

**MODESTA JIMENEZ VDA. DE NOCETE, PLAINTIFF?APPELLANT, VS.
PILAR OIRA, DEFENDANT?APPELLEE.**

G.R. No. L-23792. March 28, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

This is a pauper's appeal from the order of the Court of First Instance of Negros Oriental, the Honorable Judge Macario P. Santos, presiding, dismissing the case on the stated reasoning that it being one of forcible entry appealed from the municipal court (now City Court) of Dumaguete, Negros Oriental and the "pleadings of the parties show clearly that the question of ownership over the land in question is very much involved and for that reason, this case should have been dismissed outright in the inferior court; added to this is the fact that the original plaintiff has already died. Since actual possession is an indispensable requisite in a forcible entry case, which circumstance is wanting in the now plaintiff, for the most that she could reasonably aver is only constructive possession which began upon the death of the original plaintiff, her case is untenable."

The lone assignment of error of appellant reads thus:

THE TRIAL COURT ERRED IN DISMISSING THE ACTION OF THE PLAINTIFF:

A. DUE TO THE DEATH OF THE ORIGINAL PLAINTIFF, MARCELO NOCETE, PLAINTIFF-APPELLANT'S HUSBAND AND PREDECESSOR-IN--INTEREST, DURING THE PENDENCY OF THE APPEAL IN THE TRIAL COURT.

B. SINCE THE QUESTION OF OWNERSHIP OVER THE LAND IN QUESTION IS INVOLVED AS SHOWN IN THE PLEADINGS.

After going over the record on appeal herein, We find no other recourse but to dismiss this appeal for want of appellate jurisdiction on the part of this Court inasmuch as the inferior court was without original jurisdiction in the premises. To be sure, We have come to this conclusion not for the reasons advanced by the court a quo, but for others, more patent which from the very start should not have escaped the justice of the peace with whom the complaint was filed. Indeed, this case has been treated all along as one of forcible entry whereas very little reflection is needed for anyone to see that it is not such a case. Withal, a cursory read-ing of the answer filed by the defendant in the inferior court readily reveals that plaintiff and defendant are referring to distinct lots, albeit they both proceeded from the subdivision of a bigger lot into six aliquot parts; plaintiff acquired one part and the defendant be-came the owner of another part.

The original complaint filed in the inferior court contained the following pertinent material allegations:

"C O M P L A I N T

x x x x x

2. That plaintiff has been the legal, actual and physical possessor of a portion of a parcel of land, consisting of

one-sixth (1/6) share thereof, together with the im-provements existing thereon, be-ing a portion of Lot No. 3463 of the Dumaguete Cadastre, which is more particularly described and bounded as follows:

ORIGINAL CERTIFICATE OF TITLE No. 557-A (now TCT No. T-81)

A parcel of land (Lot No. 3463 of the Cadastral Survey of Dumaguete) with the improvements thereon, situated in the barrio of Candaw-ay, City of Dumaguete, Philippines. Bounded on the NE., by Lots Nos. 3462 & 3466; on the SE., by Lot No. 3466, Sapang Okay, and Lot No. 3463; on the SW., by Lots Nos. 3463 & 3464; and on the NW., by Lots 3461 and 3458; containing an area of FORTY-FIVE THOUSAND FIVE HUNDRED SIXTY-EIGHT (45,568) SQUARE METERS, more or less, and assessed at P150.00 under Tax Declaration No. 15308.

x x x x

5. That from 1925, date of his purchase, plaintiff immediately took actual and physical possession of the premises in question, openly, peacefully, adversely, in concept of owner, and continuously until this year 1961, when, in the month of May, 1961, and then again on Septem-ber 8, 1961, respectively, his posses-sion has been unlawfully disturbed by defendant and illegally dispossessed plaintiff by force, intimidation, threat, stealth or strategy, to the damage and prejudice of plaintiff.

x x x x

12. That in the month of May, 1961, defend-ant entered the land in question, and by means of force, intimidation, threat, stealth or strategy, illegally dispos-sessed plaintiff of the land and unlawfully wrested from him his possession thereof, gathered the coconuts on the land and availed herself of the proceeds thereof in the amount of P49.00, to the damage and preju-dice of plaintiff.

13. That despite the pleading made by plaintiff to defendant not to re-peat her unlawful act alleged in the preceding 12th paragraph, which, by the way, lasted for only about one day in the month of May, 1961, for defendant left the premises im-mediately after gathering the coco-nuts, defendant, on September 8, 1961, again entered the land in question, and by means of force and intimidation illegally dispossessed plaintiff of the land and unlawfully wrested from him his possession thereof, gathered the coconuts on the land and availed herself of the fruits thereof in the amount of P49.00, to the damage, and preju-dice of the plaintiff.

14. That every after harvesting and gathering the coconuts in the land, one day in May, 1961, and again on September 8, 1961, defendant leaves the premises in question and plain-tiff fears that since harvest time is approaching, defendant will again enter the land and harvest the pro-ducts thereof."

For emphasis, the following additional allegations are quoted separately:

"PETITION FOR PRELIMINARY INJUNCTION

12. Paragraphs 1 to 14 above are reproduced herein by reference.

13. That the unlawful and illegal, acts of the defendant adverted to above, unl-ess restrained, would cause great or irreparable injury to plaintiff.

14. That plaintiff is entitled to an injunction, restraining, and enjoining de-fendant from the commission or continuance of her unlawful and illegal acts of forcibly entering the lot in question and gathering and har-vesting the products thereon.

15. That great or irreparable injury would result and suffered by plain-tiff before the matter can be heard on notice, and plaintiff is ready and willing to put up the requisite bond for the issuance of the injunc-tion."

In the light of these allegations, certainly, this is not a case of forcible entry, for the very simple reason that the

defendant allegedly entered the land of the plaintiff only one day each in the months of May and September, 1961, leaving immediately after harvesting coco-nuts therein, and on the day the complaint was filed, plaintiff was the one in actual physical possession of the land in question. Properly considered, the said complaint alleges three causes of action, the first two referring to the allegedly unauthorized entries or trespassing of one day each in May and September, 1961 by the defendant and her gathering or harvesting of plaintiff's coconuts therein (valued totally at P98.00) for which plaintiff is asking for reimbursement and damages and the third being the plaintiff's fear that "since harvest time is approaching, defendant will again enter the land and harvest the products thereof", against which he asks for (a writ of preliminary) injunction.

Without these allegations and the prayer for injunction, the plaintiff's action is a simple one for recovery of the cost of the coconuts harvested allegedly by the defendant. It is likely that the plaintiff so thought his action to be, because the writ of injunction he prayed for was only a preliminary one, little realizing, perhaps, that the court had no jurisdiction to issue such a writ, being merely an inferior court, not a court of first instance upon which such jurisdiction is conferred by law. Only if his case were really a forcible entry one that the inferior court could legally issue a writ of preliminary injunction.[1] On the other hand, We perceive that plaintiff's main concern was to stop defendant from going back for another one-day excursion or trespass in his land. For this reason, it is more in consonance with this objective that his complaint should be treated as one for injunction, which, of course, is beyond the jurisdiction of the inferior court. (See *Rustia vs. Franco*, 41 Phil. 280, 283)

We deem it unnecessary to deal more than in passing, with the other points discussed by the parties. We consider the way they were handled by the lower court as more fit for the attention of the Department of Justice in its effort to improve the quality of the judicial service in this country. Just as an example, the two grounds invoked by the court *quo* in dismissing appellant's case, already stated at the outset hereof, are clearly erroneous. His Honor held that by the allegations in the pleadings, it is obvious that the issue of ownership is involved, thus overlooking that it is already settled by decisions of this Court that inferior courts do not lose jurisdiction over cases of forcible entry and unlawful detainer merely because the issue of ownership is raised in the pleadings and that it is only after evidence is presented and the court finds therefrom that the question of possession is inextricably fused with the issue of ownership, such that the former cannot be decided without first passing on the latter, that it can declare itself without jurisdiction. (Moran, *Comments on the Rules of Court*, 1963 ed., Vol. III, pp. 280-281.) Likewise, His Honor held that because the plaintiff died while the appeal to the court of first instance was pending, the case had to be dismissed, since "actual possession is an indispensable requisite in a forcible entry case, such circumstance is wanting in the plaintiff (the widow who substituted for the deceased plaintiff on behalf of his estate, at least half of which was hers as her share of the conjugal assets), forgetting that, if this case were a genuine one of forcible entry, it was the actual possession of her husband and/or the family prior to the entry that would be material and said actual possession passed to his estate juridically and factually upon his death, said estate being, legally speaking a continuation of the deceased plaintiff's person and personality. It would be subversive of the social order and the peace and tranquility in the community, if just because the plaintiff in a forcible entry case dies, the estate would be held as without personality to continue the action to oust the intruder from the property concerned. Again, the court *quo* and appellee seemed to be of the view that the action of forcible entry is a personal one, which is erroneous, since definitely, such an action is a real one, being founded on the privity of the real property, the land or building involved, even if at the same time it is in personam and, not in rem.

This case is indeed a clear example of how inadequate understanding of the simplest rules of procedure on the part of some members of the bar, no less than some judges, can cause useless effort, anxiety and expense to the parties and, of course, the clogging of the dockets of the courts, with the consequent detriment to public interest. Much of the delay in the administration of justice so much decried by many these days, can be easily relieved, if

lawyers and, particularly, judges of the courts of first instance, devoted more time to acquaint themselves with - at least, the basic rules of procedure and took greater interest in trying to adhere to them, without forgetting at the same time that technicalities that subvert substantial justice must be disregarded. In his short tenure of hardly three months so far in this Court, the writer of this opinion has observed that a great number, if not the majority of the cases coming up here for resolution, involve questions of procedure, very often so simple that it is to be wondered why they ever reached this Court. Thanks to Republic Act 5440, this Court can, at least, minimize now instances of this nature, since under this law, the Court can dismiss outright this kind of appeals, but the Court still needs the cooperation of the lower courts and the bar in finding the most effective solutions to the rather slow pace of litigations in our courts which may, indeed, God forbid, be the last straw that might break the camel's back of the confidence of our people in our democratic form of government and way of life.

WHEREFORE, this appeal is dismissed, without costs.

Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, and Capistrano, JJ., concur
Reyes, JBL, and Teehankee, JJ., concur in the result.
Concepcion, C.J., did not take part.

[1] Under the Rules in force in October 1961, when case was originally filed, a plaintiff in forcible entry case could secure a preliminary injunction only "to prevent the defendant from committing further acts of dispossession against plaintiff" (section 3, Rule 72). Under Article 539 of the Civil Code, already in force then, plaintiff in such a case could also move for a preliminary injunction to restore him in his possession, if the action is filed within ten days from the filing of the complaint. Obviously, neither of these injunctions were possible simply because defendant was not in possession. Even if the petition for injunction were waived in the light of the rule on injunction in ordinary cases (Rule 59), still no injunction would lie in this case because, as regards future harvest times, there was no specific averment that defendant was actually threatening to gather coconuts again in the area in question, all that is alleged is plaintiff's fear, which is purely speculative, that defendant would go back to her land.

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