

**NENITA AQUINO, RUEL C. AQUINO AND NORBERTO E. MAGNO,
PETITIONERS, VS. SPS. RUPERTO ECRAELA AND JOSIE ECRAELA,
EVELYN RAMOS AND FE BENOZA RESPONDENTS.**

Ponente: REYES, JR., J.C., J.

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REYES, JR., J.C., J.:

Before the Court is a petition for review filed by Nenita Aquino, Ruel C. Aquino and Norberto E. Magno against Sps. Ruperto and Josie Ecraela, Evelyn Ramos and Fe Benzoza praying that the Decision dated May 8, 2012 of the Regional Trial Court (RTC), Branch 29 of Cabanatuan City and its Joint Resolution dated February 20, 2013, which affirmed in toto the Decision dated September 30, 2011 of the Municipal Trial Court (MTC) of Zaragoza, Nueva Ecija and denied their Motion for Reconsideration, respectively, be reversed and set aside.

These are the antecedents:

The Sps. Ruperto and Josie Ecraela, Evelyn Ramos and Fe Benzoza (Ecraelas et al.) filed on May 3, 2011 before the MTC of Zaragoza, Nueva Ecija a complaint for forcible entry against the Sps. Melecio and Nenita, Ruel Aquino and Berting Magno, (Aquinos et al.). The Ecraelas alleged that they are owners of a 40-square meter land located at Purok 4, Concepcion West, Zaragoza, Nueva Ecija which they bought from the Sps. Melecio and Nenita on April 16, 1991 and which they used as a right way, since the Ecraelas' house was located at the back portion of the house of the Aquinos. The Ecraelas claimed that on April 30, 2011, the Aquinos entered the property against their will and constructed a fence with the intention of depriving them of their right of way. The matter was brought to the barangay for possible conciliation, to no avail. (Rollo, p. 12).

The Aquinos meanwhile alleged that the Deed of Absolute Sale being presented by the Ecraelas was entered into only by Nenita's husband. While the Aquinos admit that there is a portion of the lot being used as a right of way, they refute the width and length stated in the complaint. The right of way was originally small and it just gradually widened through the passage of time as the Ecraelas already occupied a portion of the property of the Aquinos. They alleged that if the court will grant the prayer of the Ecraelas, they will be deprived a portion of their own property. (Rollo, p. 13).

On September 30, 2011, the MTC of Zaragoza, Nueva Ecija rendered its Decision:

“WHEREFORE, in view of the foregoing judgment is hereby rendered, in favor of the plaintiffs and against the defendant, ordering the latter to:

- immediately vacate and surrender possession of the lot subject matter of the dispute located at Barangay Concepcion West, Zaragoza, Nueva Ecija to herein plaintiffs;
- to pay the cost of this suit in the amount of Php 3,870.

SO ORDERED.” (Rollo, pp. 16-17).

The MTC found established the existence of the Absolute Deed of Sale over the subject property and the Ecraelas'

use of the lot as their right of way since the execution of the deed. The Ecraelas et al. have continuously used the property as their only way towards their houses from the main road for a long period of time. The MTC also found that the Aquinos' act of entering the land and erecting a fence thereon to exclude the prior possessors, constitutes force. While the Aquinos claim that they are merely exercising their right as owners of the land in question, cases have held that whatever may be the character of a party's possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him. (Rollo, pp. 14-16).

The Aquinos filed an appeal with the RTC, which rendered its Decision on May 8, 2012, thus:

“WHEREFORE, premises considered, the appeal is hereby DENIED. The assailed Decision of the Municipal Trial Court of Zaragoza, Nueva Ecija dated September 30, 2011 is AFFIRMED in toto.

SO ORDERED.” (Rollo, p. 22).

In resolving the appeal, the RTC held that:

“The lower court is correct in its findings that although the complaint in this case did not specifically contain the phrase 'prior physical possession', the allegations in paragraphs 4 and 5 of said complaint sufficiently met the requirement to vest it with jurisdiction over the subject matter of the case. Jurisdiction of a court over the subject matter is determined by the allegations of the complaint and cannot be made to depend upon the defenses set up in the answer or pleadings filed by the defendant. Examination of paragraphs 4 and 5 of the complaint clearly shows the allegation made pertaining to 'prior physical possession' although such phrase was not specifically written therein.

The defendants-appellants' position that either the Commission on the Settlement of Land Problems (COSLAP) or the Department of Environment and Natural Resources (DENR) which has jurisdiction over this case is likewise bereft of merit. The case of *Lee v. dela Paz* is in point in the matter. The Supreme Court ruled that 'the character of the property involved as to whether it is still public land or not, is also of no moment. Even the public lands can be the subject of forcible entry cases.'

The land in dispute is a two by twenty square meter (2x20sq.m.) portion of the lot owned by the defendants-appellants spouses Melecio and Nenita Aquino. This land was sold by the latter to the plaintiffs-appellees et al, on April 16, 1991 as evidenced by a Deed of Absolute Sale executed between them. After establishing their residence in the area in 1984, plaintiffs-appellees used this land as their right of way in going to and fro their respective residences from the main road. Such kind of use is considered prior physical possession within the meaning of the law. When the defendants-appellants caused the fencing of plaintiffs-appellees' right of way, thereby prohibiting them from enjoying the same, such action strongly indicates the use of force. 'The act of going on the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property and this is all that is necessary'.

x x x

Although the land in dispute is, indeed, included in the title of the defendant-appellant Nenita Cinense-Aquino, the fact remains that she has already sold this land to spouses Ecraela et al in 1991. Hence, it is unfair to say that the members of the family of Nenita Cinense-Aquino were the ones deprived of the land because she is no longer the owner of the land as she has long sold it to the spouses Ecraela, et al. Furthermore, it is beyond question that the plaintiffs-appellees have been in possession of this land as their right of way since putting up their residence in the area. This fact is not unknown to the members of the family of Nenita Cinense-Aquino. Fencing this land is a deprivation of the plaintiffs-appellees' possession and enjoyment of the property.

x x x

Finally, with respect to the contention that the assailed Decision is vague as to the dispositive portion of which refers merely to a 'defendant' without specifically referring who among the defendants the Decision is being directed to, the same is unmeritorious. All throughout the body of the decision, the lower court specified and identified the defendants as the ones being referred to therein. Obviously, the word 'defendant' in the dispositive portion is merely a typographical error, for actually, it refers to all the defendants." (Rollo, pp.19-22).

The Aquinos filed a Motion for Reconsideration, while the Ecraelas filed a Motion for Execution Pending Appeal, which motions were both denied by the RTC on February 20, 2013. (Rollo, p. 25).

Hence the present petition where the Aquinos raise the following assignment of errors. They claim that:

"The Honorable Court a quo, with all due respect, erred in:

- taking cognizance of the case because it has no jurisdiction over the same;
- considering that appellees were in prior physical possession of the lot despite their failure to allege and prove prior physical possession as contemplated and required by law;
- ruling that appellants entered the land through force despite the absence of proof to that effect and notwithstanding that the averment by appellees in their Complaint is that the entry into the lot and fencing thereof was by means of force, intimidation, stealth, threat and strategy;
- not considering that since the portion of the lot in dispute is included in the title of appellant Nenita Cinense Aquino, she and members of her family were the ones unlawfully deprived of the lot they owned.
- rendering the above Decision which aside from being contrary to law is vague." (Rollo, pp. 36-37).

The Aquinos argue that the Ecraelas et al. were not in prior physical possession of the subject lot thus the MTC had no jurisdiction over the case. The word "possession" in unlawful detainer and forcible entry cases refers to "physical" possession and not "legal" possession. Since the property subject of the complaint is a right of way, the Ecraelas could never be in physical possession thereof. Their possession could only be constructive or legal which is not the kind of possession required and mandated by law for the case to be governed by the Rules on Summary Procedure and for the MTC to have jurisdiction over the case. The Ecraelas et al., further failed to prove that the Aquinos entered the lot through force, intimidation, strategy, threat or stealth. The Aquinos were the ones in prior physical possession of the property which was just gradually widened by the Ecraelas et al., thereby resulting to the loss of a portion of the lot of the Aquinos. (Rollo, pp. 39-40).

The Aquinos further assert that it could either be the COSLAP or the DENR which has jurisdiction over the case as the lot appearing in the Deed of Absolute Sale is not yet covered by a title. Furthermore, the property involved in this case is part of the 844-square meter lot covered by Free Patent No. 034932-95-4709, thus the Aquinos are merely protecting their rights over the property. As the title of the Aquinos was issued by the DENR, the matter should have been referred to the said government agency. By not doing so, the Ecraelas violated the rule on non-exhaustion of administrative remedies, and the complaint should have been dismissed for being premature. (Rollo, pp. 40-41).

The Aquinos further argue that what the Ecraelas' should have filed before the RTC in its exclusive and original jurisdiction, is a Complaint for Re-opening of a Right of Way which is an action incapable of pecuniary estimation. They also assert that since the Sps. Ecraela have no basis in filing the present complaint against them (petitioners), all the more that the other respondents have no cause of action against them as they are not parties to the Deed of Absolute Sale which is the only documentary evidence relied upon by the respondents. (Rollo, pp. 41-42).

Finally, the Aquinos aver that even if the MTC Decision attains finality, it cannot be enforced for being vague as the dispositive portion refers merely to a defendant without specifically identifying which defendant the Decision is being directed. (Rollo, p. 43).

Respondents Ecraelas et al. meanwhile assert that the MTC had jurisdiction to entertain their complaint for forcible entry. They had prior possession of the property as the petitioners admitted that respondents had been occupying the lots behind petitioners' house since 1991, using the subject property as their right of way. Respondents' use of the subject lot is also subject of a Deed of Sale in 1991. The argument that it is the DENR which has jurisdiction over the case is erroneous since in forcible entry cases, the fact to be determined is possession only and not ownership. (Rollo, pp. 166-171).

The Court DENIES the petition.

As correctly held by the courts a quo, ejectment proceedings are summary proceedings intended to provide an expeditious means of protecting actual possession of property. The sole issue to be resolved in such cases is who is entitled to the physical or material possession of the premises or possession de facto. (*Domalsin v. Valenciano*, 480 SCRA 114, 131 [2006]).

Specifically in forcible entry cases, the plaintiff must prove that he was in prior possession of the disputed property and that the defendant deprived him of possession by any of the means provided for in Section 1, Rule 70 of the Rules of Court, namely: force, intimidation, threats, strategy and stealth. (*Philippine Tourism Authority v. Sabandal-Herzenstiel*, G.R. No. 196741, July 17, 2013).

The petitioners Aquinos, argue that the Ecraelas et al. were not in prior physical possession of the property. They claim that the possession contemplated in forcible entry and unlawful detainer cases refer to physical and not legal possession and since the disputed property is a right of way, their possession could only be constructive or legal which is not the possession contemplated in ejectment proceedings.

We disagree.

As correctly held by the MTC and the RTC, possession in the eyes of the law does not mean that a man has to have his feet on every square meter on the ground before he is deemed in possession. (*Philippine Tourism Authority v. Sabandal-Herzenstiel*, G.R. No. 196741, July 17, 2013).

In ejectment proceedings, the only issue for resolution is who is entitled to the physical or material possession of the property involved, independent of any claim of ownership set forth by any of the litigants. The party who can prove prior possession de facto may recover such possession even from the owner himself. Now, for one to be considered in possession, one need not have actual or physical occupation of every square inch of the property at all times. Possession can be acquired not only by material occupation but also by the fact that a thing is subject to the action of one's will or by the proper acts of possession. (*Bunyi v. Factor*, 591 SCRA 350, 358-359 [2009]).

The petitioners next argue that the Ecraelas failed to show the presence of force in this case.

On this matter, cases have held that it is not necessary that the plaintiff demonstrate that the taking was done with force, intimidation, threat, strategy or stealth. The mere act of going to the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property which is all that is necessary and sufficient to show that the action is based on the provisions of Section 1, Rule 70. The words "by force, intimidation, threat, strategy or stealth" encompass every situation or condition under which a person can wrongfully enter upon real property and exclude another, who has had prior possession therefrom. (*Bunyi v. Factor*, supra, pp. 361-362).

As correctly held by the trial court, when the Aquinos caused the fencing of Ecraela et al.'s right of way, thereby prohibiting them from enjoying the same, such indicates the use of force.

Jurisprudence holds that the fact of unlawful entry and the exclusion of the lawful possessor would necessarily imply the use of force. (*Philippine Tourism Authority v. Sabandal-Herzenstiel*, G.R. No. 196741, July 17, 2013).

As for the matter of jurisdiction, it is settled that what determines the nature of the action as well as the court which has jurisdiction over the case are the allegations in the complaint. In forcible entry cases, two allegations are mandatory for the municipal court to acquire jurisdiction: first, the plaintiff must allege prior physical possession of the property and second, he must allege that he was deprived of his possession by any of the means provided for in Section 1, Rule 70 of the Rules of Court. (*Domalsin v. Valenciano*, supra, p. 133).

Regardless of the actual condition of the title to the property, the one in peaceable, quiet possession shall not be thrown out by a strong hand, violence or terror. Neither is the unlawful withholding of property be allowed. The main thing that must be proven in an action for forcible entry is prior possession and that same was lost through force, intimidation, threat, strategy and stealth, so that it behooves the court to restore possession regardless of title or ownership. (*Domalsin v. Valenciano*, supra, p. 132).

The allegation that the MTC decision cannot be enforced for being vague likewise deserves scant consideration as a mere cursory reading of the body of the decision would show that the word “defendant” in the dispositive portion was a mere typographical error which should have read “defendants”, pertaining to the Sps. Melecio and Nenita Aquino, Ruel Aquino and Berting Magno, who were named defendants in the complaint a quo.

WHEREFORE, the petition is DENIED for lack of merit. The Decision dated May 8, 2012 of the Regional Trial Court, Branch 29 of Cabanatuan City and its Joint Resolution dated February 20, 2013 are hereby AFFIRMED.

SO ORDERED.

Lopez and Inting, JJ., concur.

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