

ANTONIO BUENAVENTURA, PLAINTIFF-APPELLANT, VS. GERONIMA HALILI UY, SYLVIA TE, FELY TE, HELEN TE, REGINO TE, BENJAMIN TE, LUIS TE, BELEN TE LIM, MANUEL LIM, VIRGINIA TE DUY, CHAR...*G.R. No. L-28156. March 31, 1987*

Ponente: PARAS, J.

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This is an appeal from the Order of the Court of First Instance of Davao in Civil Case No. 5076[1] entitled "Antonio Buenaventura, Plaintiff vs. Geronima Halili Uy, et al., Defendants," which dismissed a complaint for forcible entry and detainer, on appeal before it, on the ground of lack of jurisdiction of the City Court of Davao City: (a) to entertain the original complaint which was unverified and filed beyond the reglementary period required under Section 1, Rule 70 of the Rules of Court and (b) to order the amendment of said complaint by subsequently filing a verified amended complaint.

The undisputed facts of this case as found by the City Court of Davao City are as follows:

Plaintiff-appellant Antonio Buenaventura by virtue of a written contract of lease, leased unto the defendant-appellee Geronima Halili Uy and her husband a portion consisting of 144 square meters of his residential lot located at Bolton Street, Davao City, where the latter constructed their residential house. The consideration is P50.00 a month for a period of twenty five (25) years. The appellees however, occupied an area of 279 square meters or 135 square meters in excess of the leased premises. Upon discovery of this unauthorized occupancy, appellant notified appellees to remove the additional construction on the excess portion. However, appellees agreed to pay an additional rent of P30.00 a month for the area in question and appellant allowed them to occupy the same until the time he would need the premises. Sometime later, this need arose and appellant thru counsel demanded that appellees vacate the excess portion. Upon refusal to vacate, an action was filed for "forcible entry and detainer", before the City Court of Davao City, docketed as Civil Case No. 603-A, entitled "Antonio Buenaventura vs. Geronima Halili Uy, et al" (Record on Appeal, pp. 5-11).

Defendants filed a Motion To Dismiss on the grounds of: (a) lack of jurisdiction over the subject matter, the complaint not having been verified and the supposed forcible entry having taken place almost seventeen (17) years ago and (b) lack of cause of action (*Ibid.*, pp. 14-22).

The City Court allowed counsel for plaintiff to amend his complaint and the defendants' motion to dismiss was denied (*Ibid.*, pp. 23-24).

Subsequently, the plaintiff filed an amended complaint duly verified with its caption changed to "Ejectment" but the ultimate facts remained materially the same as those in the original complaint (*Ibid.*, pp. 24-31; Brief for the Plaintiff-Appellant, p. 3).

From the evidence presented the City Court rendered a decision in favor of the plaintiff; the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, sentencing the defendants:

- (1) To vacate the excess portion in question and to restore the possession thereof to the plaintiff;
- (2) To pay the plaintiff the agreed monthly rental at the rate of P30 a month from June, 1965 until they vacate the premises; and
- (3) To pay the costs.

Defendants' counterclaim for damages and attorney's fees not having been substantiated, is hereby dismissed." (Record on Appeal, pp. 40-45)

On appeal, the Court of First Instance of Davao sustained the position of counsel for the defendant and dismissed the case, (Ibid., pp. 69-73) and denied the motion for reconsideration of said Order filed by the plaintiff (Ibid., pp. 129-130).

Hence this appeal.

In his brief appellant raised the following assignment of errors:

1. THE LOWER COURT ERRED IN HOLDING THAT INASMUCH AS THE ACTION WAS NOT BROUGHT WITHIN THE ONE YEAR PERIOD PRESCRIBED UNDER SECTION 1, RULE 70, OF THE RULES OF COURT, THE CITY COURT HAD NO JURISDICTION TO ENTERTAIN THE ORIGINAL COMPLAINT;
2. THE LOWER COURT ERRED IN HOLDING THAT THE ABSENCE OF VERIFICATION OF THE ORIGINAL COMPLAINT WAS A JURISDICTIONAL DEFECT;
3. THE LOWER COURT ERRED IN HOLDING THAT SINCE THE CITY COURT HAS NO JURISDICTION TO ENTERTAIN THE COMPLAINT IT HAD NECESSARILY NO JURISDICTION TO ORDER ITS AMENDMENT; and

4. THE LOWER COURT ERRED IN DISMISSING THE COMPLAINT.

The main issue in this case which in effect combines the four errors assigned is whether or not the suit instituted by the herein plaintiff-appellant is a forcible entry or an unlawful detainer case.

The Supreme Court in *Dikit v. Ycasiano* (89 Phil. 46-49 [1951]) clearly laid down some distinctions between the two actions, as follows: (1) As to possession: the possession of the intruder or person who deprives another of the possession of a land or building in forcible entry is illegal from the beginning because his entry into or taking possession thereof is made against the will or without the consent of the former possessor; while in unlawful detainer, the possession of the detainer is originally legal or lawful, but it becomes illegal after the expiration or termination of his right to hold possession of the land or building by virtue of a contract; (2) As to demand to vacate: in forcible entry, no previous demand to vacate is required by law before the filing of the action; while in an action for unlawful detainer by a landlord against his tenant, such demand is required.

Coming back to the case at bar, there is no question that the action filed by herein plaintiff-appellant is not one of forcible entry but of unlawful detainer. For it is clear that when appellant asked appellees to vacate the excess portion of the land (which excess had been the subject of the additional lease agreement) because of his need for the premises, and the appellees refused, their continued possession of the excess became unlawful — the filing of the complaint within the one-year statutory period makes the case fall under the jurisdiction of the City Court.

Likewise, it is settled that the requirement regarding verification of a pleading is a formal, not a jurisdictional requisite. It is simply intended to secure an assurance that what are alleged in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. Thus, the court may order the correction of the pleading if not verified, (*Oshita v. Republic*, 19 SCRA 700 [1967]). The defect was merely formal. It did not affect the validity and efficacy of the pleading, much less the jurisdiction of the court (*Gadit v. Feliciano, Sr.*, 69 SCRA 388, 389 [1976]).

In the case at bar the City Court correctly denied the motion to dismiss and allowed the amendment of the complaint by the verification of the same.

PREMISES CONSIDERED, the assailed Order of the Court of First Instance of Davao is hereby SET ASIDE, and the decision of the City Court of Davao City is hereby REINSTATED.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

[1] Penned by Judge Manases G. Reyes.

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