

GLENN BASILIO PALUBON MARRIED TO DR. CONCEPCION BERNABE-PALUBON, PETITIONERS, VS. VICENTE BALAGTAS, SPOUSES ARIEL BALAGTAS, SPOUSES ARIES BALAGTAS AND ALL PERSONS WHO CLAIM RIGH...

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

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

Assailed in the instant petition filed under Rule 42 of the 1997 Rules of Civil Procedure are the following:

- a) The Decision (Rollo, pp. 19-24) dated May 28, 2012 of the Regional Trial Court of the City of Malolos, Bulacan, Branch 14 in Civil Case No. 05-M-2012; and
- b) The Order (Rollo, p. 44) dated July 19, 2012 which denied petitioners' motion for reconsideration likewise issued by the Regional Trial Court of the City of Malolos, Bulacan, Branch 14.

The facts:

On December 7, 2009, petitioner Glen Basilio Palubon filed a Complaint for Unlawful Detainer with Damages against respondents Vicente Balagtas, Spouses Ariel Balagtas, Spouses Aries Balagtas and all persons claiming rights under them with the Municipal Trial Court of Calumpit, Bulacan.

Petitioner Glenn Basilio Palubon alleged in his complaint that he is the registered owner of a residential parcel of land referred to as Lot 13 PCS-03-010515 with an area of 161 square meters and covered by Transfer Certificate of Title No. T-232384 located at Barangay Frances, Calumpit, Bulacan. Petitioner claimed that said property was purchased from Maria C. Santiago and Simeona Santiago-Jumaquio married to Joaquin Jumaquio. After the sale and transfer of ownership of the property, petitioner settled the realty tax and he was issued Tax Declaration/ARP No. 2006-07010-01916 in his name married to Dr. Concepcion B Palubon.

Petitioner averred that herein respondents, Vicente Balagtas, Spouses Ariel Balagtas and Spouses Aries Balagtas were occupying their property and built a house thereon, not as lessees and without paying rental but by mere tolerance of the previous owners. Respondents continue to use and occupy the subject property even after the sale and transfer of ownership in the name of petitioner, also by mere tolerance of the latter. Petitioner is now subrogated to the rights and interests over the said parcel of land, including the right to recover possession through judicial action, in order to enforce his rights as new owner of the property.

Petitioner further alleged that prior to the filing of the complaint or on February 27, 2009, he sent a Formal Demand for herein respondents to vacate and deliver peaceful possession of the subject property. Aside from the notice to vacate, petitioner sent an offer for respondents to either lease or purchase the property at the prevailing market value of Php 2,000.00 per square meter. Petitioner claimed that respondents ignored the same without lawful and justifiable cause. Also, both parties met at the Barangay Office to amicably settle the issue at hand however, all efforts remained futile as evidenced by the "Certification to File Action" dated June 11, 2009. Hence, this Complaint for unlawful detainer.

On the other hand, respondents in their Answer denied petitioner's allegations and by way of a special and affirmative defense claimed that the said property was not owned by Simeona Santiago-Jumaquio and Maria C. Santiago from whom the petitioner allegedly purchased the same. The subject property occupied by respondents was previously owned by Domingo de Leon, and his legal surviving heir, Teresita M. Macapugay who sold it to them. They had with them as evidence the Pagmamana sa Labas ng Hukuman na may Bilihan and a Cadastral Survey Plan.

Respondents further claimed that the lot being claimed by the petitioner has no supporting survey and there is no clear showing that the lot being claimed by the petitioner is the lot being occupied by the respondents.

On May 6, 2010, a hearing was held where both parties agreed to have the property surveyed. On September 2, 2010, the relocation survey was conducted by the Land Management Bureau headed by Librado F. Gellez, Jr.

On October 7, 2010, the Relocation Plan and Report were submitted to the Court which stated that "the property of the [petitioner] Lot 13, Pcs-03-010515 is entirely occupied by the respondents with their existing house partly falling on the said property".

The Municipal Trial Court (MTC) of Calumpit, Bulacan decided the case in favor of petitioner. The MTC ruled that it finds credence to the survey report submitted by Librado F. Gellez and the Sketch Plan submitted to the MTC clearly shows that the respondents are occupying the entire property of the petitioner and that Lot 5488, with an area of 434 square meters which the respondents claim is the lot they own and presently occupying, is in fact adjacent to lot 13 of the petitioner. Hence, the lot owned by the petitioner is being occupied by the respondents. (MTC Decision, Rollo, p. 17) The dispositive portion of the said decision states:

"WHEREFORE, in view of the foregoing premises, judgment is hereby rendered in favor of the plaintiff and hereby orders as follows:

1. Ordering the defendants and all persons who claim rights under them to vacate the subject premises, remove the structures erected thereon and restore peaceful physical possession and use thereof to the plaintiff;
2. To pay the reasonable rental value of the subject property at One Thousand Pesos (P1,000.00) per month, from February 27, 2009 until they fully surrender possession thereof to the plaintiff;
3. Ordering the defendants to pay the costs of suit.

SO ORDERED." (Rollo, p.19)

Respondents filed an appeal before the Regional Trial Court (RTC).

On May 28, 2012, the RTC reversed the MTC decision stating that an unlawful detainer case meant that petitioner's supposed act of tolerance must be present from the beginning. The claim of tolerance of the petitioner was not proven. The dispositive portion of the said decision reads:

"WHEREFORE, premises considered, the Decision dated September 20, 2011 of the Municipal Trial Court of Calumpit, Bulacan in SCAN 175 is hereby REVERSED and SET ASIDE. Accordingly, the complaint for unlawful detainer is hereby DISMISSED.

SO ORDERED." (Rollo, p. 24)

Dissatisfied, petitioner, plaintiff therein, filed a Motion for Reconsideration which was denied on July 19, 2012. Hence, this Petition before Us with the following issues.

"1.

Whether or not the Regional Trial Court of Bulacan, Branch 14, Malolos City erred in dismissing on appeal in Civil Case No. 05-M-2012 the complaint for unlawful detainer;

2.

Whether or not the Regional Trial Court of Bulacan, Branch 14, Malolos City erred in not affirming in toto the appealed decision in Special Civil Action No.175;

3.

Whether or not the Regional Trial Court of Bulacan, Branch 14, Malolos City erred in finding that the demand letter dated February 27, 2009 does not clearly show tolerated possession.” (Rollo, p. 9)

Petitioner alleges that the RTC erred in reversing the decision of the MTC thereby dismissing the complaint for unlawful detainer on the ground that petitioner was not able to prove tolerated possession. Petitioner insists that he and the previous owners of the subject land only tolerated the possession of the respondents of the subject property. Hence, the principal issues are: a) whether petitioner tolerated the possession of the respondents over the subject property; and b) whether an action for unlawful detainer is the proper remedy.

The petition is without merit.

Unlawful detainer is a summary action for the recovery of possession of real property. This action may be filed by a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession by virtue of any contract, express or implied. In unlawful detainer, the possession of the defendant was originally legal, as his possession was permitted by the plaintiff on account of an express or implied contract between them. However, the defendant's possession became illegal when the plaintiff demanded that the defendant vacate the subject property due to the expiration or termination of the right to possess under the contract, and the defendant refused to heed such demand. A case for unlawful detainer must be instituted one year from the unlawful withholding of possession. (Jose v. Alfuerio, 686 SCRA 323 [2012])

Thus, a complaint sufficiently alleges a cause of action for unlawful detainer if it recites that: (a) initially, possession of the property by the defendant was by contract with or by tolerance of the plaintiff; (b) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (c) thereafter, defendant remained in possession of the property and deprived plaintiff of the enjoyment thereof; and (d) within one year from the last demand on defendant to vacate the property, plaintiff instituted the complaint for ejectment. Corollarily, 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. (Optimum Development Bank v. Spouses Jovellanos, G.R. No. 189145. December 4, 2013)

The allegations in the complaint determine both the nature of the action and the jurisdiction of the court. The complaint must specifically allege the facts constituting unlawful detainer. In the absence of these allegations of facts, an action for unlawful detainer is not the proper remedy and the municipal trial court or the MeTC does not have jurisdiction over the case.

In the case at bench, petitioner was trying to make out a case for unlawful detainer by invoking tolerance. However, the element of tolerance in unlawful detainer was not proven other than the self-serving allegation in the complaint that they tolerated the respondents to occupy the subject property. The complaint is silent regarding

the factual circumstances surrounding the alleged tolerance. A perusal of the records of the case would show that no supporting evidence on how and when the respondents entered the property or who had granted them permission to occupy and build a house on the premises. Without these allegations and evidence, the bare claim regarding "tolerance" cannot be upheld.

The claim that the respondents' possession was merely tolerated by petitioner was contradicted by the petitioner's allegation in the demand letter that the occupation and the building of the residential house in the subject property was unlawful from the very beginning since it is without the knowledge of the previous owner as well as their predecessor in interest. The demand letter states:

“xxx xxx xxx

You and all persons who live with you or who claim rights under you on the said parcel of land have used and occupied the said parcel of land, and you erected a residential house thereon, without any right therefor either as lessee or otherwise, and without the knowledge or consent of the previous owners of the lot, the Spouses Joaquin and Simeona Jumaquio and Maria Santiago, as well as their predecessors-in-interest.

xxx xxx xxx” (Rollo, p. 45)

It is to be noted that tolerance or permission must have been present at the beginning of possession; if the possession was unlawful from the start, an action for unlawful detainer would not be the proper remedy and should be dismissed. (*Ten Forty Realty and Development Corporation v. Cruz*, 457 Phil. 603, 610 (2003); and *Go, Jr. v. Court of Appeals*, 415 Phil. 172, 185 (2001)). In this case, the alleged tolerance was not present at the beginning.

Also, in the case of *Jose v. Alfuerio*, (686 SCRA 323 [2012]), the Supreme Court ruled:

“It is not the first time that this Court adjudged contradictory statements in a complaint for unlawful detainer as a basis for dismissal. In *Unida v. Heirs of Urban*, the claim that the defendant's possession was merely tolerated was contradicted by the complainant's allegation that the entry to the subject property was unlawful from the very beginning. The Court then ruled that the unlawful detainer action should fail.

The contradictory statements in the complaint are further deemed suspicious when a complaint is silent regarding the factual circumstances surrounding the alleged tolerance. In *Ten Forty Realty Corporation v. Cruz*, the complaint simply stated that: “(1) [defendant] immediately occupied the subject property after its sale to her, an action merely tolerated by [the plaintiff]; and (2) [the respondent's] allegedly illegal occupation of the premises was by mere tolerance.” The Court expressed its qualms over these averments of fact as they did not contain anything substantiating the claim that the plaintiff tolerated or permitted the occupation of the property by the defendant:

These allegations contradict, rather than support, [plaintiff's] theory that its cause of action is for unlawful detainer. First, these arguments advance the view that [defendant's] occupation of the property was unlawful at its inception. Second, they counter the essential requirement in unlawful detainer cases that [plaintiff's] supposed act of sufferance or tolerance must be present right from the start of a possession that is later sought to be recovered.

As the bare allegation of [plaintiff's] tolerance of [defendant's] occupation of the premises has not been proven, the possession should be deemed illegal from the beginning. Thus, the CA correctly ruled that the ejectment case should have been for forcible entry — an action that had already prescribed, however, when the Complaint was filed on May 12, 1999. The prescriptive period of one year for forcible entry cases is reckoned from the date of [defendant's] actual entry into the land, which in this case was on April 24, 1998.”

Even if petitioner is the owner of the property, possession thereof cannot be taken from another who has been in

physical possession for more than one year by resorting to a summary action for ejectment. The cause of action in ejectment is different from that in an accion publiciana or accion reivindicatoria. Possession in ejectment suits refers only to possession de facto, or actual or material possession, and not possession flowing out of ownership; these are different legal concepts for which the law provides different remedies for recovery of possession. An ejectment suit is brought before the proper inferior court to recover physical possession only or possession de facto, not possession de jure. Unlawful detainer and forcible entry cases are not processes to determine actual title to property. (Barrientos vs. Rapal, 654 SCRA 461 [2011])

WHEREFORE, we DENY the petition, and AFFIRM the Regional Trial Court's Decision dated May 28, 2012 and Order dated July 19, 2012 in Civil Case No. 05-M-2012.

SO ORDERED.

Lopez and Inting, JJ., concur.

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