

**POLICARPIA TIU, ASSISTED BY HER HUSBAND CHOA THIAN,
PETITIONER, VS. THE HONORABLE COURT OF APPEALS (SPECIAL
SECOND DIVISION) AND CHOA KIM, RESPONDENTS.**

G.R. No. L-32626. January 28, 1971

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

Policarpia Tiu came to this Court on certiorari to annul a resolution, Annex "G", of the Court of Appeals denying petitioner's motion to dismiss the appeal in CA-G.R. No.45091-R, entitled "Policarpia Tiu, assisted by her husband Choa Thian, plaintiff-appellee, vs. Choa Kim, defendant-appellant".

The basic facts are set forth in the petition and admitted by private respondent, from which we gather the following:

Petitioner instituted an action for ejectment against private respondent Choa Kim before the City Court of Manila (Branch VI), which was docketed as Civil Case No. 175141. After due trial, said Court rendered judgment ordering the defendant therein and all persons claiming under him to vacate the premises described in the Complaint and to surrender the pos-session thereof to plaintiff therein; ordering defendant further to pay plaintiff the sum of P9,000.00 as rentals in arrears up to and including December 31, 1968, plus the sum of P1,500.00 as monthly rental beginning January 1, 1969, and likewise to pay the plaintiff in con-cept of attorney's fees the sum of P2,000.00 and costs. From this judgment, defendant therein, now private respondent, appealed to the Court of First Instance of Manila, where the case was docketed as Civil Case No. 75975, and where after due hearing, the Court rendered a decision:

- (1) Ordering defendant to vacate and turn over to plaintiff the peaceful possession of that parcel of land located at, and known as, Nos. 671-673 T. Alonzo Street, Sta. Cruz, Manila;
- (2) Sentencing defendant to pay to plain-tiff the monthly rental at the rate of P1,500.00 from July, 1968, until defendant actually vacates the land of plaintiff; and
- (3) Sentencing defendant to pay plaintiff the sum of P3,000.00, as and for attorney's fees.

Private respondent's motion for reconsideration having been denied, he seasonably appealed to the Court of Appeals, which was docketed as CA-G.R. No. 45091-R, and on time filed his printed Record on Appeal (Annex "A").

Petitioner, on February 3, 1970, filed with the Court of Appeals, a motion to dismiss appeal on the grounds: (1) That the said appeal is frivolous and, therefore, without merit; (2) That said appeal is prosecuted manifestly for delay; and (3) That the question raised is unsubstantial to require consideration (Annex "B"), to which private respondent filed an opposition (Annex "C").

Petitioner on February 18, 1970, filed a supplemental motion to dismiss appeal, anchored on the ground that the

Court of First Instance of Manila having affirmed in full the judgment of the City Court of Manila, the only legal remedy left to the defendant-appellant (herein private respondent) is to elevate the matter to the Court of Appeals on a Petition for Review, pursuant to Republic Act No. 5433 which was approved on September 9, 1968 (Annex "D"). To this, private respondent filed his opposition (Annex "E"), and later petitioner filed her reply thereto (Annex "F").

The Second Division of the Court of Appeals having failed to reach a unanimous decision on the motion to dis-miss, a Special Second Division of five members was creat-ed, composed of the regular members, namely Messrs. Justices Juan P. Enriquez, Jesus Y. Perez and Andres Reyes, and Mes-srs. Justices Nicasio A. Yatco and Ruperto G. Martin as additional members. On August 19, 1970, the Special Second Division issued an extended resolution denying petitioner's motion to dismiss appeal, by a vote of three to two, with Mr. Justice Enriquez writing a dissenting opinion, in which Mr. Justice Yatco concurred (Annex "G").

Respondents having answered the petition filed herein, and petitioner having replied thereto, this case was set for hearing. However, petitioner elected to submit the case on the pleadings already filed whereas private respondent asked for and was given an opportunity to file a rejoinder to pe-titioner's reply. The latter pleading having been filed this case is now deemed submitted for decision.

Basically the main issue to be resolved in this proceeding is whether private respondent's appeal should be allowed to run its course, considering that private res-pondent's right over the property in question is based on a lease contract which had admittedly expired. Indeed, private respondent's only claim to justify continued occupan-cy of the premises in question, refers to the right of petitioner to own the leased premises, claiming petitioner is not a Filipino citizen.

We find petitioner's contention meritorious. Private respondent would persist in remaining on the premises by virtue of the unproved allegation that petitioner-lessor is not the owner thereof. Yet it is clear that not claim-ing ownership in himself, he cannot in an ejectment proceed-ings raise that very question. This Court had time and again held that the fact of lease and the expiration of its terms are the only elements of this kind of action. Plaintiff need not prove his ownership and defendant cannot deny it, and if defendant denies plaintiff's ownership he raises a question unessential to this action. (*Sevilla vs. Tolentino*, 51 Phil., 333, 337; *Centeno vs. Gallardo*, 93 Phil., 63, 67.) Evidence of ownership in ejectment cases can be admitted only for the purpose of determining the character and extent of pos-session and damages for detention. (Section 4, Rule 70, Re-vised Rules of Court.) The fact of lease having been ad-mitted by private respondent as well as the expiration of the term thereof, there can be no question that the issue of ownership is foreign to the action. Indeed, it matters not that private respondent was already an occupant of the leased premises when he executed and signed the contract of lease, because the basis of the ejectment suit is the very contract of lease. Private respondent cannot now be heard to impugn what he had previously admitted, which includes the fact that petitioner is the owner of the pre-mises. Neither can he confuse the issue by raising the question of title to defeat the right of petitioner to the possession of the premises and to eject him therefrom. Under Sec. 3, Rule 131 of the Revised Rules of Court, the tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them.

As the case now stands, private respondent's only justification to remain on the premises in question is based on a defense which is unavailable to him. His ap-peat may therefore be considered frivolous and made solely for delay. (*Vda. de Palanca vs. Chua*, 27 SCRA 357, 366, which noted that tenants' appeals in ejectment cases, the immediate disposal of which public policy demands, are notoriously dilatory.) Under these circumstances, we are justified in ordering its dismissal. (*Cruz vs. Blanco*, 73 Phil., 596; *Ferinion vs. Sta. Romana*, 16 SCRA 373, 375; *Ins. Co. of America vs. F.F. Sharp & Co.*, 18 SCRA 462, 466; *Dasalia vs. Caluag*, 8 SCRA 644, 647; *G.S.I.S. vs. Cloribel*, 14 SCRA 371, 375-376.) In view of the fore-going findings, we find it unnecessary to pass upon the

other issues raised by petitioner.

WHEREFORE, the herein petition for certiorari is granted; the resolution of the Court of Appeals of August 19, 1970, Annex "G", is hereby set aside, and defendant's appeal in CA-G.R. No. 45091-R is ordered dismissed. Costs against private respondent.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Makasiar, JJ., concur.

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