

HILARIO GANANCIAL AND PEOPLE'S HOMESITE AND HOUSING CORPORATION, PLAINTIFFS AND APPELLANTS, VS. LEONARDO ATILLO, DEFENDANT AND APPELLEE.

G.R. No. L-20830. June 28, 1965

Ponente: PAREDES, J.

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PAREDES, J.:

On April 24, 1961, plaintiff Hilario Ganancial presented with the Municipal Court of Quezon City, a complaint for Forcible Entry, against defendant Leonardo Atillo, docketed as Civil case No. 11-8645. Said complaint was subsequently amended on July 7, 1961, to implead the PHHC.

The complaint alleges that on or about February 6, 1960, the defendant, thru strategy, stealth and force, entered and occupied the lot in question by building a house, without any right thereto and without permission or agreement whatsoever. Defendant in his Answer, averred that he had been occupying the premises in question since 1957; that he has applied to buy the lot as bona fide occupant thereof, pursuant to law; and that he had a better right to purchase the lot than plaintiff Ganancial.

On December 9, 1961, the Municipal Court rendered judgment in favor of plaintiff, ordering the defendant and all claiming under him, to vacate the premises and to pay P40.00 monthly, as reasonable rental from February 6, 1960.

Defendant Atillo appealed to the CFI of Rizal, where the pleadings were reproduced. Defendant presented an Answer, interposing defenses which were virtually the same as those offered in the Municipal Court. The case was set for hearing on June 20, 1962, on which date, defendant filed a "Motion for Dismissal of the Case or the Holding in Abeyance." The motion averred that more than one (1) year had elapsed, from the date of dispossession to the presentation of the complaint on April 24, 1961; and that an administrative case concerning the lot in question, was pending. The motion was denied in open court. What had transpired at the hearing, the record is not clear, for there were no transcript of stenographic notes elevated with the appeal. On August 31, 1962, the CFI of Rizal, Quezon City Branch, rendered judgment-modifying the decision of the municipal court, by fixing the monthly rental of P20.00, from February 6, 1960 until the premises shall have been vacated.

Under date of October 2, 1962, defendant presented a "Motion for Reconsideration and New Trial", alleging that the trial court erred :

- "1. In not dismissing the case for lack of jurisdiction;
2. In not dismissing the case for failure of the plaintiffs to prove their case;
3. In deciding the case apparently on its original jurisdiction;
4. In holding that the defendant's right to the possession of the property in question as a mere squatter cannot prevail over the registered owner of the same."

The defendant adhered to the contention that the municipal court did not have jurisdiction to take cognizance of the case, since the statutory period of one (1) year of dispossession within which to institute forcible entry cases had already elapsed when the complaint was presented, and that the CFI of Rizal cannot hear and determine the case under its original jurisdiction, because an objection thereto was interposed.

An opposition to the above motion was registered by Plaintiffs, claiming that the municipal court of Quezon City had jurisdiction to try the case. Plaintiffs invoked the doctrine in the cases of *Amis, et al., vs. Aragón, et al.*, G.R. Nos. L-4684, Lr-4735, Lr-4736, wherein this Court has ruled that the one (1) year period is to be counted from the date when notice to vacate was made (here it was February 3, and the complaint was presented on April 24, 1961).

On October 17, 1962, the trial court handed down an order, of the following tenor:

"In this particular case, since the jurisdiction of this Court is in issue, as an appellate court, the focal issue to be determined is when the unlawful deprivation or withholding of possession of the defendant began. The very allegations of the amended complaint in this case show that "on or about February 6, 1960, the defendant in this case show that "on or about February 6, 1960, the defendant thru strategy, stealth, and force, entered and occupied the Jot in question by building a house without any right thereto * * *". In other words, by the use of the words strategy, stealth, and force, the occupation by the defendant of the premises in question was illegal and unlawful since February 6, 1960. Now, plaintiffs assert that the illegal occupation of the defendant began when he made a demand upon them to vacate the premises. The Court disagrees with this view, since as stated above, when the defendant begun to occupy the premises, it was, as alleged by the plaintiffs themselves, by means of force, intimidation, threat and strategy or stealth. From that time, their occupation was unlawful. Plaintiffs assert also that they tolerated the occupation by the defendants. Tolerance of an occupation illegal from the beginning does not change the situation. Having arrived at the conclusion that the illegal occupation of the defendant began on February 6, 1960 and the complaint in this case having been filed on May 10, 1961, in the Municipal Court of Quezon City, it is very obvious that this Court has no jurisdiction to hear this case as an appellate court since it was filed beyond the one year period provided for in Sec. 1, Rule 72 of the Rules of Court. The proper action here should have been an *acción publiciana*.

"WHEREFORE, on the ground of lack of jurisdiction, the decision rendered in this case on August 31, 1962, is hereby set aside, and the above entitled case ordered DISMISSED, without special pronouncement as to costs."

Plaintiffs moved for a reconsideration of the above Order, insisting that the Court had jurisdiction, claiming that the statutory period should be counted from the date of demand to vacate, citing as an additional authority, the doctrine in the *Zobel vs. Abreu* case, 98 Phil., 343; 52 Off. Gaz., No. 7, 3592, wherein it was held that the one year period for bringing the action should be counted from the time of demand, for the surrender of possession. The motion was denied on November 3, 1962. Plaintiffs appealed directly to this Court, contending that the lower court erred in dismissing the case on appeal for lack of jurisdiction, hear and try the same.

We believe the lower court was correct in dismissing the appeal. The stand of plaintiffs-appellants that commencement of the period, within which to bring the action in the municipal court, should be from the date of demand to vacate the premises, is untenable under the facts obtaining in the case at bar. It is clear from the pleadings that plaintiffs knew of the dispossession or illegal entry since February 6, 1960, and they offered no alibi for not knowing it. The lower court has made a definite finding that the defendant occupied the premises on February 6, 1960, by means of force, intimidation and threat. If these be the grounds for illegally occupying the premises, it does not require much stretch of the imagination to perceive that the plaintiffs knew, on the very date of the occupation, February 6, 1960, that they were unlawfully dispossessed. We cannot conceive of any case of dispossession by force, violence or intimidation without the person dislodged knowing how he was deprived of his possession. Having knowledge of this fact, it stands to reason that the commencement of the one (1) year

period should be, as it is, the very date of illegal entry. This is not a case of dispossession through strategy or stealth, where the owner or possessor of the land could not be expected to enforce his right to its possession against the illegal occupant and sue the latter, before learning of the clandestine intrusion. This Court has declared that there is a natural difference between an entry secured by force or violence, like the present case and one obtained by stealth. In the latter case (by stealth), the intruder might to conceal the trespass for more than one (1) and it is but just that the one year period should counted from demand, for "to deprive the lawful possessor of 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 usurpation, even if they are are unlawful" (C. Vda. de Prieto vs. Paciencia Reyes, et al., L-21470, June, 1965, Reyes, J.). Of course, the plaintiffs claim that the possession of defendant-appellee from February 6, 1960 to the date of filing the complaint on April 24, 1961, was mere tolerance which rendered necessary a demand to vacate, before possession of detention becomes illegal (Amis vs. Aragón, L-4684, April 28, 1951). Having concluded that the trial court did not have jurisdiction or authority to take cognizance of the case, the claim finds no relevance.

If an inferior court tries a case without jurisdiction over the subject-matter, on appeal, the only authority of the CFI is to declare the inferior court to have acted without jurisdiction and dismiss the case, unless the parties, agree to the exercise by the CFI of its original jurisdiction, to try the case on the merits (Aureo vs. Aureo, 105 Phil., 77. This is not true in the present case. On the contrary, the defendant moved for the dismissal of the case, on the ground that the statutory period had already lapsed, which was tantamount to contesting the jurisdiction of the trial court.

In view of the foregoing, the appeal is dismissed, without pronouncement as to cost.

Bengzon, C.J., Bautista Angelo, Concepción, Reyes, J.B.L., Dizon, Regala, Makalintál, Bengzon, J.P., and Zaldivar, JJ., concur.

Appeal dismissed.

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