

REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated 27 November 2019 which reads as follows:*

“G.R. No. 226687 (*Atty. Sinforoso E. Buenviaje vs. Spouses Rafael Catulong and Julieta Commendador Catulong*). — This is a petition for review on *certiorari*<sup>1</sup> under Rule 45 of the Rules of Court seeking to annul and set aside the Decision<sup>2</sup> dated June 30, 2015, and the Resolution<sup>3</sup> dated July 22, 2016, issued by the Court of Appeals (CA) in CA-G.R. SP No. 07455.

**The Antecedent Facts**

Atty. Sinforoso E. Buenviaje (Buenviaje) filed a case for ejectment with the Municipal Trial Court in the Cities (MTCC) against Spouses Rafael Catulong (Rafael) and Julieta Commendador Catulong (Julieta) [collectively referred as Spouses Catulong]. Buenviaje averred that he was the rightful owner and possessor of a 333-square meter residential land situated at Unit II, OPPRA Village, Kalunasan, Cebu City. He allegedly obtained the land from one Robert Rico (Rico) through a Deed of Sale with Transfer of Rights which was executed sometime in January 1988. Since 1971 until 1988, Rico and his late parents, Francisco Macasero and Emilia Macasero (Spouses Macasero), have been in exclusive, continuous, and uninterrupted possession of the land. After acquiring the lot, Buenviaje constructed a house and since then, he had been in possession of the property, which is covered by Tax Declaration No. GRC6-03-022-08098-CE.<sup>4</sup>

In 1994, Julieta’s father, Maximo Commendador (Commendador), asked for Buenviaje’s permission for him to construct at the back portion of the latter’s lot a small hut for temporary shelter of Spouses Catulong to which the latter agreed with the agreement that Spouses Catulong would vacate the said land whenever Buenviaje or his family would use it. On April

<sup>1</sup> *Rollo*, pp. 3-26.

<sup>2</sup> Penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo L. Delos Santos and Renato C. Francisco, concurring; *id.* at 167-173.

<sup>3</sup> *Rollo*, pp. 190-191.

<sup>4</sup> *Id.* at 167-168.

2010, Buenviaje demanded that Spouses Catulong vacate the property, but Spouses Catulong refused and even threatened to harm Buenviaje. A demand letter was also sent to Spouses Catulong which was ignored by Spouses Catulong.<sup>5</sup>

In their Answer, Spouses Catulong averred that they are the original possessors of Lot 2, Block 24 and that they occupied the property after Rafael became a member of the Old Philippine Railways Residents' Association, Inc. (OPPRA, Inc.). To prove their claim, they attached the following: (a) Rafael's Application for Membership with OPPRA, Inc., (b) Certification of Membership, (c) official receipts of his payments for his membership/entrance fee and (d) monthly dues.

Furthermore, Spouses Catulong maintain that when Rafael became a member of OPPRA, Inc. in 1993, they immediately constructed a house on Lot 2, Block 24. They claim that it was Buenviaje who entered the premises without knowledge and consent of OPPRA, Inc. and occupied only the adjacent Lot 1, Block 24 consisting of 119 sqm. They also denied that Rico was the previous possessor and owner of the lot being claimed by Buenviaje as Rico was not a member of OPPRA, Inc.<sup>6</sup>

In addition, Spouses Catulong averred that Rico's deed of sale was without force and effect as he was not a member of OPPRA, Inc., hence could not transfer any ownership over the two lots inside OPPRA Village. The said deed was also irregular since it did not contain the lot and block numbers, boundaries, and technical descriptions of the lots sold. Also, the lot was owned by the Province of Cebu and under the Sales Agreement entered into, between the said lot owner and OPPRA, Inc., the disposition of lots in Oppra Village was prohibited. Spouses Catulong also pointed out the tax declaration submitted by Buenviaje indicated that the lot he claimed was located at OPPRA Village, Lahug, Cebu City, while the tax declaration of the portion they occupied showed that Lot 2, Block 24 was located in Oppra Village, Kalunasan, Cebu City.<sup>7</sup>

The MTCC ruled that Buenviaje failed to prove his cause of action. It cited the provision in the Sales Agreement prohibiting among others, the sale of the lots in Oppra village within 10 years from the issuance of the certificate of title to the vendee. It was also noted by the MTCC that as of filing of the case, no certificate of title had yet been issued to the grantees-beneficiaries cum vendees of the OPPRA lots. The MTCC also found that the possessory right of Spouses Catulong originated from the Sales Agreement. They had been consistently paying their dues to OPPRA, Inc. and the taxes of the lot that they were occupying.<sup>8</sup>

<sup>5</sup> Id. at 168.

<sup>6</sup> Id.

<sup>7</sup> Id. at 169.

<sup>8</sup> Id. at 169-170.

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Aggrieved, Buenviaje appealed to the Regional Trial Court (RTC). In its January 4, 2013 Decision, the RTC reversed the decision of the MTCC on the basis that Buenviaje had adequately proven that he and his predecessors-in-interest had prior actual and physical possession of the subject lots over that of Spouses Catulong. The dispositive portion of the RTC decision reads:

FOR ALL OF THE FOREGOING CONSIDERATIONS, this Court hereby renders judgment, REVERSING, as it is hereby REVERSED, the decision of the lower court dated February 29, 2012.

A new one is hereby rendered in favor of the [petitioners] and against the [respondents], ordering the latter, as follows:

1. To vacate the subject parcel of land;
2. To remove all structures built thereon; and
3. To pay [petitioners] a monthly rental of P1,000.00 per month starting from date of the filing of the complaint on September 8, 2010 until the subject parcel of land is fully vacated.

SO ORDERED.<sup>9</sup>

The decision was appealed by Spouses Catulong to the CA, which granted the appeal and reversed and set aside the decision of RTC of Cebu City. The dispositive portion of the CA decision reads:

WHEREFORE, the petition is GRANTED. The Decision of the Regional Trial Court, Branch 16, Cebu City dated January 4, 2013 in Civil Case No. CEB-38753, is SET ASIDE. The Decision of the Municipal Trial Court in Cities Branch 6, Cebu City dated February 29, 2012 dismissing Civil Case No. R-56339 is hereby REINSTATED.

SO ORDERED.<sup>10</sup>

On August 7, 2015, Buenviaje filed a Motion for Reconsideration, but the same was denied by the CA in its Resolution<sup>11</sup> dated July 22, 2016.

Thus, this instant petition.

### The Issue

The sole issue in this case is whether the CA committed serious errors or grave abuse of discretion when it misapplied the law into given and established facts of the case as it does not find for the long prior physical and better right of possession of petitioner and a classic unlawful detainer case in accordance with law and jurisprudence.

<sup>9</sup> Id. at 146.

<sup>10</sup> Id. at 173.

<sup>11</sup> Id. at 190-191.

### The Court's Ruling

The petition is bereft of any merit.

Buenviaje argues that he and his predecessors-in-interest had prior actual and physical possession of the subject lots over that of Spouses Catulong. Such argument, however, must fail. In *National Onion Growers Cooperative Marketing Association, Inc. v. Lo*,<sup>12</sup> it has been held that prior physical possession in unlawful detainer cases are not an indispensable requirement. It is enough that the person suing has a better right of possession.

The deed of sale to which Buenviaje relied upon was not enough to grant him possession of the land subject of this controversy. The said document bore no weight since it is undisputed that the Province of Cebu owns the lot involved and it was subjected by the latter to a Sales Agreement with OPPRA, Inc. The Court has ruled time and again that "a person can sell only what he owns or is authorized to sell the buyer can as a consequence acquire no more than what the seller can legally transfer."<sup>13</sup> There is absence of any link which would establish any connection between Rico and the Province of Cebu or OPPRA, Inc. Thus, Rico had no right to dispose of the said land, as he had no ownership or whatever right over the same.

It was clear that the sale of the lots covered by the Sales Agreement are prohibited, one of the provisions in the said Agreement states:

(b) – That the individual vendee or group of vendees shall not sell, convey, transfer, assign, dispose of x x x the lots allocated, sold and/ or assigned to him x x x or any portion thereof or his x x x rights over the same, except by succession, during the life time, duration or effectivity (sic) of the conditional sale/s contract/s between him xxx and the Vendor herein x x x. Furthermore, no vendee or group of vendees x x x shall sell, alienate, transfer, or in any manner dispose of his x x x lot/s acquired by virtue hereof or the conditional/absolute sale x x x within a period of Ten (10) years from the date of the issuance to him x x x of the certificate/s of title to any person, except to the Vendor herein or the OPPRA, Inc.<sup>14</sup>

In the said provision, there is an unblemished fact that grantees of OPPRA, Inc. lots cannot dispose of the said property within a period of 10 years from the issuance to him of the certificate of title. Here, it is not possible for Rico to dispose of the subject land to Spouses Macasero because he was not proven to be a grantee of OPPRA, Inc. nor did he provide for any documents that would prove ownership. At that time, no certificates of title had been issued for the properties covered by the Sales Agreement, hence, the prohibition applies and the evidentiary worth of the deed of sale executed by Rico in favor of Buenviaje's wife must not be given any effect.

<sup>12</sup> 749 Phil. 249 (2004).

<sup>13</sup> 247-A Phil. 449, 457 (1988).

<sup>14</sup> *Rollo*, p. 172.

Furthermore, with regard to the allegation that he inherited the land from Spouses Macasero, such claim cannot be given any merit since no documentary proof was submitted by Buenviaje. In the case of *Spouses Ramos v. Obispo, et al.*,<sup>15</sup> the Court ruled that "it is axiomatic that under the Rules on Evidence a party who alleges a fact has the burden of proving it. A mere allegation is not evidence, and he who alleges has the burden of proving his allegation with the requisite quantum of evidence."<sup>16</sup> Buenviaje did not produce any Certificate of Live Birth or Affidavit of Acknowledgment to support his bare allegation. Hence, the claims of Buenviaje, without proof must fail for lack of sufficient evidence to sustain his claims.

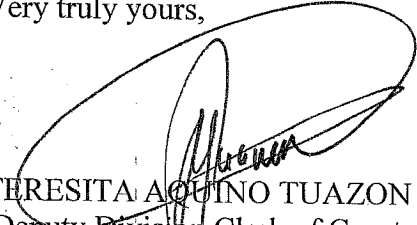
It must be also added that when Spouses Catulong purported that the property was distinct and different from the one claimed by Buenviaje, the latter was not able to disprove such averment. The best evidence could have been the geodetic survey showing that the portion being occupied by Spouses Catulong was within the lot he was claiming. However, Buenviaje only submitted photos which failed to solve the discrepancy of the locations of the subject properties claimed by the parties. In civil cases, the burden is on the plaintiff to establish his case by preponderance of evidence.<sup>17</sup> "Preponderance of evidence" means evidence which is of greater weight, or more convincing than that which is offered in opposition to it.<sup>18</sup>

By failing to present the required evidence, Buenviaje cannot obtain a favorable judgment. Therefore, his petition must fail.

**WHEREFORE**, the Decision dated June 30, 2015 and the Resolution dated July 22, 2016 of the Court of Appeals in CA-G.R. SP No. 07455 are hereby **AFFIRMED**.

**SO ORDERED.** (ZALAMEDA, J., additional Member per S.O. No. 2727, dated October 25, 2019)

Very truly yours,

  
TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court *with 12/20*  
26 DEC 2019

<sup>15</sup> 705 Phil. 221 (2013).

<sup>16</sup> Id. at 234.

<sup>17</sup> Section 1, Rule 133, RULES OF COURT.

<sup>18</sup> *Spouses Condes v. Court of Appeals*, 555 Phil. 311, 323 (2007).

PUBLIC ATTORNEY'S OFFICE (reg)  
Regional Special & Appealed Cases Unit  
3F, Taft Commercial Center  
Metro Colon Carpark, Osmeña Boulevard  
Brgy. Kalubihan, 6000 Cebu City

ATTY. WENDELLON A. BUENVIAJE (reg)  
Counsel for Respondent  
Door 6, Quano-Jakosalem Arcade  
National Highway, Tipolo  
6014 Mandaue City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 16  
6000 Cebu City  
(Civil Case No. CEB-56339)

JUDGMENT DIVISION (x)  
Supreme Court, Manila

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COURT OF APPEALS (x)  
Ma. Orosa Street  
Ermita, 1000 Manila  
CA-G.R. SP No. 07456

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