

BRICCIO B. TENORIO, PLAINTIFF AND APPELLANT, VS. JOSE GOMBA, JUANA BROSAS, ISMAEL GOMBA AND RAMON GOMBA, DEFENDANT AND APPELLEES.*G.R. No. L-1237. May 24, 1948*

Ponente: FERIA, J.

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This is an appeal from the order of the Court of First Instance of Camarines Sur, which dismissed the action of the plaintiff and appellant on the ground that, according to the allegations in the complaint, said court has no jurisdiction over the subject matter of the case, because from the plaintiff's complaint it appears that the action is of forcible entry, since the alleged illegal possession of the land in question by the defendants took place during the one year period provided for by section 1, Rule 72, of the Rules of Court, as contended by the attorney for the defendants in his petition for dismissal.

Without necessity of discussing and passing upon the question raised in the first and second assignments of error that raise a question of procedure, we are of the opinion, and so hold, that the facts alleged in the complaint do not constitute an action of forcible entry but of recovery of possession of a land and damages, and therefore the action is within the jurisdiction of the Court of First Instance.

The complaint filed by the plaintiff-appellant with the Court of First Instance of Camarines Sur on June 15, 1946, alleges:

That "he is the owner of a parcel of land registered in his name under transfer certificate of title No. 76", and that "the defendants are occupying about 40 hectares more or less in the northern part of the plaintiff's land of 251 hectares, lot No. 3, Plan No. PSU-14922, and are cultivating 20 hectares of the said 40 hectares.

"4.— That the defendants are occupying about 40 hectares, more or less, which is a part of the plaintiff's land lot No. 3, Plan PSU-14922, in the northern part and are cultivating about 20 hectares of that said 40 hectares, the value is P2,000.

"5.— That on or about the latter part of the year 1943, after the plaintiff had bought said land in question, the defendants were notified by the plaintiff that they give or pay the corresponding share or rent of the land they were cultivating to the plaintiff herein as owner of said land, but the defendants not only refused and continue to refuse or give or pay the corresponding share or rent pertaining to the plaintiff herein as owner of the land, but also thru threats and intimidation prevented the plaintiff or any of his representative to take over the possession of that portion of the land in question.

"6.— That on or about the month of November, 1945, just after the harvest, the defendants thru force and intimidation compelled the overseer of the plaintiff herein to allow them to take and receive 24 cavans of palay from one of the plaintiff's tenants who is cultivating that part of that 40 hectares of land they are occupying.

"7.— That notwithstanding repeated demands made by the plaintiff upon the defendants to vacate that portion of

the land of the plaintiff detained by them, to return the 24 cavanese of palay to the plaintiff and to restore the possession thereof to the plaintiff, the said defendants refused and still continue to refuse to do so."

Courts of First Instance have jurisdiction over all actions involving possession of land except cases of forcible entry and illegal detainer, and therefore the lower court has jurisdiction over the action alleged in the appellant's complaint, because it is not either an illegal detainer or of forcible entry. It is not an illegal detainer, for this consists in the withholding by a person from another, for more than one year, of the possession of a land or building to which the latter is entitled after the expiration or termination of the former's right to hold possession by virtue of a contract expressed or implied, and there are no allegations to that effect in the complaint. Nor one of forcible entry, since this action consists in depriving a person of the possession of a land or building for a period of time not exceeding one year, by force, intimidation, threat, strategy, or stealth, and the complaint does not contain such averments.

On the contrary, according to the above quoted allegations in the complaint, the illegal possession of the land in litigation by the defendants dates back to the year 1943, that is, about three years before the filing of the complaint. The complaint alleges that "In the latter part of the year 1943, after the plaintiff had bought the land in question, the defendants were notified by the plaintiff that they give or pay the corresponding share or rent of the land they were cultivating to the plaintiff herein as owner of said land, but the defendants not only refused and continue to refuse or give or pay the corresponding share or rent pertaining to the plaintiff herein as owner of the land, but also through threat and intimidation prevented the plaintiff or any of his representatives to take over the possession of that portion of the land in question".

The averment in the complaint that "on or about the month of November, 1945, just after the harvest, the defendants thru force and intimidation compelled the overseer of the plaintiff herein to allow them to take and receive 24 cavanese of palay from one of the plaintiff's tenants who is cultivating that part of that 40 hectares of land they are occupying", is a premise for the recovery of said 24 cavanese or the price thereof prayed for in the complaint. It is not a part of the allegation of facts constituting a cause of action of forcible entry, because it refers, not to the taking of possession of the land, but of the 24 cavanese of palay from one of the tenants of the plaintiff who is cultivating a part of the forty (40) hectares of land they (the defendants) are occupying.

In view of all the foregoing, the judgment appealed from is reversed, and the lower court is ordered to proceed with the trial of the case, with costs against the appellee. So ordered.

Parás, Actg., C.J., Perfecto, Bengzon, and Tuason, JJ., concur.

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