

CALIXTO PASAGUI AND FAUSTA MOSAR, PLAINTIFFS AND APPELLANTS, VS. ESTER T. VILLABLANCA, ZOSIMO VILLABLANCA, EUSTAQUIA BOCAR AND CATALINA BOCAR, DEFENDANTS AND APPELLEES.

G.R. No. L-21998. November 10, 1975

Ponente: ANTONIO, J.

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ANTONIO, J.:

The only issue posed by this appeal is whether or not, from the nature of the action pleaded as appears in the allegations of the complaint, the aforesaid action is one of forcible entry, within the exclusive jurisdiction of the municipal court.

On February 4, 1963, appellants Calixto Pasagui and Fausta Mosar filed a complaint with the Court of First Instance at Tacloban City, alleging that on November 15, 1962, for and in consideration of Two Thousand Eight Hundred Pesos (P2,800.00), they bought from appellees Eustaquia Bocar and Catalina Bocar a parcel of agricultural land with an area of 2.6814 hectares, situated in Hamindangon, Pastrana, Leyte; that the corresponding document of sale was executed, notarized on the same date, and recorded in the Registry of Deeds of Tacloban, Leyte on November 16, 1962; that during the first week of February, 1963, defendant spouses Ester T. Villablanca and Zosimo Villablanca, "illegally and without any right, whatsoever, took possession of the above property harvesting coconuts from the coconut plantation thereon, thus depriving plaintiffs" of its possession; that despite demands made by the plaintiffs upon the above-mentioned defendants "to surrender to them the above-described property and its possession" the latter failed or refused to return said parcel of land to the former, causing them damage; and that Eustaquia and Catalina Bocar, vendors of the property, are included defendants in the complaint by virtue of the warranty clause contained in the document of sale. Plaintiffs prayed for a decision ordering defendants to surrender the possession of the parcel of land above-described to them and to pay damages in the amounts specified.

On February 21, 1963, appellees moved to dismiss the complaint on the ground that the Court of First Instance had no jurisdiction over the subject matter, the action being one of forcible entry. Appellants opposed the Motion to Dismiss asserting that the action is not one for forcible entry inasmuch as in the complaint, there is no allegation that the deprivation of possession was effected through "force, intimidation, threat, strategy or stealth."

On May 13, 1963, the trial court issued an order dismissing the complaint for lack of jurisdiction, it appearing from the allegations in the complaint that the case is one for forcible entry, which belongs to the exclusive jurisdiction of the Justice of the Peace (now Municipal Court) of Pastrana, Leyte. The first Motion for Reconsideration was denied on May 27, 1963 and the second was likewise denied on July 5, 1963. From the above-mentioned orders, appeal on a pure question of law was interposed to this Court.

It is well-settled that what determines the jurisdiction of the municipal court in a forcible entry case is the nature of the action pleaded as appears from the allegations in the complaint. In ascertaining whether or not the action is

one of forcible entry within the original exclusive jurisdiction of the municipal court, the averments of the complaint and the character of the relief sought are the ones to be consulted.[1]

In the case at bar, the complaint does not allege that the plaintiffs were in physical possession of the land and have been deprived of that possession through force, intimidation, threat, strategy, or stealth. It simply avers that plaintiffs-appellants bought on November 12, 1962 from defendants-appellees Eustaquia Bocar and Catalina Bocar the parcel of land in question for the amount of P2,800.00; that a deed of sale was executed, notarized and registered; that "during this first week of February, 1963, defendants Ester T. Villablanca and her husband, Zosimo Villablanca, illegally and without any right whatsoever, took possession of the above described property, harvesting coconuts from the coconut plantation therein, thus depriving of its possession herein plaintiffs, and causing them damages for the amount of EIGHT HUNDRED PESOS P800.00"); that for the purpose of enforcing the vendors' warranty in case of eviction, Eustaquia Bocar and Catalina Bocar were also included as defendants; and, therefore, plaintiffs-appellants pray that a decision be rendered, ordering (a) defendants Ester T. Villablanca and her husband, Zosimo Villablanca, "to surrender the possession of the above described property to said plaintiffs"; (b) defendants Ester T. Villablanca and her husband, Zosimo Villablanca, "to pay to said plaintiffs the amount of EIGHT HUNDRED PESOS (P800.000) as damages for the usurpation by them of said property"; and (c) defendants Eustaquia Bocar and Catalina Bocar "to pay the plaintiffs the amount of P2,800.00, plus incidental expenses, as provided for by Art. 1555 of the Civil Code, in case of eviction or loss of ownership to said above described property on the part of plaintiffs."

It is true that the execution of the deed of absolute sale in a public instrument is equivalent to delivery of the land subject of the sale.[2] This presumptive delivery only holds true when there is no impediment that may prevent the passing of the property from the hands of the vendor into those of the vendee. It can be negated by the reality that the vendees actually failed to obtain material possession of the land subject of the sale.[3] It appears from the records of the case at bar that plaintiffs-appellants had not acquired physical possession of the land since its purchase on November 12, 1962. As a matter of fact, their purpose in filing the complaint in Civil Case No. 3285 is precisely to "get the possession of the property." [4] In order that an action may be considered as one for forcible entry, it is not only necessary that the plaintiff should allege his prior physical possession of the property but also that he was deprived of his possession by any of the means provided in section 1, Rule 70 of the Revised Rules of Court, namely: force, intimidation, threats, strategy and stealth. For, if the dispossession did not take place by any of these means, the courts of first instance, not the municipal courts, have jurisdiction.[5] The bare allegation in the complaint that the plaintiff has been "deprived" of the land of which he is and has been the legal owner for a long period has been held to be insufficient.[6] It is true that the mere act of a trespasser in unlawfully entering the land, planting himself on the ground and excluding therefrom the prior possessor would imply the use of force. In the case at bar, no such inference could be made as plaintiffs-appellants had not claimed that they were in actual physical possession of the property prior to the entry of the Villablanca's. Moreover, it is evident that plaintiffs-appellants are not only seeking to get the possession of the property, but as an alternative cause of action, they seek the return of the price and payment of damages by the vendors "in case of eviction or loss of ownership" of the said property. It is, therefore, not the summary action of forcible entry within the context of the Rules.

WHEREFORE, the order of dismissal is hereby set aside, and the case remanded to the court a quo for further proceedings. Costs against defendants-appellees.

Barredo, Acting Chairman, Aquino, Concepcion, and Martin, JJ.,[*] concur.

Fernando, J., is on leave.

Martin, J., was designated to sit in the Second Division.

[*] Designated to sit in the Second Division.

[1] Cananay vs. Sarmiento, 79 Phil. 36.

[2] Article 1498, Civil Code of the Philippines.

[3] Montenegro vs. Roxas de Gomez, 58 Phil. 723; Masallo vs. Cesar, 39 Phil. 134; Addison vs. Felix and Toco, 38 Phil. 404.

[4] p. 21, Record on Appeal; p. 9, Brief of Appellants.

[5] Valderama Lumber Manufacturer's Co., Inc. vs. L. S. Sarmiento, 5 SCRA 287, 291.

"In the present case the allegation in the complaint is simply that the plaintiff has been 'deprived' of the land of which he is and has been the legal owner for a long period. This allegation is not sufficient to show that the action is based upon the provisions of said section 80. Moreover, upon an examination of the prayer of the complaint, it is seen that the plaintiff is not only seeking to be repossessed of the land but desires also a declaration that he is the owner of the same. It is quite clear, from an examination of the complaint, that, had the same been presented in the court of the justice of the peace, it would have been demurrable, for the reason that the facts alleged fail to show that the plaintiff had been dispossessed by any of the methods mentioned in said section 80.

"It is a general rule of pleading and practice that in all pleadings filed in courts of special jurisdiction, the special facts giving the court jurisdiction must be specially alleged and set out. Unless these special jurisdictional facts are alleged, the complaint is demurrable. The complaint in the present case not containing allegations showing the special jurisdiction of the justice of the peace, the same would have been demurrable had it been filed in the court of a justice of the peace.

"Said section 80 does not cover all of the cases of dispossession of lands.

Whenever the owner is dispossessed by any other means than those mentioned in said section, he may maintain his action in a Court of First Instance, and it is not necessary for him to wait until the expiration of twelve months before commencing an action to be repossessed and to be declared to be the owner of said land. The summary action before a justice of the peace is given only for the special circumstances mentioned in said section (80). In all other cases Courts of First Instance have jurisdiction, even though the twelve months have not elapsed. (Alonzo vs. Municipality of Placer, 5 Phil. Rep., 71; Roman Catholic Church vs. Familiar, 11 Phil. Rep., 310; Gutierrez vs. Rosario, 15 Phil. Rep., 116.)." (Gumiran vs. Gumiran, 21 Phil. 174, 178-179.)

[6] Gumiran vs. Gumiran, Ibid.

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