

**FIDEL GERALDEZ, LEON GEUALDEZ, TEODORO ALIAS DULONG  
GERALDEZ, ET AL., PETITIONERS, VS. HON. JOSE S. RODRIGUEZ,  
JUDGE, COURT OF FIRST INSTANCE, CEBU PROVINCE, PERFECTO  
SARMIENTO ...***G. R. No. L-17064. November 09, 1964*

Ponente: DIZON, J.

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On February 19, 1958 the spouses Perfecto Sarmiento and Cristina Canonigo hereinafter referred to as respondents filed an action for recovery of possession of land, with damages, with the Justice of the Peace Court of Naga, Cebu, against herein petitioners, alleging, among other things, that they were the owners of the parcel of land situated in barrio Alfaco-Lutak, Naga, Cebu, described in paragraph 3 of their complaint; that petitioners were their tenants over a portion thereof, their oral contract of tenancy providing that one-third of the produce of the land would pertain to respondents and the remaining two-thirds to petitioners; that in June, 1957, after the crop harvest, respondents demanded their share of the crop harvested by petitioners, but the latter refused to deliver the same; that by reason thereof, respondents asked them to vacate the premises, and upon their refusal to do so, the case was filed.

Petitioners filed their answer with counterclaim, alleging, in turn, that they were the owners of the land described in the complaint, having inherited it from Pablo Geraldez, the original owner thereof, and, as affirmative defense, they claimed that the court had no jurisdiction over the subject-matter of the complaint as it involved either ownership of real estate or a tenancy relationship between the parties.

After trial, the court rendered judgment ordering petitioners to vacate the premises, to pay respondents, jointly and severally, the sum of P400.00 as the value of their share in the produce of the land, the sum of P1,000.00 as monthly rental from July 1, 1957 until possession is restored, and the sum of P200.00 as attorney's fees.

Petitioners appealed to the Court of First Instance of Cebu where they filed a motion to dismiss the case on the ground that the court had no jurisdiction to try it because under Itcp. Act No. 1199, all cases involving the ejectment of a tenant by the landlord shall be within the original and exclusive jurisdiction of the Court of Agrarian Relations. The respondent judge, however, denied the motion in his order dated July 7, 1958.

Meanwhile, as petitioners failed to pay the monthly rental fixed by the Justice of the Peace Court of Naga since August 1958, upon motion of respondents, respondent judge issued a writ of execution, and on July 7, 1959, respondents filed a motion to declare petitioners in contempt of court for their refusal to comply with said writ. The respondent court, however, postponed action thereon until after the trial of the case on the merits.

After the respondents had presented all their evidence, petitioners again moved for the dismissal of the action upon the same ground. This was also denied by the respondent judge on March 31, 1960, as follows:

"The motion to dismiss filed by the defendants on the ground of lack of jurisdiction of this Court for this case

belongs to the Court of Agrarian Relations not being well founded for the real issues involved in this case is ownership as can be gleaned from the pleadings, said motion to dismiss is hereby denied."

Petitioners moved for a reconsideration of the above-quoted order on the ground that if the real issue involved in this case was "ownership" as held in the order aforesaid then the case should be dismissed because the Justice of the Peace Court of Naga had no jurisdiction over the case. Upon denial by the respondent judge of said motion for reconsideration, the petition for certiorari before Us was commenced.

On the basis of the allegations made in the complaint filed in the Justice of the Peace Court of Naga, Cebu, the action instituted was for the ejectment of petitioners from the land that they were cultivating as tenants of respondents. Should the allegations made in their answer be taken into account, the resulting issue laid before said court necessarily involved the question of ownership over said land because, while the complaint asserted that respondents were the owners thereof, said answer averred that petitioners were the owners.

It is obvious that whether the real issue laid before the court of origin was the ejectment of a tenant or ownership over the land they were cultivating, said court had no jurisdiction. If it was the first issue that was involved, jurisdiction was with the Court of Agrarian Relations, while it was the Court of First Instance of Cebu who had jurisdiction over the question of title.

Such being the case the conclusion becomes inescapable that the proceedings had in the court of origin being void for lack of jurisdiction, the Court of First Instance could not exercise appellate jurisdiction over the case.

True, the case was partially tried in the Court of First Instance, but it must be observed that petitioners raised the question of lack of jurisdiction seasonably, not only in the court of origin but also in the Court of First Instance in the latter court, twice: first, by motion to dismiss before trial, and afterwards by a similar motion after respondents had closed their case. It cannot be said therefore that they had given their consent to the case being taken up by the Court of First Instance of Cebu in the exercise of its original jurisdiction as authorized under the provisions of Rule 40, Section 11 of the Rules of Court.

IN VIEW OF THE FOREGOING, the petition under consideration is granted and the writ of certiorari prayed for therein is ordered issued. As a result, the orders complained of, dated July 7, 1958, March 31, 1960 and May 7 of the same year are set aside. With cost against respondents.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ. concur.

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