

**DOMINADOR MALING, NESTOR UBANDO AND ELLA N. SALVACION,
PETITIONERS, VS. ZENAIDA SORIANO, REPRESENTED BY SPOUSES
NICANOR CUDIAMAT, REGIONAL TRIAL COURT, BRANCH 42,
PROVINCE OF OR...**

Ponente: CRUZ, R.A. J.

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CRUZ, R.A. J.:

THE CASE

This is a Petition for Review under Rule 42 of the Rules of Court seeking to annul and set aside the Decision dated September 20, 2012[1] of the Regional Trial Court (RTC), Branch 42, of Oriental Mindoro in Civil Case No. 2946-12, which affirmed the Decision dated May 15, 2012[2] of Municipal Trial Court of Pinamalayan, Oriental Mindoro in Civil Case No. 534. The subsequent Order dated January 21, 2013[3] denied reconsideration thereof. The dispositive portion of the Decision dated September 20, 2012 reads:

" xxx xxx xx

ACCORDINGLY, finding no reversible error in the decision of the Municipal Trial Court of Pinamalayan, Oriental Mindoro, the same is hereby affirmed in toto.

xxx xxx xxx "

THE ANTECEDENTS

(a) Before the First Level Court

Zenaida Soriano represented by Spouses Nicanor and Letty Cudiamat, as plaintiff, filed a complaint for ejectment and damages with preliminary injunction against Diego Reynoso, Nadie Maling, Nestor Ubando, Ella Salvacion and Sally Mogol, as defendants, before the Municipal Trial Court (MTC) of Pinamalayan, Oriental Mindoro docketed as Civil Case No. 534.

The Complaint[4] alleges the following material facts:

“ xxx xxx xxx

- That, defendants individually approached the plaintiff and requested the latter that they be allowed to construct their respective houses in the property referred to in paragraph 2 hereof;

- xxx plaintiff graciously granted the request of the defendants with the condition that they shall never construct a house of strong materials but only temporary dwelling in places in this lot and further imposed the condition that they will vacate the premises wherein their houses are to be constructed upon the demand of the plaintiff;

- xxx plaintiff allowed the defendants to enter, take possession and construct their respective houses without any lease rental provided they strictly abide with the conditions imposed upon them by the former;
- xxx plaintiff herself, thru her attorney-in-fact and lately thru her lawyer demanded of the defendants to remove their respective houses in her property and vacate the same as she now needs this lot;
- xxx defendants refused to remove their respective houses and vacate the premises despite repeated demands;
- xxx defendants are introducing other improvements in the lot subject of the instant case which acts of the defendants if not timely enjoined by the lawful processes of this Honorable Court will further create legal implication and will cause irreparable damages to the herein plaintiff as she is intending to construct a building in these premises;
- xxx the unjustified and unwarranted refusal of the defendants to vacate the premises and surrender the possession thereof to the plaintiff compelled her to engage the services of counsel xxx xxx;

xxx xxx xxx “

In their Answer with Counterclaim,[5] defendants denied the allegations of the complaint and by way of special and affirmative defenses alleged that, the complaint states no cause of action, the court has no basis to assume jurisdiction over the nature and subject matter of the action because there is no specific allegation as to the dates of their initial possession or occupancy of the subject lots,; there is no specific allegation as to date of demands to vacate to reckon the one (1) year jurisdictional period; there is no specific allegation as to the assessed value of the subject lots; plaintiff’s TCT No. T-7611 is fake and spurious; they have acquired the subject lot by acquisitive prescription.

On January 16, 2012, the MTC issued an Order[6] dismissing the complaint for failure of both parties to appear during the preliminary conference.

Plaintiff filed a motion for reconsideration.[7] By Order dated January 26, 2012,[8] the MTC granted the motion and set the preliminary conference on February 21, 2012.

After the termination of the preliminary conference, the MTC ordered the parties to submit their respective position papers and other evidence.[9]

On May 15, 2012, the MTC rendered a Decisionx in favor of plaintiff. It ruled that plaintiff, as the registered owner of the subject lots, has the right of possession. Since plaintiff’s property is registered under the Torrens system, her title is presumed legal and can only be assailed in an action expressly instituted for that purpose and not in an action for unlawful detainer. Finally, defendants’ assertion that they have already acquired the property through acquisitive prescription must fail.

The fallo of the Decision reads:

" xxx xxx xxx

WHEREFORE, finding the allegations of the plaintiff to be with merit, judgment is hereby rendered in favor of

the plaintiff and against the defendants. Defendants, their privies and all persons claiming rights under them are hereby ordered to:

- Vacate the property and surrender possession thereof to plaintiffs.
- Remove houses, improvements and structures found therein.
- Pay attorney's fees in the amount of P5,000.00.
- Pay the cost of suit.

SO ORDERED.

xxx xxx xxx “

(b) Before the Second Level Courts

Defendants appealed the said decision to the Regional Trial Court (RTC), Branch 42 of Oriental Mindoro, which was docketed as Civil Case No. 2946-12.[11] On May 15, 2012, the RTC issued a Decision[12] affirming the MTC. It ratiocinated that:

“ xxx xxx xxx

With respect to the issue raised by the defendants-appellants that there is no specific date as to their initial occupancy on the land in question. xxx xxx there is no necessity of specifically stating that the initial date of occupancy because the reckoning period of one year in unlawful detainer is the last date of demand to vacate. As such, this case was filed within the reglementary period of one year from the last demand which was October 1, 1998 (Heirs of Fernando Vinzonns vs. CA 315 SCRA 541)

The defendants-appellants also raise the issue that the assessed value of the subject lot was not alleged in the complaint. In an unlawful detainer, as in this case, the assessed value of the subject property is immaterial and need not be stated in the determination of the Court's jurisdiction because unlawful detainer is within the exclusive and original jurisdiction of the Court of first level. xxx xxx

The defendants also claimed to have acquired the subject property by acquisitive prescription; hence, they should not be ejected on the land in question. Such claim is untenable because as correctly ruled by the lower court in its decision no title to registered land in derogation of the title of the registered owner may be acquired by acquisitive prescription or adverse possession (Cain vs. CA 239 SCRA 252).

In their last effort to have the reversal of the appealed decision in their favor, the defendants-appellants argued that the title of the plaintiff-appellee is void for being fake or spurious. The Court is not in accord with such contention because a title cannot be collaterally attacked. It needs a separate action to have it annulled. xxx xxx.

xxx xxx xxx “

Hence, the RTC decreed:

" xxx xxx xx

ACCORDINGLY, finding no reversible error in the decision of the Municipal Trial Court of Pinamalayan,

Oriental Mindoro, the same is hereby affirmed in toto.

xxx xxx xxx "

Defendants filed a motion for reconsideration[13] but the same was denied in the Order dated January 21, 2013.[14]

Hence, this petition.

THE ISSUES BEFORE US

In assailing the decision, defendants, as petitioners before Us, advance the following posers for Our resolution, that:

I. THE MTC ORDER OF DISMISSAL DATED JANUARY 16, 2012 HAS ATTAINED FINALITY AND THEREFORE THE SUBSEQUENT PROCEEDINGS INCLUDING THE MTC DECISION DATED MAY 15, 2012 ARE NULL AND VOID;

II. ASSUMING THE COURT A QUO STILL HAS JURISDICTION TO ENTERTAIN THE APPEAL, THE DECISION OF THE RTC SHOULD BE SET ASIDE FOR BEING CONTRARY TO LAW AND EVIDENCE.

Petitioners argue that the RTC has no jurisdiction to entertain the appeal because the MTC Order dated January 16, 2012, which dismissed the complaint for failure of the parties to appear during the preliminary conference, was already final and executory. They submit that a motion for reconsideration of a judgment is a prohibited pleading under the Rules of Summary Procedure. It was erroneous therefore for the MTC to reconsider its order of dismissal and the subsequent proceedings including the MTC Decision dated May 15, 2012 are null and void.

Even assuming that the RTC has jurisdiction over the appeal, the complaint for unlawful detainer must still be dismissed. While the complaint alleges unlawful detainer, private respondent, as plaintiff, failed to substantiate her allegations. Private respondent did not submit her position paper and other supporting evidence before the MTC. Also, the purported Letter dated October 1, 1998 does not constitute a sufficient and valid demand to vacate under Section 2, Rule 70 of the Rules of Court. Because there is no specific demand to vacate and pay reasonable compensation for the use of the subject lot, the complaint should have been dismissed.

OUR RULING

Issues not previously
ventilated before the
RTC may not be
considered and
ruled upon

Petitioners essentially contend that the RTC has no jurisdiction to entertain the appeal. They pointed out that as early as January 16, 2012, the MTC issued an Order dismissing the complaint for failure of both parties to appear during the preliminary conference. Since a motion for reconsideration of a judgment is a prohibited pleading under the Rules of Summary Procedure, it was erroneous for the MTC to grant private respondent's motion and reconsider its previous order of dismissal. Consequently, the subsequent proceedings in the MTC including its Decision dated May 15, 2012 are null and void.

A perusal of the Memorandum of Appeal filed by petitioners before the RTC reveals that they never questioned the alleged procedural error of the MTC. Neither have they raised this matter in the motion for reconsideration

before the RTC. Obviously, petitioners are now estopped and are not allowed to challenge the decision on grounds of alleged technicalities being belatedly raised as an afterthought.

It is a well-settled rule that points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic consideration of due process impels this rule.[15] Clearly, matters not taken up below cannot be raised for the first time on appeal. Fair play, justice, and due process dictate that We cannot pass upon this question.

The RTC erred in ruling
in favor of private respondent
because the latter failed
to substantiate her
allegations, hence, the
complaint for unlawful
detainer must be dismissed

Petitioners also point out that the RTC erred in affirming the MTC because private respondent did not submit her position paper and other supporting evidence, thus, she failed to substantiate her allegations. Also, the purported Letter dated October 1, 1998 does not constitute a sufficient and valid demand to vacate under Section 2, Rule 70 of the Rules of Court. Because there is no specific demand to vacate and pay reasonable compensation for the use of the subject lot, the complaint for unlawful detainer should have been dismissed.

Unlawful detainer is a quieting process that is summary in nature. It is designed to recover physical possession through speedy proceedings that are restrictive in nature, scope and time limits. Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied.[16] The possession of the defendant in unlawful detainer originally legal but became illegal due to the expiration or termination of the right to possess.[17] In fact, the only issue to be resolved in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties involved.[18]

Then as now, in civil cases, the plaintiff, the party asserting the affirmative of an issue, has the burden of proving his case by preponderance of evidence.[19] She has the burden of presenting evidence required to obtain a favorable judgment.[20]

The records bear out that the issue of whether the complaint sufficiently stated a cause of action for unlawful detainer was resolved in Our Decision dated February 23, 2006.[21] However, even if We ruled that the complaint sufficiently makes out a case for unlawful detainer, it is still incumbent upon private respondent, as plaintiff, to prove the following: (1) the possession of the property by the defendant was by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by the plaintiff to the defendant about the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of its enjoyment; and (4) within one year from the making of the last demand to vacate the property on the defendant, the plaintiff instituted the complaint for ejectment.[22]

In the Decision dated May 15, 2012,[23] the MTC explicitly ruled that "both parties did not submit their respective position papers." However, even without the position papers, a judgment may still be rendered on bases of the complaint, answer and the record of the preliminary conference.[24] After wading the records, We find that private respondent, as plaintiff, miserably failed to prove the foregoing requisites. Private respondent, as plaintiff must, at least, show overt acts indicative of her or her predecessor's permission to occupy the subject

property. It appears that other than Transfer Certificate of Title No. T-7611 issued by the Registry of Deeds of Province of Oriental Mindoro[25] attached to the complaint, private respondent did not adduce any other competent evidence to strengthen her cause. Without any evidence to support private respondent's claim of tolerance, such allegation is self-serving. A bare allegation of tolerance will therefore not suffice. As held Jose vs. Alfuerio, et.al.,[26] a complaint which fails to positively aver any overt act on the plaintiff's part indicative or permission to occupy the land, or any showing of such fact that during the trial is fatal for a case of unlawful detainer.

Also, Section 1, Rule 70 of the Rules of Court allows a plaintiff to bring an action in the proper inferior court for unlawful detainer within one (1) year, after such unlawful withholding of possession, counted from the date of last demand.[27] Here, private respondent did not even bother to present or attach a copy of the purported Notice or Demand Letter dated October 1, 1998 she allegedly sent to petitioners. There is no evidence on record that petitioners were served with notice or demand to vacate. We also cannot determine whether the complaint for unlawful detainer was filed within the one-year period. In short, there is dearth of evidence supporting private respondent's cause of action against petitioners.

While petitioners submitted copies of the Demand Letter dated October 1, 1998 addressed to Nestor Ubando and Nadie Maling, marked as Exhibits "1"[28] and "2"[29] in their position paper,[30] We find the same bereft of probative value because they were not presented and admitted before the MTC. As previously discussed, the MTC ruled that both parties did not submit their position papers. Not being part of the records, they lack credence.

And, even if petitioner has shown proof of ownership, her complaint for unlawful detainer must fail. The case of Carbonilla vs. Abiera[31] is apt. There, it was held that an ejectment case will not necessarily be decided in favor of one who has presented proof of ownership of the subject property. Key jurisdictional facts constitutive of the particular ejectment case filed must be averred in the complaint and sufficiently proven, thus:

“ xxx xxx xxx

Without a doubt, the registered owner of real property is entitled to its possession. However, the owner cannot simply wrest possession thereof from whoever is in actual occupation of the property. To recover possession, he must resort to the proper judicial remedy and, once he chooses what action to file, he is required to satisfy the conditions necessary for such action to prosper.

In the present case, petitioner opted to file an ejectment case against respondents. Ejectment cases—forcible entry and unlawful detainer—are summary proceedings designed to provide expeditious means to protect actual possession or the right to possession of the property involved. The only question that the courts resolve in ejectment proceedings is: who is entitled to the physical possession of the premises, that is, to the possession de facto and not to the possession de jure. It does not even matter if a party's title to the property is questionable. For this reason, an ejectment case will not necessarily be decided in favor of one who has presented proof of ownership of the subject property. Key jurisdictional facts constitutive of the particular ejectment case filed must be averred in the complaint and sufficiently proven.

The statements in the complaint that respondents' possession of the building was by mere tolerance of petitioner clearly make out a case for unlawful detainer. Unlawful detainer involves the person's withholding from another of the possession of the real property to which the latter is entitled, after the expiration or termination of the former's right to hold possession under the contract, either expressed or implied.

A requisite for a valid cause of action in an unlawful detainer case is that possession must be originally lawful, and such possession must have turned unlawful only upon the expiration of the right to possess. It must be shown that the possession was initially lawful; hence, the basis of such lawful possession must be established. If, as in this case, the claim is that such possession is by mere tolerance of the plaintiff, the acts of tolerance

must be proved.

Petitioner failed to prove that respondents' possession was based on his alleged tolerance. He did not offer any evidence or even only an affidavit of the Garcianos attesting that they tolerated respondents' entry to and occupation of the subject properties. A bare allegation of tolerance will not suffice. Plaintiff must, at least, show overt acts indicative of his or his predecessor's permission to occupy the subject property. (Underscoring Ours).

xxx xxx xxx “

It is fundamental that complainants in an ejectment case must allege and prove that they had prior physical possession of the property before they were unlawfully deprived thereof by defendants.xxxii Private respondent did not present any evidence to substantiate her allegations, therefore, the complaint for unlawful detainer should be dismissed.

WHEREFORE, premises considered, the petition is GRANTED. The assailed Decision dated September 20, 2012 of the Regional Trial Court (RTC), Branch 42, of Oriental Mindoro in Civil Case No. 2946-12 is REVERSED AND SET ASIDE. The complaint for unlawful detainer is DISMISSED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Abdulwahid, J.S., Chairperson and Barza, R.F., JJ., concur.

[1] Penned by Judge Recto A. Calabocal; Rollo, pp. 33-35.

[2] Penned by Judge Rosalie Ang Lui; Ibid., pp. 100-102.

[3] Id., p. 128.

[4] Id., pp. 37-40.

[5] Id., pp. 42-46.

[6] Id., p. 77.

[7] Id., pp. 78-79.

[8] Id., p. 80.

[9] Order dated March 28, 2012, id., p. 86.

[10] Supra, Note 2.

[11] Notice of Appeal, id., p. 103-104 and Memorandum of Appeal, id., pp. 107-115.

[12] Supra, Note 1.

[13] Id., pp. 119-127.

[14] *Supra*, Note 3.

[15] *Enesio vs. Tulop*, G.R. No. 183923, November 27, 2013, citing *Mark Anthony Esteban, etc. v. Spouses Rodrigo C. Marcelo and Carmen T. Marcelo*, G.R. No. 197725, July 31, 2013, citing *Nunez v. SLTEAS Phoenix Solutions, Inc.*, G.R. No. 180542, April 12, 2010, 618 SCRA 134, 145

[16] *Corpuz vs. Spouses Agustin*, G.R. No. 183822, January 18, 2012. Citing *Canlas vs. Tubil*, G.R. No. 184285, 25 September 2009, 601 SCRA 147.

[17] *Spouses Silverio vs. Spouses Marcelo*, G..R. Nos. 184079 and 184490, April 17, 2013. Citing *Corpuz v. Agustin*, G.R. No. 183822, January 18, 2012, 663 SCRA 350, 362.

[18] *Samelo vs. Manotok Services, Inc.*, G.R. No. 170509, June 27, 2012. Citing *Racaza v. Gozum*, 523 Phil. 694, 707 (2006). *Mendoza v. Court of Appeals*, 492 Phil. 261, 265 (2005).

[19] *Borlongan vs. Madrideo*, G.R. No. 120267, January 25, 2000. Citing *New Testament Church of God v. Court of Appeals*, 246 SCRA 266, 269 (1996); *Republic v. Court of Appeals*, 204 SCRA 160, 168 (1991).

[20] *Borlongan vs. Madrideo*, *ibid.*, *Transpacific Supplies, Inc. v. Court of Appeals*, 235 SCRA 494, 502 (1994); *Geraldez v. Court of Appeals*, 230 SCRA 320, 330 (1994); *Republic v. Court of Appeals*, 182 SCRA 290, 301 (1990).

[21] Penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Marina L. Buzon and Aurora Santiago-Lagman; Rollo, pp. 71-76.

[22] *Macaslang vs. Zamora*, G.R. No. 156375, May 30, 2011. Citing *Cabrera v. Getaruela*, G.R. No. 164213, April 21, 2009, 586 SCRA 129, 136-137.

[23] *Id.*, pp.100-101.

[24] Section 10 of the Rules of Summary Procedure.

[25] Marked as Annex “A”; Rollo, p.41.

[26] G.R. No. 169380, November 26, 2012. Citing *Sarona, et al. v. Villegas, et al.*, 131 Phil. 365, 372 (1968).

[27] *Canlas vs. Tubil*, G.R. No. 184285, September 25, 2009. Citing *Heirs of Fernando Vinzons vs. Court of Appeals*, 374 Phil. 146, 152 (1999).

[28] *Id.*, p. 98.

[29] *Id.*, p.99.

[30] Position Paper marked as Annex “U”; *Id.* Pp. 83-99.

[31] G.R. No. 177637, July 26, 2010. Citing *Go, Jr. v. Court of Appeals*, 415 Phil. 172, 183-184 (2001). *David v. Cordova*, 502 Phil. 626 (2005). *Republic v. Luriz*, G.R. No. 158992, January 26, 2007, 513 SCRA 140, 152-153. *Spouses Macasaet v. Spouses Macasaet*, 482 Phil. 853 (2004).

[32] *Cansino vs. Court of Appeals*, G..R. No. 125799, August 21, 2003. Citing *Go, Jr. v. Court of Appeals*, 362 SCRA 755 (2001).

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