

**FILOMENA JUZON DE PO AND ANTONIO PO, PETITIONERS, VS.
SEGUNDO C. MOSCOSO, JUDGE OF THE COURT OF FIRST INSTANCE
OF TACLOBAN, LEYTE, VICENTE MATE, SHERIFF EX-OFFICIO OF
LEYTE, AND...**

G. R. No. L-5858. June 30, 1953

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is a petition for a writ of certiorari with preliminary injunction. From the numerous and not very clear allegations and statements in the petition and those of the annexes or exhibits attached to it, including the transcript of the notes taken before respondent Judge Moscoso during a hearing held before him, we can make out the following facts. Petitioner Filomena Juzon de Po, married to a Chinese citizen, was the owner of a parcel of registered land with an area of about 151 hectares in the municipality of Calubian, Province of Leyte, covered by transfer certificate of title No. T-320, including a house on it, where petitioner and her family live. On August 23, 1949, Filomena executed a document purporting to sell and convey said land and house to Jose Q. Enage for the sum of P10,000. According to petitioner Filomena she was given to understand that far from being an absolute sale, it was only a mortgage to guarantee the payment of a loan of P10,000 which loan as a matter of fact was not given to her in full because Enage gave her only P6,000, at the same time promising to pay her debt, in the form of crop loan, to the Philippine National Bank, plus interest. It is a fact that Enage never took possession of the land and house and so Filomena and her family continued in the continuous enjoyment thereof.

On September 11, 1950, Enage sold the property with pacto de retro to Dra. Macrina Leyson. Part of the sales price was used to pay off Filomena's crop loan from the bank, but not completely, because according to the statement of the bank, Filomena thereafter still owed it about P1,500. Enage later redeemed the land from the buyer Macrina Leyson. Then on September 5, 1951, Enage sold the same property to his co-respondent Eugenio Nierras who registered the deed of sale and had the transfer certificate of title No. T-320 cancelled and in lieu thereof obtained transfer certificate of title No. T-683 in his name.

On October 21, 1951, Filomena filed an action in the Court of First Instance of Leyte (Civil Case No. 906) against Enage asking for the annulment and cancellation of the supposed deed of sale of the land by her in his favor, claiming that as already stated, it was a mere deed of mortgage. As soon as Filomena was informed of the registration of the sale of the land to Nierras in the office of the register of deeds, she amended her complaint so as to include Nierras as party-defendant and also so as to annul the said deed of sale in Nierras' favor. The amendment was made on December 12, 1951. Four days later and because Filomena refused to accede to the demand of Nierras that she vacate the land and give it to him, Nierras filed civil case No. 6 in the Justice of the Peace Court of Calubian for unlawful detainer, claiming that as vendee he was entitled to the possession. of the land, and that Filomena was unlawfully detaining it.

Filomena before and during the trial questioned the jurisdiction of the justice of the peace court saying that the

title to the property was involved and that said title will have to be decided before the question of possession could be determined. She presented evidence to the effect that neither Enage nor Nierras had ever taken possession of the land or the house on it, which possession had always remained with her; that before this detainer case was filed against her, she had already filed civil case No. 906 in the Court of First Instance of Leyte, questioning the validity of the supposed conveyance of the same land to Enage, which case will vitally affect the subsequent sale of the property to Nierras, and naturally, his right to possess the land. Her challenge of the jurisdiction of the justice of the peace court was overruled, and after hearing, judgment was rendered by the said court in favor of Nierras and against Filomena, sentencing the latter to deliver to Nierras the land in litigation and to pay the amount of P1,600 as damages.

Filomena appealed to the Court of First Instance of Leyte (Civil Case No. 1492) but forgot to file a supersedeas bond. On April 2, 1952, appellee Nierras filed a motion in the court of first instance for execution of the judgment based on the failure of Filomena to file a supersedeas bond. Filomena offered to post the necessary supersedeas bond but the respondent judge of court of first instance denied the offer and granted the motion for execution by order of May 26, 1952. Hence, this present petition for certiorari with a request that a writ of preliminary injunction be issued to restrain the respondent judge and the sheriff from executing the judgment of the justice of the peace court in the detainer case. By resolution of this tribunal, the writ of preliminary injunction prayed for was granted, petitioner having filed a surety bond of P300 we required of her.

The determination of the present petition hinges on the jurisdiction of the justice of the peace court to entertain and decide the unlawful detainer case in view of the challenge made of its jurisdiction because of the pendency of civil case No. 906 in the court of first instance, involving title to the property whose possession was litigated in the detainer case. If the justice of the peace court had no jurisdiction then the court of first instance had no jurisdiction to entertain the appeal because all the proceedings in the justice of the peace court were null and void. In that case, having no appellate jurisdiction, the respondent judge had no authority to issue the writ of execution.

There have been quite a number of cases decided by this court as to when a justice of the peace court before which an action for forcible entry or unlawful detainer is filed loses jurisdiction. Almost all, if not all these cases, center on and are based on the doctrine laid down in the leading case of *Supia vs. Quintero* (59 Phil., 312) where this court after reviewing Philippine and American cases on the subject, laid down the rule that in an action of forcible entry or unlawful detainer in the justice of the peace court, a mere filing of an answer claiming title to the property involved will not divest said court of jurisdiction; but if during the trial it should appear that the action is not in fact for the recovery of the possession of the property but to determine a question of title, then the court loses jurisdiction and the case must be dismissed. This doctrine has in subsequent cases been elaborated upon but without changing the substance or the basic rule. It has been said that if to decide a case of unlawful detainer it is necessary to determine title to the property, then the justice of the peace court has no jurisdiction; but, to deprive said court of jurisdiction, mere claim of title on the part of the defendant may not be allowed to deprive the court of jurisdiction to decide the case, but when it is shown that said claim to title is not frivolous and not intended merely to suspend court proceedings and block the action of the plaintiff but on the contrary is meritorious and that the defendant has made out a *prima facie* case of her title to the land and her right to continue possessing it, then the case must be dismissed.

"On the other hand, while as a general rule a mere allegation by defendant claiming ownership of the property does not and cannot divest the court of its jurisdiction, yet if it appears during the trial that, by the nature of the proof presented, the question of possession cannot properly be determined without settling that of ownership, then the jurisdiction of the court is lost and the action should be dismissed. For instance, when the proof of possession of plaintiff is predicated upon a deed of sale alleged to have been executed by the defendant, who in turn alleges said document to be fictitious and fraudulent, and there are no circumstances showing that this

claim of defendant is unfounded, then the justice of the peace court loses its jurisdiction." (Moran, Comments on the Rules of Court, Vol. II, 1952 Ed., p. 299).

In the course of the discussion of this case, an observation was made and some doubt was expressed as to the propriety of the remedy sought by the petitioners, namely, certiorari with preliminary injunction, it being insinuated that the proper remedy should be appeal; and it is also claimed that where the appellant in an unlawful detainer case fails to file a supersedeas bond, as what happened in this case, it is the ministerial duty of the appellate court to issue a writ of execution of the judgment of the justice of the peace court on motion of the appellee, and that this tribunal should not and may not interfere with that duty of the lower court before which an unlawful detainer case is pending on appeal. In explanation and in an answer it may be stated that an order for the issuance of a writ of execution in a detainer case is interlocutory in character and is not appealable, and we can hardly expect an appellant in long and continued peaceful possession of her land and occupancy of her house thereon, threatened with summary ejection by means of a writ of execution to calmly submit to said forcible measure and patiently wait for the termination of the trial and rendition of judgment and then appeal to a higher court. Besides, there is no point or necessity in expelling a party from his house and from the land and its improvements including perchanse standing crops, on the strength of a writ of execution which derives its force and authority from judicial proceedings and judgment of a justice of the peace court which may later be declared null and void for want of jurisdiction. It is highly possible that the main concern of petitioner Filomena was the summary, impending loss of her property because of the writ of execution hanging over her head, and that was the main motive for the filing of this petition for certiorari with preliminary injunction based on lack of jurisdiction of the justice of the peace court as well as the court of first instance which ordered the issuance of the writ of execution. Anyway, this is not the first time that we have accepted and decided petitions for certiorari with preliminary injunction based on lack of jurisdiction of a court of first instance to entertain an appeal from a judgment of the justice of the peace court in forcible entry and detainer case. In the cases of *Torres vs. Peña* (78 Phil. 231), and *Peñalosa vs. Garcia*, (78 Phil. 245), we not only entertained similar cases but we also revoked orders for the issuance of a writ of execution based on non-payment of rentals pending appeal, after we found and decided that the court of first instance issuing the writ had no appellate jurisdiction because the justice of the peace court had no jurisdiction to decide the case of forcible entry and detainer because title to the property was involved.

Filomena in challenging the jurisdiction of the justice of the peace court presented evidence in said court to show that the question of possession could not be decided without first deciding the question of title. This can be gleaned from the very decision of the justice of the peace court. Without anticipating the determination of civil case No. 906 pending in the court of first instance filed by Filomena against Enage and against Nierras, we are satisfied that she has made out a prima facie case and established a meritorious claim that the unlawful detainer case filed against her involves the title to the land which title must first be decided before plaintiff Nierras could eject her from the land and from the house thereon where she and her family live. According to the evidence presented in the justice of the peace court and recited in the decision of said justice of the peace court, the land and house were purportedly sold by Filomena to Enage in 1949. He never took possession of either. In 1950 Enage sold the land under pacto de retro to one Macrina Leyson. Neither did Macrina take possession of the land or the house. Enage redeemed the land from Macrina and in September, 1951, allegedly sold it to Eugenio Nierras and it was only in said year that she was asked to vacate the land. Before Nierras brought the action for unlawful detainer against her she had already filed civil case No. 906 in the court of first instance against Enage to annul the supposed sale made by her in favor of Enage, and when she found out that Enage had sold the land to Nierras, she amended her complaint in order to include Nierras as co-defendant. There is, therefore, no room for suspicion that she filed said civil case No. 906 only as an afterthought and as an excuse or reason for questioning the

jurisdiction of the justice of the peace court. Nierras never had possession of the property; neither had his vendor Enage. According to the petition of Filomena the land in question is registered with torrens title and has a house on it. It has an extension of over 151 hectares, and for taxation purposes it is assessed at P35,000; and yet she was supposed to have sold it for only P10,000 to Enage. That, is why she claims that the transaction between her and Enage was a mere mortgage to obtain funds to pay off her debt with the Philippine National Bank, and that Enage had no title to convey to Nierras.

In conclusion, we find and hold that in challenging the jurisdiction of the justice of the peace court to entertain and decide the unlawful detainer case against her, petitioner Filomena has presented evidence to make out a prima facie case and a meritorious claim that the question of possession of the property in question could not be decided without first determining title to the same; consequently, the justice of the peace court was divested of jurisdiction and should have dismissed the case. It follows that the court of first instance had no appellate jurisdiction, and consequently, respondent judge was without authority to issue the writ of execution because of the failure of Filomena to file a supersedeas bond. As a matter of fact, when we first gave due course to this petition and before the case was heard, we granted the petition for the issuance of the writ of preliminary injunction and issued the same upon the filing of the required surety bond. The petition is hereby granted and the writ of preliminary injunction heretofore issued, is hereby made permanent. The question of title to the property in litigation which should precede that of possession may well be ventilated and decided in civil case No. 906 now pending in the court of first instance. Respondent Nierras will pay costs.

Paras, C. J., Pablo, Bengzon, Bautista Angelo and Labrador, JJ., concur.

CONCURRING

REYES, J.,

I concur in the result. It appears from the decision of the justice of the peace court that enough facts had there been proved to show that the question of possession could not properly be determined without settling that of ownership. In that court, plaintiff's claim to possession was predicated upon a deed of sale alleged to have been executed by the defendant in favor of plaintiff's grantor, which deed was claimed by defendant to be fraudulent. With defendant having retained possession of the land notwithstanding the alleged sale, and there being no circumstances to indicate that defendant's claim was a sham or made only for the purpose of defeating the jurisdiction of the justice of the peace court-defendant having in fact formalized said claim in a case brought in the court of first instance prior to the institution of the summary action in the peace court-I join the majority in the opinion that the case should have been dismissed in the latter court for lack of jurisdiction. This view accords with that expressed by a former Chief Justice of this Court in his Comments on the Rules of Court. He says:

"* * * while as a general rule a mere allegation by defendant claiming ownership of the property does not and cannot divest the court of its jurisdiction, yet if it appears during the trial that, by the nature of the proof presented, the question of possession cannot properly be determined "without settling that of ownership, then the jurisdiction of the court is lost and the action should be dismissed. For instance, when the proof of possession of plaintiff is predicated upon a deed of sale alleged to have been executed by the defendant, who in turn alleges said document to be fictitious and fraudulent, and there are no circumstances showing that this claim of defendant is unfounded, then the justice of the peace court loses its jurisdiction." (Moran, Comments on the Rules of Court, Vol. II, 1952, ed., p. 299.)

DISSENTING

TUASON, J.,

The decision of the court discards in one sweep four well-settled doctrines in possessory actions: (1) that judgment of the justice of the peace is immediately executory unless the defendant on appeal files a supersedeas bond; (2) that mere allegations of title do not divert the court of its jurisdiction; (3) that questions of title if and when raised should be determined at the trial; and (4) that the remedy against decisions of the lower court is appeal and not certiorari.

It is held in an unbroken line of decisions that, in accordance with section 8 of Rule 72, or section 88 of the former Code of Civil Procedure, execution is to be granted as a matter of course upon failure of the defendant to file a supersedeas bond and/or deposit current rents or rents in arrears adjudged in the judgment. To mention only a few of the cases sustaining this view, see *Guillena vs. Borja*, 53 Phil., 379; *Lapuz vs. Court of First Instance of Pampanga*, 36 Phil., 77; *Arcega vs. Dizon*, 76 Phil. 164; *Meneses vs. Dinglasan*, 81 Phil., 470; *Hernandez vs. Honorable Peña*, 86 Phil., 411. The rule admits of no exception. So inflexible is it that supersedeas bond offered out of time was not allowed to stop execution. The duty of the court to issue execution under the circumstances stated has been variously described as mandatory, imperative, positive, ministerial, non-discretionary.

There is no compelling reason for disregarding a rule so uniform and explicit. The judgment sought to be executed had been handed down after a regular trial, and the order of execution was issued after a regular hearing conducted with previous notice to defendant. The main ground of her opposition to the execution in the court below was that defendant's counsel had forgotten all about the bond, and he offered to rectify the omission by filing one in an increased amount. Hence, the Court could very well limit itself to a consideration of the allowance of the proffered security if it wants to stay execution, which was the only thing the petitioner wished for at the outset. Instead of overhauling established concepts and reverting to old ones which were found to be a prolific source, as this Court once noted, of much perplexity to both courts and litigants and resultant conflicting decisions.

It has also been declared time and time again that the justice of the peace court or the court of first instance on appeal will not be ousted of its jurisdiction by mere averments of title to the property. The most recent cases in which this rule was affirmed and reaffirmed are *Savinada vs. Tuason, et al.*, [1] G. R. No. L-2132 (1949); *Loo Soo vs. Osorio*, [2] G. R. No. L-1364 (1951); *Cruz vs. Lansang*, [3] G. R. No. L-2332 (1950); *De los Reyes vs. Elepaño, et al.*, G. R. No. L-3466 (1950); *Mediran vs. Villanueva*, 37 Phil., 752; *Aguirre, et al., vs. De las Alas, et al.*, G. R. No. 27432. In *Mediran vs. Villanueva*, supra, a leading case which paved the way for the now prevailing doctrine, Mr. Justice Street, speaking for the court, adverted that "in considering this problem the averments of the complaint and character of the relief sought are primarily to be consulted" but that "it would be a mistake to suppose that * * * the defendant in such an action (can) defeat the jurisdiction of the magistrate's court by setting up title in himself." "The fact which defeats the jurisdiction of the court of the justice of the peace," it is said, "is the necessity to adjudicate the question of title, and the mere circumstance that proof of title is introduced at the hearing or that claim of ownership is made by either or both parties is immaterial." See also in this connection *Medel vs. Militante*, 41 Phil., 526; *Fabie vs. Gutierrez David*, 42 Off. Gaz., 511, 75 Phil., 536; *Facundo vs. Santos*, 44 Off. Gaz., No. 3, 860, 77 Phil., 733.

The main thesis of the court's opinion is the supposition that "petitioner Filomena has presented evidence to make out a prima facie case and a meritorious claim that the question of possession * * * could not be decided without first determining title to the same."

I feel obliged to disagree on both points of this statement, both on facts and in law. I can not agree that "the

question of possession could not be determined without first deciding title to the same" if by deciding title is meant adjudication. If upon the circumstances of the present case the justice of the peace lost jurisdiction, then it must be admitted that there can hardly be any instance where the defendant could not defeat such jurisdiction by alleging title in himself as sole defense. The most perfect and bona fide sale could become the subject of contest of title by the simple expedient of asserting, which is none too hard to make, that the transaction was fraudulent, or that it was effected through duress, or that the document of sale was forged, and so forth and so on. Any such averment directly puts in issue plaintiff's title, and if the court's line of reasoning is to be pursued to its logical conclusion, it (the averment) must of necessity operate to quash the suit as beyond the court's jurisdiction. The net result of all this would be virtually to nullify the statutory provisions which have been devised to enable the purchaser to have possession of the property purchased and paid for, through summary action, and set at naught this court's own warning that "the ends of justice (could not) be frustrated by making the efficacy of this kind of action depend upon the defendant in all cases." (Aquino vs. Deala, 63 Phil., 582; De los Reyes vs. Elepaño, et al., supra.)

The whole trouble, if I may be permitted to say so, lies in the mistaken assumption that in the case at bar, and in all similar cases, "the question of possession * * * could not be decided without first determining title to the same." The plaintiff's right to possession and the defendant's purported ownership here are not, in my judgment, so intermingled as to be inseparable. One can be disposed of without touching, except incidentally, on the other. It is entirely possible, and it would be more in accord with the norm envisaged by the Rules of Court, to adjudicate possession and let the defendant who supposes herself to be still the owner of the property to vindicate her ownership in a court of competent jurisdiction, which she has already commenced to do.

In the case of Cruz vs. Lansang, G. R. No. L-2332, October 4, 1950, 48 Off. Gaz., 551,[*] the Court through Mr. Justice Montemayor said: "The claim of title made by Lansang did not divest the Municipal Court's jurisdiction * * *. It still remains for Lansang to prove in the civil case he has instituted in the Court of First Instance of Manila that the transaction had between him and his wife on one side and the two Chinese nationals on the other, was only a mortgage and not a sale. Until he succeeds in this venture and proves that the title of Cruz and his wife is null and void, the courts will in the meantime respect said titles possessed by Cruz and Mrs. Cruz and allow them to exercise their rights as such owners, including possession of the property as against a mere occupant like Lansang whose alleged title still remains to be proven." (See also De los Reyes vs. Elepaño, et al., supra.)

It seems to me that the present decision is in exact contradiction to the above ruling and reasoning. Fundamentally there is no difference between that case and the case at bar. The animating, overriding principle is the same in both cases. In at least two important particulars they are identical. In the Lansang case there was a pending action between the parties in which the right of the plaintiff buyer to the possession was impugned. In that case allegations were also made that the deal between the parties was one of sale and not of mortgage.

Juridically speaking, possession is distinguished from ownership, and from the distinction are derived legal consequences of much importance. (Mediran vs. Villanueva, supra.) In giving recognition to the action of unlawful detainer the purpose of the law is to afford the lessor or purchaser a summary, speedy, and inexpensive remedy for the determination of who is entitled to the possession of the premises, without resorting to an action upon the title. In action of this class it may be convenient or necessary for the court to receive evidence on the pretended ownership of the defendant or invalidity of the sale; but if the court allows and considers proof of title, it does so merely as a means of determining plaintiff's right to possession; and if the court should make an express pronouncement, say, that the defendant did sell his land, the pronouncement would not work as a judgment on the right of property, but only as basis and justification for the award of its possession. The pronouncement is not material and does not operate to prejudice the ownership. Assuming, therefore, as we must assume for the purpose

of this decision, that the justice of the peace's finding here was correct-that the contract executed by the defendant-was one of sale-the court did well, and acted in accordance with law, in sentencing the defendant to vacate the property in litigation, subject of course to the eventuality that the contract might be declared one of mortgage in the pending action for annulment.

It is, I believe, when the justice of the peace finds for defendant on his claim of title that the court would have no choice but declare itself without jurisdiction. Believing the disputed sale to be of no effect, the justice of the peace cannot consistently go ahead with the proceedings, since in that case the plaintiff has no right to possession, which is the subject and object of the suit, nor does the justice of the peace have jurisdiction to adjudicate questions of title to real estate.

This, it is believed, is the situation contemplated by section 68 of Act 136, as amended by section 8 of Act 1627, which provides: "A justice of the peace shall have no jurisdiction to adjudicate questions of title to real estate or any interest therein, and whenever a case requiring such adjudication is brought before him, it shall be his duty, upon discovering the same, to suspend further proceedings therein, and certify the cause forthwith to the court of first instance."

It may be interesting to note that this court, in *Mediran vs. Villanueva*, supra, made the observation that not even in such a situation should the justice of the peace, in the interest of speedy trial, be required to refrain from deciding the cause and certify it to the court of first instance. Said the court: "The introduction into the statute of the words which we have printed in italics was most unfortunate. What should have been stated, if it was necessary to state anything, in place of these words was a rule to the effect merely that no judgment entered in a case originating in the court of a justice of the peace should affect the title of real property or operate as *res adjudicata* with respect thereto. The result of the words actually employed in this statute is to place upon the justice of the peace in all cases the duty of deciding, as a preliminary affecting his jurisdiction, whether the action involves possession only or ownership as well. The determination of this question has often been a source of great perplexity to both courts and litigants and where the mistake is made it is followed by very inconvenient results. For instance, if the justice of the peace erroneously decides that the action involves the question of ownership, and certifies the case into the court of first instance, and the latter court discovers that the only question is one relating to possession, no judgment can therein be entered upon the merits, and the cause must be returned, so it is decided, to the court of the justice of the peace in order that he may proceed to hear the cause."

However the case may be, the rule is settled, as stated, that mere allegations can not affect jurisdiction, and that in any and every case where the point is in doubt there must be a trial. In *Aquino vs. Deala*, supra, *De Ios Reyes vs. Elepaño, et al.*, supra, and *Alviar vs. Pampolina*, G. R. No. L-1855 (1949) it was correctly held that claim of title to the property in litigation raises an issue of fact which can only be determined from the evidence presented by both parties at the trial.

The statement that "the defendant has presented evidence to make out a *prima facie* case and a meritorious claim," is, it is submitted, not quite correct. What the court calls evidence is no evidence at all, for there was never a trial, on the merits in the court of first instance. What trial there was, was one on the motion to execute the justice of the peace's judgment. The so-called evidence and *prima facie* case are impressions and probabilities gathered from the pleadings, statements of counsel, and in memoranda filed in the hearing for execution.

To use such pleadings and manifestation as ground for dismissing the main case is hardly fair to the plaintiff. The plaintiff has the elementary right to be heard and to refute the charge that the sale was fraudulent. In drawing its conclusions from these data the court in effect adopts the rejected theory that there need be no trial-that the court may or should decide the question whether title is involved upon the averment of the answer.

But granting that the court may be permitted to limit its investigation to an examination of the pleadings, where does prima facie showing lie in this case? It seems to me that the plaintiff has an "edge" over her adversary. As stated, the circumstances from which the court deduced the prima facie evidence are the manifestations of counsel, allegations in pleadings that were filed with the justice of the peace, and the pendency of another case in the court of first instance. On the other hand, the plaintiff holds a certificate of title, duly registered and regular on its case. And the plaintiff here was a third purchaser, not the purchaser with whom the defendant dealt.

In the face of the defendant's certificate of title and the deed of conveyance admittedly signed by the plaintiff, the justice of the peace acted in accordance with the spirit of the law and procedure in holding the plaintiff entitled to the possession of the premises in question, without prejudice to defendant's vindicatory action in which she seeks to annul the transaction.

The foregoing discussion, at any rate, only goes to bring to a focus the necessity and justice of a regular trial to thresh out conflicting assertions on jurisdiction.

Adherence to the established rule that determination of questions of ownership should be made at the trial has one basic reason behind it besides the plaintiff's right to due process of law. Under the plea of want of jurisdiction this court is made to undertake a function which under the law and procedure pertains to the Court of Appeals. Appeals in detainer cases invariably have been elevated to that court, except when only questions of law are raised. If this action had been allowed to proceed to trial the trial court's decision would have been appealable to the appellate court.

It is said that objection to the lower court's jurisdiction having been raised, and want of jurisdiction being pleadable at any stage of the proceeding, the Supreme Court properly took cognizance of the petition at bar. The clear implication is that only this Court should have jurisdiction of the appeal even if trial had been held. I think this is a mistake.

Possessory action as envisaged by the Rules of Court is unique. Investigation into the facts is of its very essence. The justice of the peace's jurisdiction depends upon facts, and it must follow, and it is for this reason, that there must be a trial if there are to be facts. The court is forbidden to decide questions of title, it is true. But it is not forbidden to hear the evidence necessary to inform itself whether questions of title are material and have to be decided as a preliminary to the determination of the question of possession. The power of the justice of the peace or of the court of first instance to take cognizance of the case ceases only when and if it finds, after knowing the facts, that ownership is inextricably mixed with possession.

What has been said is equally true with regard to appellate jurisdiction. The Court of Appeals is not disqualified from entertaining an appeal in unlawful detainer cases merely because the defendant pretends to be the owner of the land, and alleges that, for that reason, the inferior court lacked jurisdiction. The primary issue in such cases relates to the weight of the evidence, and upon the Court of Appeals, not the Supreme Court, is this function lodged.

In my humble opinion, matters of jurisdiction which the parties can raise at any stage of the proceeding and which would deprive the Court of Appeals of authority to decide, are such as are determinable from the nature of the case, from the pleadings, or from the relief sought. Generally, cases involving jurisdiction which depends upon facts and evidence ought to be reviewable by the Court of Appeals alone.

Jugo, J., concurs.

[1] 46 Off. Gaz. (11) 291; 83 Phil. 840.

[2] 89 Phil. 135.

[3] 48 Off. Gaz. 551; 87 Phil. 443.

[*] 87 Phil. 443.

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