

**ANGELINA CANAYNAY ET AL., PETITIONERS AND APPELLEES, VS.
FELICIANO SARMIENTO, AND GUILLERMO ROMERO, IN HIS
CAPACITY AS JUDGE OF THE JUSTICE OF THE PEACE COURT OF
PARAÑAQUE, RIZA...**

G.R. No. L-1246. August 27, 1947

Ponente: PERFECTO, J.

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PERFECTO, J.:

On August 28, 1946, Feliciano Sarmiento filed against petitioners-appellees, a complaint which reads as follows:

"Comes now the plaintiff, thru his undersigned counsels, and to this Honorable Court, respectfully alleges:

"1. That the plaintiff is of age and residing at San Dionisio, Parañaque, Rizal; while the defendants are also of age, with Angelina Canaynay, Prudencia V. Asprec and Cleto Asprec having their residence and postal address at San Dionisio, Parañaque, Rizal, and Pedro O. Jose residing at his postal address in 409 Real Street, Parañaque, Rizal;

"2. That plaintiff is the lawful owner of that certain parcel of unregistered and unsurveyed residential land located at San Dionisio, Parañaque, Rizal, and more particularly described as follows:

" 'A parcel of unregistered and unsurveyed residential land located at San Dionisio, Parañaque, Rizal, bounded on the N by Callejon Moras, on the E by Calle Real, on the S by Simon San Agustin and on the W by Cirilo Jaramillo, containing an area of 161.06 square meters more or less, covered by Tax Declaration No. 11466 of the municipality of Parañaque, Province of Rizal, declared for taxation purposes by Feliciano Sarmiento since July 26, 1922.'

"3. That on or about January 15, 1920, the defendants, Angelina Canaynay and her daughter, Prudencia V. Asprec, then single and now married to Cleto Asprec, entered into a verbal contract with the herein plaintiff whereby the latter leased to the former the land above-described under an agreed rental of P3 a month, payable at the end of each month;

"4. That by virtue of the contract of lease referred to in the preceding paragraph, the defendants, Angelina Canaynay and Prudencia V. Asprec, then single, bought and acquired, on or about January 15, 1920, a residential house erected on the said lot from a former lessee, Atty. Manuel Jose of Parañaque, Rizal;

"5. That defendant Pedro O. Jose is presently the occupant of the house mentioned in paragraph 4 hereof;

"6. That defendants Angelina Canaynay and Prudencia V. Asprec have so far paid to plaintiff the amount of P130 corresponding to the rentals for the months of January 15, 1920 to August 25, 1923, inclusive;

"7. That plaintiff has several times verbally demanded of the defendants to pay the unpaid rentals and to vacate the premises in question, the last demand having: been made on them personally and in writing on August 3, 1946, but they failed and refused and still continue to fail and to refuse to pay the rentals now amounting to P828

and to vacate the premises described above to the prejudice of the plaintiff;

"8. That plaintiff is now in need of the premises subject of this complaint for the construction of his own house.

"Wherefore, it is respectfully prayed that, after due hearing, judgment be rendered in favor of the plaintiff and against the defendants:

"(a) For the restitution of the above-mentioned premises;

"(b) For the payment of the sum of P828 representing the rentals in arrears, with legal interest thereon from the filing of this complaint;

"(c) For the immediate removal of the house from the premises at defendant's expense;

"(d) For costs of this suit and attorney's fees and such other remedies as shall be deemed just and reasonable in the premises.

"Manila, Philippines, August 28, 1946."

Defendants answered admitting the allegations in paragraphs 1 and 5, denying the allegations in paragraph 2, and averring lack of knowledge as to the truth of the allegations of paragraphs 3, 4, 6, 7, and 8 of the complaint, and as an affirmative defense alleged that defendant Angelina Canaynay acquired ownership of the property in question by prescription for having possessed it over a period of twenty years.

In September, 1946, petitioners-appellees filed with the Court of First Instance of Rizal, a petition for a writ of certiorari, impugning the jurisdiction of the Justice of the Peace Court of Parañaque, alleging that its jurisdiction in forcible entry and unlawful detainer cases extends only within a period of one year from and after the date of the accrual of the cause of action, and because defendants have interposed an affirmative defense of prescription, which necessarily involves the question of ownership of the land, and that the petitioners moved for the dismissal of the case, but Judge Guillermo Romero, of the justice of the peace court, denied the motion, thus acting in excess of his jurisdiction.

On September 24, 1946, Judge Eulalio Garcia of the Court of First Instance of Rizal, required respondents to answer the petition and ordered Judge Romero to refrain from trying the ejectment case until further orders.

On November 12, 1946, Judge Garcia rendered decision, ordering Judge Romero of the Justice of the Peace Court of Parañaque, to desist from continuing taking cognizance of the ejectment case in question, declaring final the writ of preliminary injunction ordering Judge Romero to refrain from proceeding with the case, and dismissing the complaint in the same, with costs against Feliciano Sarmiento.

The latter appealed against the decision.

Appellant Sarmiento made five assignments of error in his brief. Appellees choose not to file any brief. They did not even appear to argue the case at the hearing which took place on March 21, 1947.

Two main questions are raised in this case: First, whether the complaint was filed within the one-year period prescribed by section 1 of Rule 72, and second, whether the defense of ownership set up by defendants had the effect of divesting the justice of the peace court of its jurisdiction to take cognizance of the case.

Section 1 of Rule 72 provides that the one-year period provided therein must be reckoned from the date of the "unlawful deprivation or withholding of possession."

In paragraph 7 of the complaint, it is alleged that plaintiff has several times verbally demanded the defendants to pay the unpaid rents and to vacate the premises, the last demand having been made on them personally and in

writing on August 3, 1946. Under the said paragraph, it is evident that the "unlawful deprivation or withholding of possession," mentioned by section 1 of Rule 72, started on August 3, 1946, when formal demand for vacating the premises was made. This position is strengthened by the allegation in paragraph 8 of the complaint to the effect that "plaintiff is now in need of the premises subject of this complaint for the construction of his own house."

The fact that it is alleged in the complaint that defendants failed to pay the rents since after August 25, 1923, does not make unlawful defendant's withholding of possession of the property. Mere failure to pay rents does not ipso facto make unlawful tenant's possession of the premises. It is the owner's demand for tenant to vacate the premises, when the tenant, has failed to pay the rents on time, and tenant's refusal or failure to vacate, which make unlawful withholding of possession. There is no legal obstacle for the owner to allow a defaulting tenant to remain in the rented property one month, one year, several years, or even decades. That consent, no matter how long it may last, makes lawful tenant's possession. Only when that consent is withdrawn and the owner demands tenant to leave the property is the owner's right of possession asserted and the tenant's refusal or failure to move out makes his possession unlawful, because it is violative of the owner's preferential right of possession.

On the next question, it is a well-established doctrine that what determines the jurisdiction of the justice of the peace court in cases like the one at bar is the nature of the action pleaded as appears in the allegations of the complaint. The averments of the complaint and the character of the relief sought are the ones that must be consulted. Defendant's claim of title acquired by prescription cannot defeat the jurisdiction once established by what is pleaded in the complaint. Only when, after hearing the evidence, the justice of the peace court shall have found that what is litigated in effect between the parties is the ownership, is when said court shall lose its jurisdiction.

For all the foregoing, the appealed decision of the Court of First Instance of Rizal is reversed. The Justice of the Peace Court of Parañaque may proceed with the hearing and trial of the ejectment case No. 9, entitled "Feliciano Sarmiento vs. Angelina Canaynay et al.," until final judgment.

Moran, C.J., Feria, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

DISSENTING

PARAS, J.:

The only actual occupant of the house standing on the lot claimed by the respondent-appellant is one Pedro O. Jose. There is no allegation whatsoever in the detainer complaint filed by said respondent regarding any agreement of lease between him and said occupant or any privity between the latter and the herein petitioners-appellees, the defendants in the detainer case. It is alleged in the complaint that the occupancy by the appellees of the lot in question without payment of the stipulated rent commenced in August, 1923, and that several demands for payment of rentals and to vacate the premises had been made on the appellees, the last one in writing on August 3, 1946.

The justice of the peace court has jurisdiction in a detainer case, if and when the complaint is filed within one year from the date of "unlawful deprivation or withholding of possession." A demand to vacate need not be in writing, and inasmuch as the appellees have allegedly defaulted in paying the agreed rentals since 1923, and several demands have admittedly been made, without any specification that said demands were all for the default occurring within the one-year period prior to the date of the filing of the detainer complaint, the logical conclusion is that one or some of such demands had been made more than one year or long before the written demand of August 3, 1946. From the very allegations of the complaint, therefore, the case is not within the jurisdiction of the

justice of the peace court, and the appealed decision of the Court of First Instance of Rizal dismissing said complaint should be affirmed.

PABLO, M.:

Concurro con esta disidencia.

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