

JOVITO P. DIZON, PLAINTIFF-APPELLANT, VS. AGAPITA CONCINA, FLORENCIO PONGPONG, ANANIAS CONCINA AND ROSITA REMITIR, DEFENDANTS-APPELLEES.*G.R. No. L-23756. December 27, 1969*

Ponente: SANCHEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/916ea05a25ff/>**SANCHEZ, J.:**

Suit for forcible entry. The land involved is located in barrio Telegrafo, San Jose, Camarines Sur, bounded on the north-east by Cornelia and Marcelina Prado, Jovito P. Dizon and Feli-zardo Cilot, on the northwest by a canal, Jovito P. Dizon and Heirs of Lucio Pande, on the southeast by Asuncion Fuentebella and on the southwest by Rangas River and Felipa Capus before, now Jovito P. Dizon. The complaint filed on September 3, 1960 before the Justice of the Peace (Municipal) Court of San Jose, Camarines Sur, avers that on April 3, 1960, defendants, confede-rating together and helping one another, by means of force, stra-tegy and stealth, unlawfully entered the southwestern portion of the property just described, having an area of 75 ares, more or less, ejecting therefrom plaintiff's encargado and depriving plain-tiff of the possession thereof. Defendants' answer in the inferior court dated October 13, 1960 describes in paragraph 3 thereof two parcels of land both bounded on the north by Rangas River which is the southwestern boundary of plaintiff's land, and avers "[t]hat if the plaintiff refers to the land described in paragraph 3 hereof, he has no right over the same." The judgment of the inferior court, after trial, went for plaintiff. Defendants appealed.

In the Court of First Instance of Camarines Sur, defend-ants in their new answer repeated the averments just mentioned.

Then, on February 12, 1963, defendants filed an amended answer in the Court of First Instance. Their two parcels of land described as such in paragraph 3 of the two previous answers were there - also in paragraph 3 - consolidated into one. To be noted is that this consolidated parcel describes the boundary on the north by Rangas River (before), by Jovito P. Dizon (now). Then followed the following material amendments: "5. That during the strong typhoon sometime in the year 1948, the Rangas River which, prior thereto, was the natural boundary between the estates of the parties herein, suddenly changed its course by traversing the northern portion of the defendants' lands separating from it the northern portion thereof; 6. That the old river bed has become dry and defendants have taken pos-session thereof and have never abandoned the possession of the segregated northern portion; 7. That if the plaintiff refers to the land described in paragraph 3 hereof and referred to in the two preceding paragraphs, then he has no right whatsoever over the same." This amended answer was admitted by the court on February 28, 1963, the court stating that the claim of ownership was "only for the purpose of showing the character and extent of possession."

On March 23, 1963, plaintiff filed his amended complaint which repeats the description of his land showing that the southwest portion thereof is bounded, amongst others, by Rangas River. The disputed paragraph 3 of the amended complaint reads: "3. That on the SW which is bounded by the Rangas River and Felipa Capus now of

the plaintiff there existed a por-tion which was periodically covered by water during rainy season and hence it was not included in the survey but later became higher thus forming an accretion to the plaintiff's property thru the gradual effect of the current of said river from which time then it was dedicated to pasture and to casava and camotes up to April 3, 1960." Then follows the allegation of forcible entry.

On May 13, 1964, defendants moved for the dismissal of the action, in the words of counsel, "for lack of jurisdiction because the land litigated before this Honorable Court by virtue of the amended complaint has not been litigated in the inferior court", and that there was "a change of theory and cause of action." They directed their criticism against paragraph 3 of the amended complaint just adverted to.

On July 20, 1964, the trial court, declaring that "it was obvious that there is a change of subject matter which this court, as an appellate court has no jurisdiction", and that "there is a change of theory and cause of action, now that the plaintiff is proving that there was accretion which is different from that of the original case", dismissed the complaint, and directed the plaintiff "to reimburse the defendant Agapita Concina the sum of P300.00 representing the costs of survey of the property of the plaintiff."

It is now plaintiff's turn to appeal on purely questions of law.

1. No serious question arises as to plaintiff's cause of action. It is forcible entry. The subject matter thereof merely is the material possession or possession de facto over the real property. Ownership or the right of possession as an attribute of ownership is not to be determined.[1] The questions to be resolved simply are these: First, who had actual possession over the piece of real property? Second, was the possessor ousted therefrom within one year from the filing of the complaint by force, threat, strategy or stealth? And lastly, does he ask for the restoration of his possession?[2] Mere posture of ownership by plaintiff or defendant does not take the case out of the jurisdiction of the trial court, unless the issue of material possession necessarily depends upon the question of ownership,[3] which is not the case here. Any controversy over ownership rights could and should be settled after the party who had the prior, peaceful and actual possession is returned to the property.[4]

Here, plaintiff averred prior material possession; that he was ousted therefrom by means of force, strategy or stealth; and that this usurpation was done within the one-year period prior to the filing of the suit in the inferior court.

Succinctly did this Court explain in one case the nature of the forcible entry action: "In giving recognition to the action of forcible entry and detainer the purpose of the law is to protect the person who in fact has actual possession; and in case of con-troverted right, it requires the parties to preserve the status quo until one or the other of them sees fit to invoke the decision of a court of competent jurisdiction upon the question of owner-ship. It is obviously just that the person who has first acquired possession should remain in possession pending this decision; and the parties cannot be permitted meanwhile to engage in a petty warfare over the possession of the property which is the subject of dispute. To permit this would be highly dangerous to individual security and disturbing to social order. There-fore, where a person supposes himself to be the owner of a piece of property and desires to vindicate his ownership against the party actually in possession, it is incumbent upon him to institute an action to this end in a court of competet jurisdic-tion; and he can not be permitted, by invading the property and excluding the actual possessor, to place upon the latter the burden of instituting an action to try the property right."[5]

2. But then the trial court, viewing the amendment set forth in paragraph 3 of the amended complaint, did rule that such amendment changed the subject matter over which as an appellate court it had no jurisdiction; and that because plain-tiff would have to prove that there was accretion which was different from the original cause of action, a change of theory and cause of action likewise resulted.

Misconception is right here apparent. To be observed is that in the original complaint the technical description of plaintiff's land[6] shows that on the southwest its boundary is Rangas River. To coincide with this in a general way is that defendants' answer in the inferior court and their original answer in the Court of First Instance state that their two parcels of land, as they were originally described, place the boundary to the north of their properties as the same Rangas River. And, in their amended answer, the two parcels of land (this time consolidated into one) claimed to be owned by defendants were described by the latter as being bounded on the north by Rangas River (before), but by Jovito P. Dizon (now). But in paragraph 5 thereof, they do aver that the course of the river suddenly changed by traversing the northern portion of their lands, segregating each portion from the rest; but that, as alleged in paragraph 6, the old river bed had become dry, and defendants had taken possession of the same, and never abandoned such possession of the segregated northern portion; and that if plaintiff referred to the consolidated land, the northern portion of their land separated as well as the old river bed, then plaintiff, in the words of the amended answer, "has no right whatsoever over the same."

It thus appears all along in plaintiff's original and amended complaints that his land was described as being bounded on the southwest by the Rangas River - which actually separates it from defendants' land. If he made the additional averment in the amended complaint stating that on the southwest portion of his land bounded by the Rangas River a part was added by accretion, and that defendants forcibly entered the said southwestern portion, it was merely to clarify the issues of the case and to localize, more particularly, the land in dispute. Besides, this amendment was merely an offshoot of, and was made to meet, the averments in defendants' amended answer - on appeal - referring to the sudden change in the course of the Rangas River by traversing the northern portion of their lands separating it from the rest.

Even on the assumption that there was an apparent conflict in the description of the disputed land as set forth in the two complaints, such a situation would not change the case from a forcible entry suit into a different action.[7] The case must be tried and the identity of the land alleged in the complaint established, to determine whether or not plaintiff's rights have been violated.

For the foregoing reasons, the order of the trial court of July 20, 1964 dismissing plaintiff's complaint and ordering him to reimburse defendant Agapita Concina in the sum of P300 is hereby set aside, and this case is hereby remanded to the Court of First Instance of Camarines Sur with instructions to proceed until the determination thereof on the merits.

Costs against defendants-appellees.

SO ORDERED.

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

[1] See for example: *Mediran vs. Villanueva*, 37 Phil. 752, 757; *Masallo vs. Cesar*, 39 Phil. 134, 137; *Fuentes vs. The Justice of the Peace of Pila*, 67 Phil. 364, 365-366; *Lizo vs. Carandang*, 73 Phil. 649, 650; *Maddammu vs. Judge of Municipal Court of Manila*, 74 Phil. 230, 231; *Pitargue vs. Sorilla*, 92 Phil. 5, 13; *Argenio vs. Marino*, G.R. No. L-9299, December 18, 1956; *Lequigan vs. Katalbas*, 105 Phil. 645, 647; *Subano vs. Vallecer*, 105 Phil. 1264, 1265; *De la Cruz vs. Burgos* (1969), 28 SCRA 977, 983.

[2] See: Section 1, Rule 70, Rules of Court.

[3] *Fuentes vs. The Justice of the Peace of Pila*, *supra*, at p. 366.

[4] Mediran vs. Villanueva, *supra*, at p. 757; De la Cruz vs. Burgos, *supra*, at p. 483.

[5] Mediran vs. Villanueva, *supra*, at p. 757.

[6] This land is titled under the Torrens system.

[7] Subano vs. Vallecer, *supra*, at pp. 1264-1265.

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