

**SPS. EDWARD DAVID CROKEY AND AILEN TERANA CROKEY,
PLAINTIFFS-APPELLEES, VS. HEIRS OF ELEUTERIO JAPITAN
REPRESENTED BY MA. NILA JAPITAN FRANCISCO,
DEFENDANTS-APPELLANTS,**

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is an appeal on the Decision[1] dated March 9, 2009 (“assailed Decision”) and Order[2] dated August 27, 2009 (“assailed Order”) of the Regional Trial Court of Dakit, Bogo, Cebu, Branch 61, in Civil Case No. BOGO-01561 for Cancellation of Tax Declaration, Writ of Preliminary Injunction and Damages with prayer for issuance of Temporary Restraining Order (TRO). The assailed Decision granted plaintiffs-appellees' complaint and ordered the cancellation of Tax Declaration No. 20629 covering Lot No. 15505 and issued in the name of Sps. Eleuterio Japitan and Amada Soco. The same assailed Decision also ordered a permanent injunction against herein defendants-appellants and further ordered the latter to remove any constructions erected on Lot No. 15505 and to pay herein plaintiffs-appellees damages and attorney's fees. Meanwhile, the assailed Order denied defendants-appellants' Motion for Reconsideration seeking for the reversal of the trial court's assailed Decision.

The instant case arose when plaintiffs-appellees filed a Complaint[3] dated June 24, 2006 before the trial court for cancellation of Tax Declaration No. 20629 issued in favor of Sps. Eleuterio Japitan and Amada Soco, the same tax declaration covered Lot No. 15505 (“subject Lot”) situated in San Remigio, Cebu. In the same case, plaintiffs-appellees sought to enjoin the defendants-appellants from constructing cemented landmarks surrounding the subject Lot and from erecting a residential structure thereon.

Plaintiffs-appellees alleged in their Complaint that the subject Lot is adjacent to the west of Lots 7790 and 15381, which are owned and occupied by plaintiffs-appellees. Plaintiffs-appellees admitted that the subject Lot is classified as a public forest land, being a foreshore land, belonging to the government and is incapable of private appropriation and ownership. They, however, alleged that they have possessory rights over the subject Lot and claimed to be riparian owners (littoral owners to be exact) of such Lot. They claimed occupation and possession over the subject Lot through their predecessors-in-interest who planted coconut trees thereon. Thus, they concluded that they have a better right of possession over the same Lot as against other persons.

This physical and actual possession by the plaintiffs-appellees, according to them, was disturbed by herein defendants-appellants when the latter caused the construction of cemented landmarks on the corners of the subject Lot and the construction of a residential structure on the same area which fronted Lot 7790, which is owned by plaintiffs-appellees. Plaintiffs-appellees alleged that such constructions are illegal considering that defendants-appellants were not issued any permit or authorization by the Community Environment and Natural Resources Office (CENRO) of Carmen, Cebu.

Plaintiffs-appellees further alleged that they demanded the defendants-appellants to desist from continuing the illegal constructions but their demands were ignored.

On the part of defendants-appellants, through Nila Japitan Francisco, they alleged, in their Answer[4], that they are the ones possessing the subject Lot after the same was transferred to spouses Eleuterio Japitan and Amada Soco by spouses Pedro Pilapil and Maximina Andrin through a Deed of Sale dated October 4, 1965.

They contended that spouses Pilapil and Andrin possessed and occupied the subject Lot before the same was sold to spouses Japitan and Soco. And when the subject Lot was sold to spouses Japitan and Soco, the latter continued to possess and occupy the Lot, which possession and occupation were continued by the defendants-appellants. Defendants-appellants used as evidence of possession and occupation the Tax Declaration with number 20629 which was issued in the name of spouses Japitan and Soco.

Defendants-appellants also alleged that Nila Japitan Francisco has a pending application for Forest Lease Agreement with the CENRO of Carmen, Cebu.[5]

With these claims, defendants-appellants concluded that they have a better possessory right over the subject Lot, and being the actual occupants of the same, they could not be ordered to remove any improvements they have made thereon.

Moreover, defendants-appellants claimed that the trial court has no jurisdiction over the case considering that the controversy on who has better right to possess the subject Lot must be resolved by the CENRO or the Department of Environment and Natural Resources (DENR) which has the authority to grant applications for lease of forest or foreshore lands.

Defendants-appellants further argued that plaintiffs-appellees failed to implead indispensable parties considering that the individual heirs of spouses Eleuterio Japitan and Amada Soco were not named in plaintiffs-appellees' Complaint.

On April 18, 2011, the trial court rendered its assailed Decision[6] granting the reliefs prayed for in plaintiffs-appellees' Complaint. The decretal portion of the said Decision reads:

“WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants, as follows:

- 1) Making the Writ of preliminary prohibitory injunction permanent with cost against the Defendants;
- 2) Ordering the Defendants to remove the said illegal construction;
- 3) Directing the partial cancellation of Tax Dec. No. 20629 issued in the name of Sps. Eleuterio Japitan and Amada Soco to the effect that the questioned portion of the public forest land belonging to the Government is included in the said tax declaration, thereby removing and/or segregating the said portion of the public forest land from the lot being covered by the said tax declaration;
- 4) Ordering the Defendants to pay Plaintiffs the following sums:
 - (a) P50,000.00 as and by way of moral damages;
 - (b) P20,000.00 as and by way of exemplary damages;
 - (c) P30,000.00 as attorney's fees;
 - (d) P20,000.00 as litigation and necessary expenses;
 - (e) Cost of the suit.

SO ORDERED.”[7]

Defendants-appellants moved for a reconsideration of the above assailed Decision, but the same was denied in the assailed Order[8] of the trial court.

Hence, this appeal, which raised the following errors allegedly committed by the trial court:

1. “The Regional Trial Court erred in rendering a Decision on the merits when Defendant-Appellant still had yet to present her evidence in chief and was never declared in default;
2. The Regional Trial Court erred in finding merit in plaintiff’s cause of action when it is patently clear that the said Court had no jurisdiction;
3. The Regional Trial Court erred in proceeding with the hearing of the instant case when indispensable parties have not been impleaded.”[9]

We start Our discussion on the second assigned error, that is, the trial court had no jurisdiction to hear and try the instant case.

Defendants-appellants argue that the jurisdiction concerning the conflicting claims between the parties herein is with, at the first instance, the CENRO and, ultimately, with the DENR, considering that both parties filed an application for forest lease agreement before the said executive offices.

We disagree with such contention.

Well settled is the rule that jurisdiction of the court over the subject matter of the action is determined by the allegations of the complaint at the time of its filing, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted. On its face, the complaint must show enough ground for the court to assume jurisdiction without resort to parol testimony.[10]

From the allegations in the Complaint dated June 24, 2006, it appears that plaintiffs-appellees insist of a better right of possession over the subject Lot, as against herein defendants-appellants. Plaintiffs-appellees, being littoral owners, alleged that their peaceful possession and occupation of the subject Lot was disturbed by the defendants-appellants when the latter constructed cemented landmarks and residential structure thereon. Clearly, plaintiffs-appellees filed an accion publiciana which is a suit for recovery of the right to possess. Accion publiciana is an ordinary civil proceeding to determine the better right of possession of realty independently of title.[11] And “it has been a recognized principle of law in our jurisdiction that the courts have jurisdiction to determine who has prior possession of public land and entitled to be protected in such possession.”[12]

Also in the case of *Spouses Modesto v. Urbina*,[13] the Supreme Court had the occasion to elucidate that courts have the authority to resolve and settle questions relating to the possession of property even when the land in question is public land. It held:

“The authority of the courts to resolve and settle questions relating to the possession of property has long been settled. This authority continues, even when the land in question is public land. As we explained in *Solis v. Intermediate Appellate Court*:

We hold that the power and authority given to the Director of Lands to alienate and dispose of public lands does not divest the regular courts of their jurisdiction over possessory actions instituted by occupants or applicants against others to protect their respective possessions and occupations. While the jurisdiction of the Bureau of Lands [now the Land Management Bureau] is confined to the determination of the respective rights of rival claimants to public lands or to cases which involve disposition of public lands, the power to determine who has the actual, physical possession or occupation or the better right of possession over public lands remains with the courts.

The rationale is evident. The Bureau of Lands does not have the wherewithal to police public lands. Neither

does it have the means to prevent disorders or breaches of peace among the occupants. Its power is clearly limited to disposition and alienation and while it may decide disputes over possession, this is but in aid of making the proper awards. The ultimate power to resolve conflicts of possession is recognized to be within the legal competence of the civil courts and its purpose is to extend protection to the actual possessors and occupants with a view to quell social unrest.

Consequently, while we leave it to the LMB to determine the issue of who among the parties should be awarded the title to the subject property, there is no question that we have sufficient authority to resolve which of the parties is entitled to rightful possession.” (emphasis original)

However, before any possessory right could be claimed over a public land, it is necessary to show that such public land have been reclassified as alienable or actually alienated by the State to a private person,[14] or that the State has granted a permit or authority to occupy or utilize such public land.[15]

To recall, as admitted by both parties, the subject Lot is a tract of foreshore, mangrove and swampland, and was categorized as Mangrove and Swampland within the Forestland for Permanent Forest.[16] Therefore, the subject Lot, being a foreshore land, remains to be part of the public domain and is outside the commerce of man. It is not capable of private appropriation. It is part of the alienable land of the public domain and may be disposed of only by lease and not otherwise.[17]

However, under the provisions of the Public Land Act (CA 141), the Secretary of Environment and Natural Resources may grant temporary permission to qualified persons the use of foreshore areas, upon payment of a reasonable charge, for any lawful private purpose, subject to revocation at any time when, in his judgment, the public interest shall require it.[18]

Also, under DENR Administrative Order (DAO) No. 2004-24, before any person/entity could occupy, develop, utilize, and manage a foreshore land, a Foreshore Lease Agreement must be forged between the DENR and the applicant.[19]

Clearly, before any person could possess or utilize a foreshore land, the concerned agency, that is, the DENR must have authorized them to possess and utilize the same through a Foreshore Lease Agreement.

In this case, neither the plaintiffs-appellees had shown any evidence of a Foreshore Lease Agreement granted to them, much less any grant or permit issued by the DENR to possess and occupy the subject Lot.

On the part of the defendants-appellants, their application for lease of the subject Lot is still yet to be acted upon by the CENRO. Hence, they do not have any authority or right to possess the subject Lot. And being so, they cannot erect any structures on the subject Lot. They cannot also find protection of their alleged possessory right on their claim of ownership by virtue of the Deed of Sale dated October 4, 1965 because the sellers therein could not validly own a property that is part of the public domain.

Meanwhile, plaintiffs-appellees, even if they may be considered as littoral owners, they, too, cannot acquire possessory rights over the same subject Lot. Their alleged possession and occupation cannot be considered valid absent any permit from the government allowing them to utilize the subject Lot. Being littoral owners, defendants-appellants, indeed, have a preferential right[20] to file an application for lease of the subject Lot. But such is limited only to preference to file an application for lease, and not until they have forged foreshore lease agreement with the DENR could they validly possess, develop, utilize, and manage the subject Lot. Sadly, plaintiffs-appellees had not shown any approved foreshore lease agreement or any permit to occupy the said Lot. Verily, without this agreement or permit, plaintiffs-appellees cannot be considered as real parties-in-interest because they cannot also claim a possessory right over the subject Lot as against herein defendants-appellants.

In *Spouses Gulla v. Heirs of Labrador*,^[21] the Supreme Court has denied possessory right over a party who does not have any permit or grant from the government to possess a foreshore land and declared such party to have no cause of action against another person who has occupied the same foreshore land. The same case also held that the real party-in-interest to file a complaint against petitioners for recovery of possession of the subject property and cause petitioner's eviction therefrom is the Republic of the Philippines, through the Office of the Solicitor General.

The same is the fate of the instant case. While it is true that the trial court has jurisdiction to adjudicate the issue of possessory right over the subject Lot, it cannot grant such right absent any evidence to prove the same. And since neither the plaintiffs-appellees nor the defendants-appellants have proven that they have a right to possess the subject Lot, both parties cannot claim a cause of action against each other on the basis of a possessory right over the subject Lot. Moreover, plaintiffs-appellees cannot be the real parties-in-interest to pursue a case of recovery of possession against defendants-appellants.

This being the case, We are constrained to dismiss the Complaint filed by herein plaintiffs-appellees for lack of cause of action, without prejudice to the right of the Republic of the Philippines to take such appropriate action for the recovery of said lot from the defendants-appellants.

Considering the foregoing, the discussion of the other assigned errors is no longer necessary.

WHEREFORE, the instant appeal is GRANTED. The Decision dated March 9, 2009 and Order dated August 27, 2009 of the Regional Trial Court of Dakit, Bogo, Cebu, Branch 61, in Civil Case No. BOGO-01561 are REVERSED and SET ASIDE. The Complaint dated June 24, 2006 filed by herein plaintiffs-appellees is DISMISSED without prejudice to the right of the Republic of the Philippines to take such appropriate action for the recovery of said lot from herein defendants-appellants.

Let a copy of this Decision BE SERVED on the Office of the Solicitor General for appropriate action.

SO ORDERED.

Hernando, J., Chairperson, and Azcarraga-Jacob, JJ., concur.

[1] Records, pp. 145-162.

[2] Records, pp. 188-190.

[3] Records, pp. 1-19.

[4] Records, pp. 49-64.

[5] Records, pp. 61-63.

[6] *Supra*, note 1.

[7] Records, pp. 161-162.

[8] *Supra*, note 2.

[9] Rollo, p. 36.

[10] *Encarnacion v. Amigo*, G.R. No. 169793, September 15, 2006.

[11] *Lopez v. David*, G.R. No. 152145, March 30, 2004.

- [12] Espejo v. Malate, G.R. No. L-48612, January 27, 1983.
- [13] G.R. No. 189859, October 18, 2010.
- [14] Ibid.
- [15] Spouses Gulla v. Heirs of Labrador, G.R. No. 149418, July 27, 2006.
- [16] See also Certification dated June 5, 2006 from CENRO, Records, p. 14.
- [17] Manese, et al. v. Spouses Velasco, et al., G.R. No. 164024, January 29, 2009.
- [18] Sec. 68, CA 141.
- [19] Sec. 2 (c), DAO No. 2004-24.
- [20] Sec. 6, DAO No. 2004-24.
- [21] G.R. No. 149418, July 27, 2006.

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