

**CONSUELO VDA. DE PRIETO, PLAINTIFF AND APPELLEE, VS.
PACIENCIA REYES AND HER HUSBAND “JOHN DOE”;
DEFENDANT AND APPELLANT.**

G.R. No. L-21470. June 23, 1965

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Paciencia Reyes appealed to the Court of Appeals from a decision of the Court of First Instance of Manila (in its Case No. 26750) affirming that of the Municipal Court which ordered her to vacate Lot. 11, Block 18, of the New Legarda Estate in the City of Manila, and to pay a reasonable rental of P5.00 a month from February 8, 1952, plus litigation costs. The Court of Appeals has certified the case to the Supreme Court for the reason that only questions of law are involved.

On April 7, 1952, appellee herein, Consuelo Vila, de Prieto, had sued appellant Paciencia Reyes in the Municipal Court of Manila Cor illegal detainer, averring that plaintiff owned the lot in question; that "through, stealth, strategy and misrepresentation and without the knowledge, consent or authority of the owner" defendant build a barong-barong (shack) on the lot, and that despite repeated demands, both oral and written, defendant Reyes refused to vacate. De-fendant filed a motion to dismiss, assailing the jurisdiction of the Municipal Court on the ground that it did not appear that the case had been brought "within one year from unlawful deprivation or withholding of possession", and that no cause of action was alleged. The court denied the motion to dismiss, and defendant answered alleging that since December 3, 1948 she was a bona fide occupant, brought from one Dominador Merced the house as well as the right of occupation as tenant of the lot. After trial, the municipal court sentenced defendant Reyes to vacate and pay P5.00 a month from February 8, 1952. She appealed to the court of first instance.

In the latter court, Reyes again challenged the original jurisdiction of the municipal court as well as the appellee jurisdiction of the court of first instance, reiterating the position she had taken in the court of origin. The motion to dismiss was overruled, and the defendant then answered, reiterating that she had in good faith purchased the house from a sub-lessee of the lot in question.

The case went to trial. The court of first instance that plaintiff, as owner of the lot, learned of the or the defendant's house only in January of ; that 1952; that in February of that year plaintiff's attorney wrote defendant several letters asking her to vacate, but defendant paid no attention; that defendant purchased the house (but not the land on which it stands), in December 3, 1949, from one Dominador Merced, who, in turn, had purchased it from one Pedro Sta. Ana; that defendant lived in the house since she purchased it; that it was all done without the landowner's knowledge or consent; and that defendant had failed to pay any part of the rentals of the land in question. In view of such findings, the court of first instance, in accord with the municipal court, ordered the defendant to vacate and pay P5.00 a month from February 1952. Her motions for recon-sideration having been denied, defendant appealed once more.

It is insisted now that both trial courts lacked juris-diction to entertain the illegal detainer suit, because de-fendant-appellant had been in possession since December, 1948, and the action was started only in 1952; and that it was an error to consider that the year for the summary action should be counted only from the time the owner learned of defendant's encroachment.

The contention is unmeritorious. There is a natural difference between an entry secured by force or violence and one obtained by stealth, as in the case before us. The owner or possessor of the land could not be expected to enforce his right to its possession against the occupant and sue the latter before learning of the clandestine intrusion. And to deprive the lawful possessor the benefit of the summary action, under Rule 70 of the Revised Rules, simply because the stealthy intruder manages to conceal the trespass for more than a year would be to reward clandestine usurpations even if they are unlawful.

Besides, since there can be possession by tolerance, this Court has repeatedly held that possession or detainer becomes illegal only from the time that there is a demand to vacate.[1] Hence, the year for bringing the action for illegal detainer should be counted only from such demand. Since in the case before us the first demand to vacate was made in February of 1952 and the complaint was filed in April of the same year, the plea of lack of jurisdiction has nothing to support it.

WHEREFORE, the decision appealed from is affirmed. Defendant-appellant shall pay the costs in all instances.

Bengzon, C.J., Concepción, Paredes, Dizon, Regala, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

Judgment affirmed.

[1] *Amis vs. Aragon*, L-4684, April 28, 1951; *Tuason vs. Gonzalez*, 109 Phil. 923; *Canaynay vs. Sarmiento*, 79 Phil. 36; *Robles vs. San Jose*, 52 Off. Gaz., 6193; *Zobel vs. Abreu*, 98 Phil. 343; *Casilan vs. Tomassi*, L-16574, February 28, 1964.

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