

JOSE DE LA SANTA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS (FOURTH DIVISION) AND VALENTIN MAGSUMBOL AND MRS. VALENTIN MAGSUMBOL, RESPONDENTS.

G.R. No. L-30560. November 18, 1985

Ponente: MAKASIAR, C.J.

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MAKASIAR, C.J.:

This is a petition for review by certiorari filed by petitioner, Jose de la Santa, of two separate decisions by the respondent Court of Appeals (now Intermediate Appellate Court) in two cases entitled "Jose de la Santa vs. Balbino Deodoro," CA-G.R. No. 34422-R, and "Jose de la Santa vs. Valentin Magsumbol, et al.," CA-G.R. No. 34423-R.

Both appeals originated as unlawful detainer complaints filed by herein petitioner with the Justice of the Peace Court of Mogpog, Marinduque. After trial, the Justice of the Peace Court dismissed the complaints.

On appeal to the Court of First Instance (now Regional Trial Court), the complaints were sustained and the reliefs prayed for by the petitioner were awarded.

On further appeal, herein respondent Court reversed the Court of First Instance. In CA-G.R. No. 34422-R, respondent Court reversed the decision of the Court of First Instance and dismissed the complaint, it having found that —

"All the foregoing considerations, together with the fact that the defendant's possession of the properties has never been disturbed by Antonio Palileo nor by his successor-in-interest including the plaintiff herein, are preponderant evidence indicating that the transaction between the predecessors of the plaintiff and the defendant is a loan with an equitable mortgage over the lands in dispute. It appears that the interest on the loan was paid up to December 1957. Thereafter, Deodoro refused to make further payments in view of plaintiff's refusal to allow him to pay his debt and release the mortgage. The right of the plaintiff is, therefore, to foreclose the mortgage in order to effect collection of what Deodoro owes him but not ejectment as he has done in the present case.

"In view of the foregoing considerations, the decision appealed from is hereby reversed and the complaint dismissed without pronouncement as to costs."

In CA-G.R. No. 34423-R, respondent Court said:

"In view of our conclusion in CA-G.R. No. 34422-R xx xx we are constrained to rule, as we hereby rule, that the plaintiffs have no cause of action against the defendants and consequently, the decision appealed from is hereby reversed and the complaint must be, as it is hereby, dismissed, without pronouncement as to costs" (pp. 49-50, rec.).

The undisputed facts follow (pp. 11-17, L-30560 rec.; pp. 17-23, L-31078 rec.).

On September 7, 1960, Jose de la Santa filed two separate complaints for unlawful detainer with the Justice of the

Peace Court of Mogpog, Marinduque. One case named Balbino Deodoro as defendant; the other named the Magumbol spouses as defendants. The complaints substantially alleged that plaintiff was the owner of two parcels of land in Balanacan, Mogpog, Marinduque; that portions of said lands were leased to the defendants; that both defendants failed and refused to pay their rentals, Balbino Deodoro, from January 1958, and the Magumbols, since June, 1959; that, he sent Balbino Deodoro a notice of demand to pay his arrearages and to vacate the leased premises; that he sent a similar notice to the Magumbols; and that notwithstanding said notices, the defendants failed and refused to pay their arrearages, and vacate the premises.

On September 22, 1960, defendants filed their respective answers admitting the fact of actual possession and the receipt of the notices aforementioned. The notice of demand to pay arrearages and vacate the contested premises sent to Balbino Deodoro was dated January 19, 1960; that for the Magumbols was dated February 8, 1960. Balbino Deodoro further alleged that he was the true and lawful owner of the premises in question and that his possession thereof in the concept of owner was continuous, peaceful and adverse against all other claimants or pretenders for almost fifty (50) years. The Magumbols, on the other hand, alleged that they recognize the ownership of Balbino Deodoro, but that in any case, they would recognize the ownership of, and will pay the corresponding monthly rental to, the party adjudged as the true owner of the premises.

On October 10, 1960, the lower court, after trial, dismissed both complaints "because the possession in question lasted for more than one year."

On November 10, 1960, herein petitioner filed his motion for reconsideration and new trial. Private respondents filed their opposition thereto manifesting their concurrence with the findings of the Court and stating that "the only issue to be resolved in the case at bar, is whether the plaintiff has filed the present action in conformity with the provisions of Rule 72 of the Rules of Court."

On December 5, 1960, the Justice of the Peace Court issued an order denying the motion for reconsideration and new trial.

On December 19, 1960, plaintiff filed his notice of appeal. The cases were elevated to the Court of First Instance of Marinduque. Private respondents herein merely reproduced verbatim their answers filed before the Justice of the Peace Court.

On December 31, 1963, the Court of First Instance rendered judgment ordering the defendants in both cases to pay the plaintiff rentals in arrears plus attorney's fees and costs, and to vacate the land in question, declaring further that the "plaintiff is the rightful possessor of the land in question."

Defendants Deodoro and the Magumbols appealed their respective cases to the Court of Appeals, assigning almost uniform set of errors, to wit —

I. The lower court erred in not dismissing the case on the ground that the complaint originally instituted by the plaintiff-appellee in the inferior court of Mogpog, Marinduque was filed beyond the one-year period provided for by law.

II. The lower court erred in not dismissing the case on the ground that the appeal of the plaintiff-appellee from the judgment of the aforesaid inferior court was not perfected within the the reglementary period provided for by the Rules of Court.

III. The lower court erred in not dismissing the case for lack of jurisdiction for reasons mentioned in the last two preceding assignment of error.

IV. The lower court erred in not finding that the property in question was merely mortgaged to plaintiff-appellee's predecessors-in-interest and that therefore defendant-appellant has a right to redeem the

same and when refused to stop paying rents.

V. The lower court erred in not annulling Exhibits B, D, and G.

VI. The lower court erred in giving credence to the evidence of the plaintiff-appellee and in rendering judgment in his favor and against the defendant-appellant.

VII. The lower court erred in awarding attorney's fees to the plaintiff-appellee (pp. 21-22, L-31078 rec.).

The errors assigned by the Magsumbols differ from the above only as follows—

xxx xxx xxx

IV. The lower court erred in not finding that the property in question was merely mortgaged to plaintiff-appellee's predecessor in-interest and that therefore Balbino Deodoro (owner of the land in question) has a right to redeem the same from plaintiff-appellee and when refused had the right to ask defendants-appellants to stop paying rents to plaintiff-appellee (p. 16, L-30560 rec.).

xxx xxx xxx

On February 24, 1968 and April 26, 1968, the respondent Court rendered judgments in CA-G.R. No. L-34422-R and CA-G.R. No. L-34423-R, respectively, reversing the CFI decisions and finding Balbino Deodoro the true and lawful owner of the controverted premises. Subsequent motions for reconsideration in both cases were denied. Thus, the present appeal.

Petitioner raises uniform questions of law:

(1) May private respondents raise for the first time on appeal before the Court of Appeals, as they did raise in their fourth and fifth assigned errors, issues not raised before the lower courts? and

(2) May respondent Court nevertheless consider and resolve said issues, as it did in these appeals? (p. 21, L-30560 rec.; pp. 27, L-31078 rec.).

WE resolve both appeals jointly.

WE answer the first query in the negative.

The fourth and fifth errors relating to the alleged ownership of private respondent Balbino Deodoro before respondent Court of Appeals (now Intermediate Appellate Court), although averred in the answers of private respondents in both cases, were never the subject of proof in, nor considered by, the lower courts. They were new issues discussed and considered for the first time on appeal in the Court of Appeals. An issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal; because it would be offensive to the basic rule of fair play and justice, and would be violative of the constitutional right to due process of the other party (*Dosch vs. NLRC, et al.*, 123 SCRA 296, 310 [1983]; *Velasco vs. Manila, etc.*, 42 SCRA 556, 560 [1971]; *People vs. Archilla*, 1 SCRA 698, 701; *City of Manila vs. Eboy*, L-15872, 1 SCRA 1086 [April 26, 1961]).

The second query requires some discussion.

At the outset, We note that the nature of the actions filed by the petitioner before the Justice of the Peace Court of Mogpog, Marinduque, never changed in the course of the appeals both to the Court of First Instance of Marinduque and the respondent Court of Appeals.

The Justice of the Peace Court, after trial, dismissed said actions because, accordingly, "the possession in question lasted for more than one year."

On appeal, the Court of First Instance reversed the inferior court and ordered therein defendants (now private respondents) to pay arrearages and vacate the contested premises. Accordingly, the Court of First Instance granted the relief afforded in an unlawful detainer suit (pp. 64-65, rec. on appeal, L-31078; p. 65, rec. on appeal, L-30560).

Thus, the appeals thereafter elevated to the respondent Court of Appeals were from decisions of the Court of First Instance (in the latter's exercise of appellate jurisdiction) in an unlawful detainer suit. WE may well note that the respondent Court properly ruled that the unlawful detainer suits filed by herein petitioner before the Justice of the Peace Court were filed within the one-year period of adverse possession, counted from the date of the notices of demand to pay arrearages and vacate the premises given the private respondents herein (p. 84, L-31078 rec.).

"In actions of forcible entry and detainer, the main issue is possession de facto, independently of any claim of ownership or possession de jure that either party may set forth in his pleadings. As incidents of the main issue of possession de facto, the inferior court can decide the questions of [a] whether or not the relationship between the parties is one of landlord and tenant; [b] whether or not there is a lease contract between the parties, the period of such lease contract and whether or not the lease contract has already expired; [c] the just and reasonable amount of the rent and the date when it will take effect; [d] the right of the tenant to keep the premises against the will of the landlord; and [e] if the defendant has built on the land a substantial and valuable building and there is no dispute between the parties as to the ownership of the land and the building, their rights according to the Civil Code. Defendants' claim of ownership of the property from which plaintiff seeks to eject him is not sufficient to divest the inferior court of its jurisdiction over the action of forcible entry and detainer. xxx" (Alvir vs. Hon. Vera, et al., L-39338, 130 SCRA 357 [July 16, 1984]).

"xxx (T)he mere fact that, in his answer, defendant claims to be the exclusive owner of the property from which plaintiff seeks to eject him is not sufficient to divest the Justice of the Peace Court of its jurisdiction over the summary action of forcible entry or unlawful detainer x x for were the rule to be otherwise, the ends of justice would be easily frustrated by making the efficacy of the summary action for possession depend entirely upon the defendant" (Vivar vs. Vivar, L-18667, Aug. 31, 1963, 8 SCRA 847, 849).

"However, if it appears during the trial that the principal issue relates to the ownership of the property in dispute and any question of possession which may be involved necessarily depends upon the result of the inquiry into the title, previous rulings of this Court are that the jurisdiction of the municipal or city court is lost and the action should be dismissed." (Alvir vs. Vera, supra).

Thus, a distinction must be made between the resolution of an issue and the reception of evidence. In an unlawful detainer suit, while the court cannot adjudicate on the issue of ownership, it may receive evidence on possession de jure to determine the nature of possession (Consing vs. Jamandre, L-27674, 64 SCRA 1 [May 12, 1975]).

The principles and doctrines aforementioned apply to cases before inferior courts. WE find no reason however to depart from those principles on unlawful detainer suits on appeal before the respondent Court. Appeal does not operate to change the nature of the original action.

The fourth and fifth errors assigned in the appeal before respondent Court import a question of title or ownership.

It is within the discretion of the respondent Court to look into the evidence supporting the fourth and fifth assigned errors mentioned, insofar as said evidence would indicate or determine the nature of private respondents' possession of the controverted premises. Said court should not however resolve the issues raised by the assigned errors. The resolution of said issues would effect an adjudication on ownership which is not sanctioned in the summary action for unlawful detainer.

On the face of the questioned decision in CA-G.R. No. L-34422-R, it is evident that respondent Court did adjudicate on the issue of ownership (pp. 71-76, L-31078 rec.). It is unfortunate that it did so considering that the

appeal elevated to it was one from a decision of the Court of First Instance in an unlawful detainer action.

Respondent Court cannot take refuge in the provisions of Section 11 of Rule 40 of the Rules of Court. The provision reads —

"Sec. 11. Lack of jurisdiction. — A case tried by an inferior court without jurisdiction over the subject matter shall be dismissed on appeal by the Court of First Instance. But instead of dismissing the case, the Court of First Instance, in the exercise of its original jurisdiction, may try the case on the merits if the parties therein file their pleadings and go to trial without any objection to such jurisdiction."

Clearly, it applies only to appeals from inferior courts to the Court of First Instance. Such appeals from decisions of inferior courts to the Court of First Instance when given due course "stand for trial de novo upon its merits in accordance with the regular procedure in that court, as though the same had never been tried before and had been originally there commenced xx xx" (Sec. 9, Rule 40, Rules of Court; *Vda. de Kraut vs. Lontok*, L-18374, 7 SCRA 281 [Feb. 27, 1963]). Thus, the flexibility afforded therein.

No similar provisions appear under Rule 41 regarding the procedure for appeals from the Court of First Instance to the Court of Appeals.

Neither may the respondent Court justify its adjudication on ownership on the basis of Our declared abhorrence of multiplicity of suits in the attainment of the same result, nor the dictates of section 2 of Rule 1, to wit —

"Sec. 2. Construction. — These rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceedings."

The action for unlawful detainer is summary in nature (*Devesa vs. Montecillo*, L-23942, 27 SCRA 822 [March 28, 1969]; *Sarona vs. Villegas*, L-22984, 22 SCRA 1256 [March 27, 1968]). As such, it is inadequate for the ventilation of issues involving title or ownership of controverted real property. It is more in keeping with procedural due process that where issues of title or ownership are raised in the summary proceedings for unlawful detainer, said proceedings should be dismissed for lack of jurisdiction, unless, in the case of an appeal from the inferior court to the Court of First Instance, the parties agree to the latter Court hearing the case in its original jurisdiction in accordance with Section 11, Rule 40, as aforequoted.

OUR declared abhorrence of multiplicity of suits and the provisions of the Rules of Court remain subservient to the constitutional guaranty of due process.

Departing from the above procedure, respondent Court adjudicated on the question of ownership. The departure renders the decision void for having been issued without jurisdiction.

Nonetheless, it is apparent from the questioned decisions that respondent Court perceived from the evidence presented that the question of possession could not be determined without first determining the question of ownership. Insofar as this is so, WE sustain the dismissal of the unlawful detainer suits without prejudice to the filing of the proper action to determine the nature of the transaction between and among the private parties herein.

WHEREFORE, THE DECISIONS OF RESPONDENT COURT OF APPEALS (NOW INTERMEDIATE APPELLATE COURT) IN THESE TWO CASES DISMISSING THE UNLAWFUL DETAINER SUITS ARE HEREBY AFFIRMED, WITHOUT PREJUDICE TO THE FILING BY THE PARTIES OF THE APPROPRIATE ACTION. NO COSTS.

SO ORDERED.

Abad Santos and Cuevas, JJ., concur.

Aquino and Alampay, JJ., in the result.

Escolin, J., see separate opinion.

Concepcion, Jr., J., no part.

SEPARATE OPINION**ESCOLIN, J.:**

The case at bar was originally instituted in 1960 before the Justice of the Peace Court of Mogpog, Marinduque, which erroneously dismissed the complaint for unlawful detainer. The dismissal was appealed to the Court of First Instance. A full-dress hearing was conducted; and both parties adduced evidence tending to prove ownership of the disputed land as basis for the right of possession. Plaintiffs presented documentary evidence consisting of: [a] Escritura de Venta con pacto de retro executed on January 7, 1932 by defendant Deodoro in favor of one Antonio Paulino over the land in question; [b] a contract of absolute sale dated March 29, 1935 executed by Antonio Paulino in favor of spouses Calixto de la Santa and Asuncion Roque, parents and predecessor-in-interest of plaintiff; [c] a contract of lease dated April 30, 1935 executed by defendant Deodoro as lessee and Calixto de la Santa as lessor whereby the former agreed to pay a rent of P4.00 a month for continued possession of the portion of land in question, whereon his house is built; [d] contract entitled Kasunduan ng Upahan sa Solar, dated November 1, 1951 between Deodoro and Asuncion Roque whereby the rent was reduced to P3.00/month; and [e] various Tax Declarations and Official Receipts showing payment of realty taxes on said land by plaintiff and his predecessors-in-interest.

Upon the other hand, defendant Deodoro, taking the stand on his own behalf, declared that this escritura de venta con pacto de retro did not express the true meaning and intent of the parties, as the real transaction was a mortgage. He likewise testified that he signed the contract of lease without real understanding of their true meaning and import. To such parol evidence no objection was interposed.

The trial court, without specifically declaring plaintiff the owner of the land in question, ruled that the latter had the right to possession of the same. The fact however that the issue of possession is inextricably linked with the issue of ownership, as observed by the distinguished ponente, could only mean that the trial court did rule *sub silentio* on the question of ownership. Evidently, it found the claim of ownership of plaintiff more convincing; otherwise, it could not have rendered judgment for the plaintiff. Thus, when the decision was appealed to the Court of Appeals, it was understandable for the defendants to assail the findings of the lower court and assign as error the fact that it did not find the "venta con pacto de retro" a mere equitable mortgage as contended by defendant Deodoro. This issue was raised in the course of the trial, without any objection on the part of plaintiff. Upon this premise, the issue cannot really be considered as a new matter being raised for the first time on appeal.

Section 5 of Rule 10 provides, "when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all aspects, as if they had been raised in the pleadings." The decision of the Court of Appeals is therefore based on evidence presented at the trial and it is within its competence and jurisdiction to rule as it did. As aforesaid, the decision of the trial court was in effect an adjudication on the issue of ownership over which it had jurisdiction, as the proceeding had therein was in fact an exercise of its original jurisdiction under Section 11 of Rule 40. The parties participated fully in said hearing without objection to such

jurisdiction. It follows, therefore, that the Court of Appeals may review its findings of facts on appeal. The proofs presented appear sufficient to form as bases for a definite ruling on the issue of ownership.

To my mind, the question that should be re-solved in this case is whether the appreciation by the Court of Appeals of the evidence presented on the issue of ownership is correct or not. A definite ruling on this question is not only proper, but, more importantly, it would put an end to this controversy which has been dragging since 1960, and thus spare the parties of the time, expenses and effort of filing another suit where the parties would only present the same evidence already adduced in this case.

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