Trial Court of Cainta, Rizal is **DIRECTED** to resolve the instant case with dispatch.

SO ORDERED.

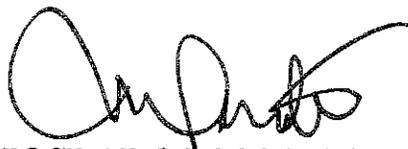

RODIL M. ZALAMEDA
Associate Justice

WE CONCUR:

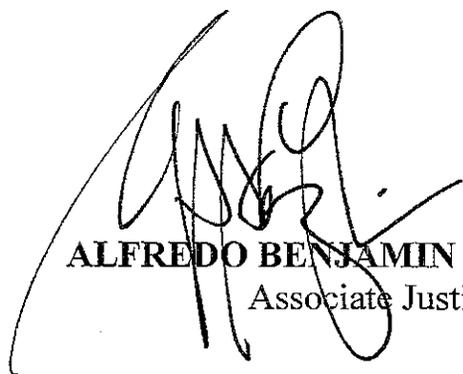
²⁷ *Perez-Silva v. Mata-Pedong*, G.R. No. 190772, 01 February 2012, citing *Montalban v. Maximo*, G.R. No. L-22997, 15 March 1968, 131 Phil. 154 (1968) [Per J. Sanchez].

²⁸ *Palma v. Galvez*, G.R. No. 165273, 10 March 2010, 629 Phil. 86 (2010) [Per J. Peralta].

²⁹ G.R. No. 181489, 19 April 2017, 809 Phil. 24 (2017) [Per J. Leonen].



DIOSDADO M. PERALTA
Chief Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ROMARI D. CARANDANG
Associate Justice



SAMUEL H. GAERLAN
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.



DIOSDADO M. PERALTA
Chief Justice

