

**VALDERRAMA LUMBER MANUFACTURERS COMPANY, INC.,
PETITIONER VS. L. S. SARMIENTO, CO., INC., HON. MACAPANTOS
ABBAS AND THE PROVINCIAL SHERIFF, RESPONDENTS**

G. R. No. L-18535. May 30, 1962

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

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

Petitioner company applied for certiorari and prohibition with preliminary and/or preliminary mandatory injunction, alleging that the respondent Judge of the Court of First Instance of Davao committed a clear abuse of discretion amounting to lack or excess of jurisdiction in ordering the immediate execution of an appealed decision of the Justice of the Peace Court of Mabini, Davao.

It appears that on September 26, 1960, the petitioner, which has been occupying and using a parcel of foreshore land as its log pond in its logging business, was notified in writing by counsel for respondent L. S. Sarmiento & Company to vacate the premises, within ten days from receipt of notice, as the land has already been leased to it by the government. Not having complied with the demand to vacate within the said period, respondent company instituted an action for ejectment against the petitioner in the Justice of the Peace Court of Mabini, Davao, which was docketed as Civil Case No. 33. Answering the complaint, the petitioner interposed the affirmative defense, among others, of lack of jurisdiction over the case because it had been in prior, peaceful, and open possession of the premises since 1958, more than one year before the suit was commenced, and that there was a conflict pending between the parties in the Bureau of Lands over the land which has not been finally resolved.

After trial, the Justice of the Peace Court of Mabini, rendered judgment against the petitioner, and ordered it to vacate completely the premises within 5 days from receipt of a copy of the decision, to pay rentals in the amount of P239.82 a month, commencing from September 5, 1960 until surrender of possession of the land in question, and to pay the sum of P500.00 as attorney's fees and the costs. Upon motion for reconsideration by petitioner and/or new trial, the judgment was amended as follows:

"a. To vacate the premises completely after the decision shall have become final or sooner upon immediate execution of the judgment pursuant to Section 8, Rule 72 of the Rules of Court.

"In view of the foregoing, the motion for new trial and/or reconsideration is hereby denied and the decision rendered in the above-entitled case dated December 15, 1960, as modified, shall remain in full force and effect."

Not satisfied with the aforesaid judgment, petitioner company appealed to the Court of First Instance of Davao by filing on time its Notice of Appeal and a supersedeas bond, which was not objected to by opposing company and which was approved by the court in the amount of P2,178.74, "in order to stay execution of the decision rendered in the present case, dated December 15, 1960, in accordance with the provisions of Rule 72, Section 8, of the Rules of Court", and "conditioned for the performance of the judgment appealed from in case it be affirmed wholly or in part". Upon failure of petitioner to deposit within the first ten days of March, 1961 the adjudged

monthly rent of P239.82 allegedly corresponding to the month of February, 1961, while the appeal was pending in the court of first instance, L. S. Sarmiento & Company filed a motion for immediate execution. Over the opposition of the petitioner, the court granted the motion, and respondent Provincial Sheriff complied with the writ of execution on June 21, 1961 (Exhibit 7). However, when respondent company received the Writ of Preliminary Injunction issued by the Supreme Court on June 29, 1961, it "allowed the petitioner the use" of the premises (par. 5(b), p. 5, Answer). A motion to dissolve the said writ of this Court was filed in July 28, 1961.

It is not disputed that the petitioner, on August 18, 1958, applied for a permit to use and occupy the log pond in question with the Bureau of Forestry; the District Forester of Davao having permitted petitioner company to construct a pier and log pond, it introduced improvements thereon and since November 3, 1958 had been depositing its log products in, and shipping them for export from this pond. However, to clear doubts as to the jurisdiction of the Bureau of Forestry, petitioner also filed with the Davao District Land Office a lease application for the same property on March 30, 1959. On January 6, 1960, petitioner was informed that the area was being surveyed by Bureau of Lands surveyors in connection with a lease application of the respondent; thereupon, petitioner protested to the Bureau of Lands, but its protest was not entertained by this Office because the respondent, as successful bidder at public auction, had already been awarded the right to lease the property, and that the petitioner's lease application with the Davao District Land Office on March 30, 1959 did not appear on the records of the Bureau of Lands in Manila. On August 30, 1960, the Republic of the Philippines, represented by the Secretary of Agriculture and Natural Resources, entered into a contract of lease over the property in dispute with the respondent company.

The main issue in this case is whether or not the Justice of the Peace Court of Mabini, Davao, had jurisdiction over the ejectment case.

Petitioner" attacks the jurisdiction of said court on the ground that the complaint is insufficient in having failed to allege prior possession of the land by the plaintiff; neither did it allege that the deprivation of possession by the defendant was done through any of the means mentioned in Section 1, Rule 72, of the Rules of Court, namely: force, intimidation, threats, strategy, or stealth; nor is there anything averred as to any contractual relationship, or priority thereof, between the parties over the land.

Respondent counters by arguing that the prior possession of the land by petitioner was by tolerance of the Republic of the Philippines, and that respondent, as lessee of the land, stepped into the shoes of the lessor; and, inasmuch as tolerance of possession expires upon demand, which was made by lessee-company upon petitioner, the latter lost the right to possess the land, and, therefore, it cannot thereafter withhold the possession of the land.

The allegations in the complaint are what determine the jurisdiction of the court (*Baguioro vs. Barrios*, 77 Phil. 120).

Here, the complaint for ejectment recites that the plaintiff, is the lessee from the Republic of the Philippines of the foreshore land occupied by the defendant; that on September 5, 1960, plaintiff demanded of the defendant to vacate the premises within ten days from notice as it desired to use said parcel of land itself, being entitled to its possession and use thereof by reason of the aforementioned lease agreement; that defendant refused to vacate the premises, and that because of the "unwarranted acts of the defendant alleged hereinabove", plaintiff has been compelled to hire the services of counsel. Among other things, the complaint prayed for judgment, ordering the defendant "to vacate the premises in question and to restore the possession thereof to the plaintiff", and to pay rental value "until the possession of the same is returned to the plaintiff".

The complaint not only shows prior possession by petitioner herein, but does not allege that plaintiff (respondent herein) was deprived of possession by any of the means mentioned in Section 1, Rule 72, of the Rules of Court,

namely; force, intimidation, threats, strategy, and stealth, that would have made out a case for forcible entry (detentacion), nor that the right of possession of the petitioner had terminated, and occupancy was being unlawfully withheld so as to constitute unlawful detainer.

"If the dispossession did not take place by any of these means, Courts of First Instance, not justice of the peace courts, have jurisdiction." (2 Moran 287, 1957 Ed.)

And, to make out a case of detainer (desahucio), the complaint must show that the withholding of possession, or the refusal to vacate, was unlawful, though not necessarily employing the terminology of the law (Co Tiamco vs. Dias, 75 Phil. 672). On this jurisdictional requisite, the complaint under scrutiny is fatally silent. While it is true that the complaint uses the word "unwarranted", the way it was used is merely descriptive of the "acts of the defendant alleged hereinabove"; and thereinabove (referring to the complaint), nowhere can be found any word or phrase describing the withholding of possession by the defendant as unlawful or of as similar tenor.

The Justice of the Peace Court not having acquired jurisdiction over the case, the Court of First Instance of Davao did not acquire appellate jurisdiction.[1] Hence, the respondents Judge of the Court of First Instance of Davao and Provincial Sheriff acted with grave abuse of discretion in issuing and enforcing the writ of execution.

With regard to the claim that the action to dispossess petitioner should have been instituted by the government, as owner-lessor, and not by the lessee, it should be observed that while under Article 1664 of the Civil Code a lessee had no direct action against an intruder who questions the lessee's right to possession and asserts it in himself, yet such issue can not be taken up now, as it does not affect the jurisdiction of the court, and the point does not appear to have been properly invoked before the respondent court.

In view whereof, judgment is hereby rendered, making permanent the writ of preliminary injunction issued by this Court on June 29, 1961, and declaring all proceedings had in connection with Civil Case No. 33 of the Justice of the Peace Court of Mabini, Davao, to be null and void for lack of jurisdiction. Costs against respondent Sarmiento & Co., Inc.

Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, and Dizon, JJ., concur.

[1] 127 Torres vs. Pena, 78 Phil., 231; 44 Off. Gaz., No. 8, p. 2690; Penalosa vs. Garcia, 78 Phil., 231; 44 Off. Gaz., No. 8, p. 2709, cited in Juzon de Po vs. Moscoso 93 Phil., 427; 49 Off. Gaz., No. 7, p. 2786.

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