

**CARLOS CALUBAYAN AND EMILIA FERRER,
PLAINTIFFS-APPELLANTS, VS. CIRILO PASCUAL,
DEFENDANT-APPELLEE.**

G.R. No. L-22645. September 18, 1967

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/7550ed4a8f64/>

ANGELES, J.:

This case was commenced in the Court of First Instance of Rizal on May 6, 1963, upon the filing of a complaint which, so far as pertinent, is quoted hereunder:

"II

"The plaintiffs are the registered owners of two parcels of land situated in the corner of 6th Avenue and F. Roxas Streets, Grace Park, Caloocan City, known as Lots Nos. 1 and 3, Block No. 48 C of the Subdivision Plan Psd-15136, being a portion of Block No. 48-C of the Plan Psd-4212, G.L.R.O. Record No. 11267, both covered by Transfer Certificate of Title No. 7200 of the land records of the Province of Rizal. The plaintiffs purchased these two (2) parcels of land from the Philippine Realty Corporation on October 22, 1957.

"III

"The defendant is one of the squatters occupying a portion of the above-mentioned parcels of land and upon plaintiffs' acquisition thereof, the latter, on several occasions, notified the said defendant that they are now the legal owners of the said two (2) parcels of land and requested the said defendant to see them so that necessary arrangement could be made under which the said defendant may continue for the meantime using the portion of the land that he has been occupying. The defendant has consistently ignored these requests and until now he has not seen the plaintiffs with regard thereto.

"IV

"On February 2, 1963, the plaintiffs notified the defendant that they now need the two (2) parcels of land in question and requested him to vacate the same within the period of twenty (20) days from receipt thereof. The defendant received the said letter on February 7, 1963 and in spite thereof, he has refused and still continues to refuse to vacate the portion of the above land in question which he has been illegally occupying."

The defendant filed a motion to dismiss the complaint, on the ground that the Court of First Instance has no jurisdiction over the subject matter of the suit, which is one for ejectment, the main basis for such contention being that the action was filed in less than one year after the demand to vacate the premises. Plaintiff's opposed the motion. On September 3, 1963, the lower court issued an order dismissing the case.

From the order of dismissal the plaintiffs appealed, contending that the Court of First Instance has jurisdiction over the said case because their purpose is not merely to eject the defendant but to re-cover possession of the real property occupied by him. Since, fundamentally, the nature and purpose of an action, and the character of the relief sought are determinable from the averments in the complaint,[1] We have reproduced the pertinent

allegations of the com-plaint.

The issue is whether upon the averments of the com-plaint, the case should be treated as one for ejectment, cognizable by the inferior court, or for recovery of pos-session (accion publiciana), falling within the jurisdic-tion of the Court of First Instance.

To begin with, it would appear that although the defendant is regarded by the plaintiffs as a "squatter" his occupancy of the questioned premises had been permitted or tolerated even before the Philippine Realty Corporation sold the lots to the plaintiffs. Otherwise, the latter would not have found him on the premises. It may be true that upon their acquisition of the parcels of land in 1957, plaintiffs notified and requested defendant to see them, but despite defendant's failure to heed these requests, plaintiffs did not choose to bring an action in court but suffered the defendant instead to remain in the premises for almost six years. Only on February 2, 1963, did the plaintiffs for the first time notify the defendant that "they now need the two parcels of land in question" and requested him to vacate the same. In allowing several years to pass without requiring the occu-pant to vacate the premises nor filing an action to eject him, plaintiffs have acquiesced to defendant's possession and use of the premises. It has been held that a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will va-cate upon demand, failing which a summary action for ejectment is the proper remedy against them.[2] The status of defendant is analogous to that of a lessee or tenant whose term of lease has expired but whose occupancy continued by tolerance of the owner. In such a case, the unlawful deprivation or withholding of possession is to be counted from the date of the demand to va-cate.

This brings Us to the question as to when the demand to vacate should be considered in this case. It is our impression that it was not plaintiffs' intention to eject the defendant on the several occasions referred to in the complaint when they notified him that they were already the owners of the parcels of land. Plaintiffs merely wanted to make necessary arrangements with the defendant so that the latter "may continue for the meantime using the portion of the land they are occupying". In other words, they were amenable to the creation of a land--lord-tenant relationship between them and the defendant. Under this circumstance, the one year period of unlawful detainer should be counted not from the time the defend-ant ignored plaintiffs' notification and invitation to see them, for these were only manifestations of plaintiffs' desire to be recognized as owners of the parcels of land involved, but from February 2, 1963, when a demand to va-cate was effectively made.

Even assuming, for the sake of argument, that the various notifications for defedant to see the plaintiffs could be construed as demands upon the defendant to vacate, the length of time that defendant detained the premises is to be reckoned with from the date of the last demand.[3] Plaintiff's failure to file an action in court shortly after defendant had ignored their previous notices is to be considered as a waiver on their part to eject the defendant in the meantime.

"There is no legal obstacle for the owner to allow a defaulting ten-ant to remain in the rented property one month, one year, several years, or even decades. That consent no matter how long it may last, makes lawful tenant's possession. Only when that consent is withdrawn and the owner demands tenant to leave the property is the owners right of pos-session asserted and the tenant's re-fusal or failure to move out makes his possession unlawful because it is vio-lative of the owner's preferential right of possession."[4]

The written demand upon the defendant to quit the premises was made on February 2, 1963, while the complaint was filed on May 6, 1963. The action having been filed in less than one year after the notice to vacate, the case must be treated as one for ejectment over which the inferior courts have exclusive jurisdiction.

Of course, We have not overlooked nor disregarded the allegation as to plaintiffs' ownership of the par-cels of

land in dispute. But this allegation, when it is merely to show the character of plaintiffs' possession, does not bring the case within the jurisdiction of the Court of First Instance. There seems to be no question as to plaintiffs' right of ownership and possession over the properties, for the complaint does not pray for a declaration of such right. What is only necessary is for plaintiff to gain possession of the premises by ousting the defendant, and this may be attained by a summary action for ejectment which must be filed within one year from the unlawful deprivation or withholding of possession, not with the Court of First Instance, as was erroneously done here, but with an inferior court.

PREMISES CONSIDERED, the order of dismissal is hereby affirmed. Costs against the plaintiff-appellants.

Concepcion, C.J., Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, and Fernando JJ., concur.

[1] Subano vs. Vallecer, G. R. No.L-11867 March 24, 1959.

[2] John O Yu vs. Maximo de Lara, et al., G. R. No. L -16084, November 30, 1963, also involving a forcible entry and detainer case in other portions of the same subdivision formerly owned by the Philippine Realty Corporation.

[3] Cruz et al. vs. Atencio, G. R. No. L-11276, February 28, 1959; Zobel vs. Abreu, G. R. L-7663 January 31, 1956; Lucido vs. Vita, 25 Phil. 414.

[4] Canaynay vs. Sarmiento, 79 Phil. 36. See also Casillan vs. Tomassi, G. R. No, L-16574, February 28, 1965; Richards vs. Gonzales, G. R. No. L-14339, September 26, 1960; Robles vs. Jose, 52 O. G. 6193.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.