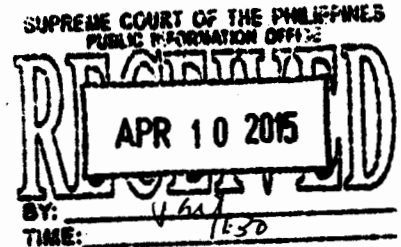




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **February 11, 2015**, which reads as follows:

“G.R. No. 215635 (Nerissa Tartana, Spouses Ryan Tartana and Tessa Tartana, Danny Sanico and Gil Sanico vs. Spouses Felisa Danao and Norberto Danao). – Petitioners’ motion for an extension of thirty (30) days within which to file a petition for review on certiorari is **GRANTED**, counted from the expiration of the reglementary period.

This is a petition for review on *certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision² dated June 6, 2014 and Resolution³ dated November 18, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 07681. The assailed decision reversed the Decision⁴ dated April 10, 2013 of the Regional Trial Court (RTC) of Roxas City, Branch 16, in Civil Case No. V-31-11 and the Decision⁵ dated May 27, 2011 of the 1st Municipal Circuit Trial Court (MCTC) of President Roxaz-Pilar, Capiz, in Civil Case No. 513, by ordering Nerissa Tartana (Nerissa), Spouses Ryan Tartana and Tessa Tartana, Danny Sanico and Gil Sanico (Gil) (petitioners) to vacate Lot No. 1973-A-6-D and surrender its material possession to respondents Felisa Danao (Felisa) and Norberto Danao (spouses Danao).

The dispute in the instant case involves a parcel of land registered in the name of Felisa under Transfer Certificate of Title (TCT) No. T-32512 identified as Lot No. 1973-A-6-D, with an area of 181 square meters, situated in *Barangay* San Nicolas, Pilar, Capiz.

On April 14, 2010, the spouses Danao filed a complaint⁶ for unlawful detainer against the petitioners before the 1st MCTC of President

¹ *Rollo*, pp. 16-38.

² Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with Associate Justices Ramon Paul L. Hernando and Marie Christine Azcarraga-Jacob concurring; *id.* at 239-256.

³ *Id.* at 275-279.

⁴ Issued by Judge Delano F. Villaruz; *id.* at 163-170.

⁵ Issued by Judge Designate Henry B. Avelino; *id.* at 121-129.

⁶ *Id.* at 47-52.

Roxas-Pilar for failure to vacate the property despite repeated written demands. The spouses Danao alleged that they are the absolute owners of the disputed property and that they are paying the real property taxes thereof religiously. Also, they claimed that the petitioners' occupation thereof was only by mere tolerance without the benefit of any contract, express or implied, and without any rent.

In their Answer,⁷ the petitioners denied the allegations in the complaint. They claimed that they are the true and lawful owners of the portion of Lot No. 1973, consisting of 300 sq m, as they inherited the same from the late Quintin Sanico (Quintin), the father of petitioners Nerissa and Gil. The petitioners maintained that on September 3, 1977, Quintin lawfully purchased the disputed property from Spouses Alejo and Estrella Arboleda who, in turn, bought the same from Saturnina Custodio (Saturnina) which was all registered in the Register of Deeds under Entry Nos. 34030 and 34031.⁸

The petitioners further claimed that after the sale of the disputed property to Quintin, Saturnina was able to fraudulently secure Original Certificate of Title (OCT) No. P-7262 under Free Patent No. (VI-2) 4382 covering Lot No. 1973-A, consisting an area of 11,633 sq m, more or less, on April 25, 1980. According to the petitioners, Lot No. 1973-A covered by OCT No. P-7262 was then subjected to Extra-Judicial Partition among the co-heirs of Saturnina and was subdivided into several sub-lots, wherein one of the lots was sold to respondent Felisa only in 1999, which is now Lot No. 1973-A-6-D.⁹

On August 11, 2010, the MCTC appointed Mansueto A. Aguirre (Aguirre) as Court Commissioner to conduct a relocation survey to determine whether or not the petitioners are in possession of the disputed property.¹⁰

In his Report, Commissioner Aguirre stated that on September 15, 2010, a relocation survey was conducted after notice to the parties. The lot subject of the case was identified as Lot No. 1973-A-6-D, Psd-06-046816 with an area of 181 sq m situated in *Barangay* San Nicolas, Pilar, Capiz with TCT No. T-32512 registered in the name of Felisa. The report likewise stated that the lot allegedly bought by Quintin from Saturnina with an area of 300 sq m could not be physically identified for lack of material evidence.¹¹

⁷ Id. at 53-58.

⁸ Id. at 54.

⁹ Id. at 55.

¹⁰ Id. at 242.

¹¹ Id. at 242-243.

On May 27, 2011, the MCTC dismissed the complaint on the ground that the spouses Danao should have filed an *accion reivindicatoria* since the issue of possession cannot be decided without deciding the issue on ownership. The spouses Danao filed an appeal to the RTC.¹²

On April 10, 2013, the RTC found no reversible error in the findings of facts and law of the MCTC. Thus, the RTC affirmed the said findings of facts and law and ordered the dismissal of the appeal. A motion for reconsideration¹³ was filed but the same was denied in an Order dated May 15, 2013. Undaunted, the spouses Danao filed a petition for review under Rule 42 with the CA.¹⁴

On June 6, 2014, the CA granted the petition and ordered the petitioners to vacate Lot No. 1973-A-6-D and to surrender its material possession to the spouses Danao. Also, the petitioners were ordered to pay the amount of ₱50,000.00 as attorney's fees and ₱1,000.00 per month, counted from March 19, 2010 until the finality of its decision as reasonable rent for the use and occupation of Lot No. 1973-A-6-D plus 12% interest on the total judgment award from the finality of the decision until the total award is fully paid.

The CA provisionally passed upon the issue on ownership to determine the issue of possession. It held that the spouses Danao are armed with a TCT as evidence of their ownership. The CA pointed out that a title issued under the Torrens System is entitled to all the attributes of property ownership, which necessarily includes possession. The petitioners moved to reconsider the said decision, but the CA denied their motion in its Resolution dated November 18, 2014, hence the filing of the present petition for review.

Except as to the award of attorney's fee and interest imposed on the total judgment award, this Court finds the petition without merit.

Well-settled is the rule that in ejectment cases, the only 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.¹⁵ The issue of ownership, however, may be provisionally ruled upon for the sole purpose of determining who is entitled to possession *de facto*.¹⁶

In the present case, the petitioners did not dispute the existence of TCT No. 32512 registered in the name of Felisa. The petitioners, however,

¹² Id. at 130-131.

¹³ Id. at 171-179.

¹⁴ Id. at 180-193.

¹⁵ *Mendoza v. Court of Appeals*, 492 Phil. 261, 265 (2005).

¹⁶ *Heirs of Rosendo Lasam v. Umengan*, 539 Phil. 547, 559 (2006).

alleged that the mother title where TCT No. 32512 originated from was fraudulently secured by Saturnina, through her application of Free Patent with the Department of Environment and Natural Resources. Nonetheless, the petitioners' argument is amiss considering that such claim is equivalent to a collateral attack against the Torrens title of Felisa, which is not allowed in an unlawful detainer case.

It is a fundamental principle in land registration that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. Moreover, the age-old rule is that the person who has a Torrens title over a land is entitled to possession thereof.¹⁷ The adjudication made, however, is only an initial determination of ownership for the purpose of settling the issue of possession, the issue of ownership being inseparably linked thereto. The CA's adjudication of ownership in the ejectment case is merely provisional and would not bar or prejudice an action between the same parties involving title to the property.¹⁸ The provisional determination of ownership in the ejectment case cannot be clothed with finality.¹⁹

This Court, however, finds the award of attorney's fee improper. It has been consistently held that the award of attorney's fees is the exception rather than the general rule. The discretion of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture.²⁰ Here, the award of attorney's fees was merely cited in the dispositive portion of the assailed decision without the CA stating any legal or factual basis for said award.

Moreover, consistent with this Court's pronouncement in *Nacar v. Gallery Frames*,²¹ the interest rate of 12% herein awarded is modified to six percent (6%) *per annum*, to be computed from the finality of this Resolution until the total award is fully paid.

WHEREFORE, the Court hereby **AFFIRMS** the Decision dated June 6, 2014 and Resolution dated November 18, 2014 of the Court of Appeals in CA-G.R. SP No. 07681 granting the possession *de facto* of Lot

¹⁷ *Caña v. Evangelical Free Church of the Philippines*, 568 Phil. 205, 217 (2008).

¹⁸ *Spouses Pascual v. Spouses Coronel*, 554 Phil. 351, 359-360 (2007).

¹⁹ *Samonte v. Century Savings Bank*, G.R. No. 176413, November 25, 2009, 605 SCRA 478, 486.


²⁰ *Delos Santos v. Papa, et al.*, 605 Phil. 460, 472-473 (2009).

²¹ G.R. No. 189871, August 13, 2013, 703 SCRA 439.

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No. 1973-A-6-D to the respondent spouses, Felisa Danao and Norberto Danao, with **MODIFICATION** in that the award of attorney's fees is **DELETED** and the award of damages shall earn interest at six percent (6%) *per annum* from the finality of this Resolution until fully paid."

Very truly yours,


WILFREDO V. LAPITAN
Division Clerk of Court
2/27/15

Atty. Ernesto P. Layusa
Counsel for Petitioners
NITORREDA NASSER AND LAYUSA
Rm. 211 Margarita Building
J.P. Rizal St., 1200 Makati City

COURT OF APPEALS
CA G.R. SP No. 07681
6000 Cebu City

Atty. Jovencio James G. Bereber
Counsel for Respondents Felisa &
Norberto Dano
Bilbao St., Inzo Arnaldo Village
5800 Roxas City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 16, 5800 Roxas City
(Civil Case No. V-31-11)

The Presiding Judge
1st MUNICIPAL CIRCUIT TRIAL COURT
President Roxas-Pilar
President Roxas, 5803 Capiz
(Civil Case No. 513)

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