

DOROTEA CATALOCTOCAN, RALPH S. CATALOCTOCAN, RYAN S. CATALOCTOCAN AND RHEA CATALOCTOCAN, PETITIONERS, VS. SPS. GREGORIO & NILDA CASTROMAYOR, REPRESENTED BY THEIR ATTY.-IN-FACT, ...

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

THE CASE

For review under Rule 42 of the 1997 Rules of Civil Procedure, as amended, is the Decision[1] dated 22 September 2008 of the Regional Trial Court, 6th Judicial Region, Branch 37, Iloilo City and its Order[2] denying reconsideration dated 3 September 2009 in Civil Case No. 08-29792. The fallo of the said decision reads,

“WHEREFORE, foregoing premises considered, the Judgment appeal from is AFFIRMED in toto.

SO ORDERED.”[3]

This controversy stems from a complaint[4] for “Unlawful Detainer with Damages” filed by the Sps. Gregorio and Nilda Castromayor, represented by their attorney-in-fact Felina C. Lansang,[5] against the Sps. Raul and Dorotea Cataloctocan and all persons claiming authority under them with the Municipal Trial Court, Iloilo City docketed as Civil Case No. 05-139.

THE ANTECEDENTS

In their complaint, the Sps. Castromayor alleged in the main that by mere tolerance and out of their generosity, they allowed the Sps. Cataloctocan to occupy the subject property denominated as Lot No. 3343-A situated in Iloilo City, registered in their names and which is covered by Transfer Certificate of Title No. 60450.[6] The Sps. Cataloctocan have been occupying the subject property since their marriage until the filing of the complaint.

A boarding house which can accommodate 50 persons stands on the subject property and caters to students enrolled in Western Visayas College of Science and Technology. The boarding house is being administered by Sps. Cataloctocan. As administrators, the Sps. Cataloctocan collect the rents from the boarders at the rate of P400.00 per boarder. Even with the substantial income derived from the boarding house, the Sps. Cataloctocan have never given any accounting thereof despite demands. That, at present the boarding house needs a complete renovation as it has already become dilapidated, thus, has become a hazard and safety-risk. They demanded the Sps. Cataloctocan to vacate the subject property so that they can demolish the existing structure and build a concrete one but their demands to vacate fell on deaf ears as the Sps. Cataloctocan refused and stubbornly refuses to vacate the premises. That, because of very close family ties, earnest efforts were exerted to the extent of giving in to the request of the Sps. Cataloctocan for reimbursement of expenses for relocation and transfer to other places. But this agreement did not materialize because the Sps. Cataloctocan backed-out. That, after exhausting extra-judicial means to come up with an amicable agreement with the Sps. Cataloctocan and failing thereafter,

they sought the services of counsel who, in turn, sent the said spouses a demand letter.[7] That, despite receipt of the demand letter, the Sps. Cataloctocan instead of heeding the demand letter, filed a complaint against them for “Cancellation of Title” with the Regional Trial Court, Br. 32, Iloilo City docketed as Civil Case No. 04-28087.[8] In conclusion, the Sps. Castromayor averred that they have been deprived possession of their property and that despite demands to vacate and to render proper accounting of the income of the boarding house, the Sps. Cataloctocan, stubbornly and without reason at all, refused to heed such demands.

In her Answer with Counterclaim and Motion to Dismiss,[9] Dorotea Cataloctocan denied the material allegations in the complaint. She alleged that the late Sps. Diosdado and Paciencia Cataloctocan parents of her late Raul Cataloctocan[10] and Nilda Castromayor left certain properties and one of these is a residential house located at 76 Burgos St., La Paz, Iloilo City standing on a parcel of land then owned by Matilde Gregorios vda. de Salazar. That, the late Raul Cataloctocan lived in that house since 1953, that is, before and after he got married and until his death. That, this house was utilized as a boarding house since 1953 up to the present. That, sometime in 1976, the siblings Raul Cataloctocan and Nilda Castromayor agreed to purchase on installment basis the land on which the boarding house is standing on. That, the said siblings agreed to equally share the monthly payments for the parcel of land as they become due and which payments would be taken from the earnings of the boarding house. That, it was the late Raul Cataloctocan who managed the boarding house. That, upon full payment of the purchase price of the subject property in 1982, the Sps. Castromayor told the late Raul Cataloctocan that they will be hiring someone to transfer the title to them (Sps. Castromayor and Sps. Cataloctocan), to which the late Raul Cataloctocan acceded, with the latter giving his full trust and confidence to the Sps. Castromayor. That, the Sps. Castromayor asked from them for their tax certificates as these would be needed for the transfer. That, unknown to her and her late husband, the Sps. Castromayor, by means of fraud, machination, and falsification, effected the transfer of the title in their names (Sps. Castromayor). That, what made it worst, is that the Sps. Castromayor effected the execution of a falsified document denominated as “Waiver of Rights” dated February 6, 1996 and which was purportedly signed by the Sps. Cataloctocan. That, it was only after the Sps. Castromayor demanded for them to vacate the subject property that they learned about the illegal acts committed by the Sps. Castromayor and about the certificate of title already in the names of the latter, to their exclusion. That, the sister-in-law of Nilda Castromayor, Felina Castromayor-Lansang has been harassing them almost everyday, telling them to demolish their house and vacate the property, giving them anxiety, tension, annoyance and public ridicule. That, in consideration of their relationship, earnest efforts were exerted to amicably settle with the Sps. Castromayor but their attempts were all refused by the latter. That, because of this unreasonable refusal, she and her late husband were constrained to file a case against the Sps. Castromayor for “Cancellation of Title, Partition, Injunction and Damages”. That, a criminal case was also filed against the Sps. Castromayor for the latter's malicious falsification of document now pending with the RTC, Br. 39, Iloilo City denominated as Crim. Case No. 05-60588 where a warrant of arrest was already issued against the Sps. Castromayor but remains unserved because the latter have absconded and, thus, have become fugitives from justice. And that, this complaint for unlawful detainer is another design authored by the Sps. Castromayor to harass them and to purposely drain them financially. That, she is claiming damages arising from the illegal acts and harassment committed by the Sps. Castromayor. Anent her motion to dismiss, Dorotea Cataloctocan averred, to wit: (1) that, in the unlawful detainer cases, consultation is mandatory. In this instance, there was no consultation conducted; (2) that, the complaint was filed more than one (1) year after the last demand to vacate was made on them. Under the circumstances, the proper action should be for recovery of possession filed with the RTC; (3) that, there is a pending case for Cancellation of Title, Partition, Injunction and Damages they filed with the RTC against the Sps. Castromayor based on their claim of co-ownership over the subject property. Clearly, the resolution of this case poses a pre-judicial question to the resolution of the respondents' case for unlawful detainer; (4) that, there is a pending action between the same parties for the same action; and (5) that, the Sps. Castromayor violated the rule on forum shopping and

multiplicity of suits.

By its Order[11] dated 31 August 2005, the MTCC denied the motion to dismiss incorporated in the Answer filed by the Sps. Cataloctocan. In denying the said motion to dismiss, the MTCC reasoned that,

“The plaintiffs' action for unlawful detainer was filed more than one year from the demand. After the expiration of the one-year period from the date of unlawful deprivation, the possession of real property may be recovered by means of accion publiciana or plenaria de posesion (Magdangal vs. Hawaiian Phil. Co., 65 SCRA 101; Banayos v. Susana Realty, 71 SCRA 557).

This action [is] within the exclusive jurisdiction of the Regional Trial Court. However, with RA 7691 expanding the jurisdiction of the Municipal Trial Courts, jurisdiction depends upon the assessed value of the property, thus:

'x x x x'

The plaintiff has shown by tax declaration No. 139-04-006-01-101-101 attached as Annex “A” to the Comment/Opposition that the total assessed value of the property is only P11,700.00.

It is the allegations of the complaint that determines (sic) jurisdiction. The complaint for ejectment filed more than one year from demand is still cognizable by the MTC pursuant to the above-quoted amendatory law since the property's assessed value does not exceed P20,000.00.

With respect to the other defenses, the same do not appear to be indubitable, hence, they may be resolved only after trial on the merits.”

In the same Order, the MTCC set the case for pre-trial conference.

In the Comment to Formal Offer of Exhibits,[12] Dorotea Cataloctocan objected to the following, among, others:

“x x x x

Exhibit “C” – is objected to because the case is not under summary rules but under regular procedure plus the purpose for which it is being offered. x x x

x x x x

Exhibit “F” – is objected to because the said tax declaration is dated for the year 1997 when this case was filed in 2005 already and only for the building (old house) and not the tax declaration covering the land which is the subject of this case.

x x x x.”

In their Formal Offer of Exhibits,[13] the Sps. Cataloctocan offered, among others, a copy of Tax Declaration No. 139-04-006-01-101[14] marked as Exhibit “1” showing that the subject property has a market value of P1,468,800.00 and assessed value of P121,410.00 for the tax year to begin in 2003. The same tax declaration indicates that the owners/administrators are the Sps. Castromayor.

By its Ruling[15] dated 20 July 2006, the MTCC stated,

“Acting on the Formal Offer of Exhibits submitted by the defendants and taking into consideration the Comment/Opposition filed by the plaintiffs, Exhibit “1” and the submarkings are hereby admitted for the purpose offered and as part of the testimony of the witnesses for the defendants.

x x x x.”

After trial on the merits, the MTCC upheld the claims of the Sps. Castromayor in its decision rendered on 18

January 2008.

THE RULING OF THE MUNICIPAL TRIAL COURT IN CITIES[16]

The MTCC disposed the complaint in this wise:

“WHEREFORE, in view of all the foregoing, judgment is rendered in favor of the plaintiffs and against the defendants ordering the defendants, their family and privies to vacate the premises of the property in question and turn over possession to the plaintiffs.

The defendants are further ordered to pay reasonable compensation for the use and occupation in the amount of P10,000.00 per month from May 2005, the date of judicial demand, until they vacate and turn over possession to plaintiffs, attorney's fees of P20,000.00 and the costs of the suit.

SO ORDERED.”[17]

In ruling against Dorotea Cataloctocan, the MTCC ratiocinated, thus,

“The plaintiffs predicate their claim for possession upon the title in the[ir] names. Transfer Certificate of Title No. 60450 was issued in the name of the plaintiffs on August 1982 (Exhibit “B”). There [are] no other annotations or encumbrance in favor of the third persons much less defendants. The plaintiffs derived their title from the document Deed of Sale dated April 1979 executed by the previous owner Jose Salazar (Exhibit “C”).

x x x x

The defendants' averment does not hold water.

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- It should be borne in mind that under Section 48, P.D. 1529, a certificate of title shall not be subject to a collateral attack. It cannot be altered, modified or cancelled except in a direct proceeding in accordance with law. The defendants' defense of co-ownership is a classic example of a collateral attack on the plaintiffs' Certificate of Title . In the case of Dionisio Carran vs. Court of Appeals, G.R. [No.] 140752, Nov. 11. 2005, the Supreme Court cited the previous case of Mallilin vs. Castillo, where it defined a collateral attack on title in this wise:

'x x x x'

In the present case, the attack on the title is definitely merely collateral attack, the relief being sought by the plaintiff is recovery [o]f possession. The attack on the validity of plaintiff's title was merely raised as a defense in defendant's answer. In Ybañez vs. IAC, the Supreme Court categorically ruled:

'x x x x'

- The evidence shows that the parties' parents leased the premises from the previous owner. They used it as a boarding house. In 1979, it was offered up for sale. Since only the plaintiffs have the money, it was they bought it. The defendants admit that the money used to pay the agreed down payment equivalent to one-half of the purchase price is entirely owned by the plaintiffs. The monthly installments admittedly came from the income of the boarding house.

x x x x

It seems that the change of attitude and their claim over one-half of the property was made as an afterthought. Given the prospect of an eminent ejectment from the property which has appreciated in value but which they know they could not share, they now resort to the story in the hope that their absent relative, if not generous enough would be intimidated to give in to their demand. But defendants' claims have no bases in law and in the

facts. The parents of the parties were mere lessees of the property. For this reason not known to the court, they did not opt to buy when the property they leased was sold to the plaintiffs. They have acquiesced the fact that plaintiff bought the property they leased. If ever, what the defendants succeeded into with respect to their parents is the right as lessee not as buyer or owner. A lessee can never be allowed to deny the title of the landlord.

x x x x

- x x x x.

The defendants, in the last ditch effort, want the court to resolve anew the issue of jurisdiction based on the property's new assessed value which is allegedly more than P20,000.00. The court has to reject the defendants' plea for the simple reason that the court had earlier resolved the issue of jurisdiction before the pre-trial. During the pre-trial conference that issue has not anymore been raised. Hence, the defendants are now estopped from questioning the court's jurisdiction (*Tijam vs. Sibonghanoy*, April 15, 1968).

Pre-trial is primarily intended to make certain that all issues necessary to the disposition of a cause are properly raised. Thus, to obviate the element of surprise, the parties are expected to disclose at a pre-trial conference all the issues of law and fact which they intend to raise at the trial, or else they would be barred. In the case of *Permanent Concrete Products, Inc. vs. Teodoro*, (26 SCRA 332), the Supreme Court announced a very judicious policy that litigants are expected to disclose at the pre-trial conference all issues of law and fact which they intend to raise at the trial in order to obviate the elements of surprise. Hence, questions not so disclosed, even if raised in the pleadings, are deemed waived and barred from consideration. A pre-trial, when entered, limits the issues for trial and, in substance, takes the place of pleadings covered by the pre-trial order. Once the issues have been definitely stated in the pre-trial order, the pleadings are superseded, the issues are set and trial proceeds accordingly. With the issue having been thus defined they ought to be adhered to in the absence of some good and sufficient reasons, which must rest largely with the discretion of the court. A pre-trial order formulating issues for trial controls the subsequent course of the action unless modified at the trial to prevent manifest injustice. A pre-trial order controls the subsequent portion of the action and the parties are bound in the pre-trial proceedings by a pre-trial order, the case goes on trial on issues those determined, with exception only in cases where there would be manifest injustice. Parties are bound by the issues in the pre-trial order, and may not later inject a new issue except in exceptional cases.”[18]

By its Order[19] dated 24 April 2008, the MTCC denied the motion for reconsideration[20] filed by Dorotea Cataloctocan.

Feeling aggrieved, Dorotea Cataloctocan appealed to the Regional Trial Court. In its decision dated 22 September 2008, the RTC affirmed in toto the MTCC ruling.

THE RULING OF THE REGIONAL TRIAL COURT[21]

In affirming in toto, the decision of the MTCC, the RTC explained, viz -

“As the lower court correctly ruled, jurisdiction is determined by the allegations in the complaint and therefore it can not be made to depend upon the pleas and defenses set up in a motion to dismiss, otherwise, jurisdiction would be dependent almost entirely upon the defendant, citing the case of *Commart vs. SEC*, 198 SCRA 73. Courts are guided by the elementary principle that what determines the nature of an action as well as which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought (*Bejar vs. Calauag*, G.R. No. 171277, February 15, 2007).

Defendants-appellants are confused.

The action was for unlawful detainer. As such, the only issue is possession. The case referred to pending in

another Court, x x x, is for Cancellation of Title, x x x, which, from the cause of action alone, involves the issue of ownership. Therefore, the ejectment proceedings may proceed independently of the other action where the bone of contention is who between the parties is the owner of the property subject of the litigation.

On the third assigned error – that the lower court did not resolve the question of ownership raised in resolving the issue of possession.

Again, the defendants-appellants submission is without basis.

'x x x x'

On the fourth assigned error – that the lower court erred in ordering defendants-appellants to vacate the premises subject of the case and turn over possession to the plaintiffs-appellees.

The court a quo could not order otherwise after it found from the evidence presented that the plaintiffs-appellees are entitled to the relief sought for.

The last two assigned errors being interrelated shall be discussed simultaneously.

The lower court ordered the defendants-appellants to pay the plaintiffs[-appellees] damages and attorney's fees and to pay the latter P10,000.00 per month from May 2005 as reasonable compensation for the use and occupation of the property until they vacate the premises.

Defendants-appellants' arguments is that although the title to the property is in the name of the plaintiffs-appellees, the latter have made admissions in their own evidence that the property is co-owned by the defendants-appellants when plaintiffs-appellees alleged in the complaint that they were 'deprived of their substantial share from the income, estimated to be not less than P100,000.00 from 1982, when they bought the lot from the previous owner. X x x.' and paragraph 6 of the Preliminary Conference Order, to wit: '6. The defendants contend that it was the plaintiff who made a minimal downpayment but the subsequent payments or installments were made out of the rental income from the boarders of the house itself.'

The falsity of this argument of the defendants-appellants lies in the following: first, the meaning of the 'substantial share' is itself ambiguous. The phrase may or may not refer to the defendants-appellants with whom the plaintiffs-appellees would be sharing the income. Second, assuming for the sake of argument only that the one or ones referred to by the plaintiffs-appellees are the defendants-appellants, the share may have a different connotation, such as remuneration to the latter for their administration of the property. Third, the alleged subsequent payments made by the defendants[-appellants] after the plaintiffs[-appellees] made the minimal downpayment coming as it did from the rentals of the property, would not in any way make the defendants-appellants co-owners of the subject property, as against what TCT No. T-60450, in the name of the plaintiffs-appellees only has established.

On the award of Php20,000.00 as attorney's fees against the defendants-appellants, there is no gain saying that such an award is justified if the prevailing party was forced to litigate and secure the services of counsel to protect their interest, as in this case." (Underscoring supplied)

By its Order[22] dated 3 September 2009, the RTC denied the motion for reconsideration filed by Dorotea Cataloctocan, viz -

"WHEREFORE, premises considered, the subject Motion for Reconsideration is hereby DENIED in part only as the assigned error with respect to the compensatory damage is granted, hence, the said award of Php10,000.00/month as compensation is, therefore, overturned and set aside.

SO ORDERED."[23]

Hence, this present petition wherein Dorotea Cataloctonan and Ralph S. Cataloctonan, Ryan S. Cataloctonan and

Rhea Cataloctonan (collectively hereinafter petitioners) challenged the decisions of the MTCC and RTC arguing that:

“4.1

The RTC (the court a quo) erred when it affirmed the decision of the MTCC (Branch 3, Iloilo City) not to dismiss the complaint of the respondents for unlawful detainer for lack of jurisdiction.

4.2

The RTC (the court a quo) erred when it affirmed the decision of the MTCC (Branch 3, Iloilo City) not to dismiss the complaint on the ground that there is another action pending between the same parties for the same cause.

4.3

The RTC (the court a quo) erred when it affirmed the decision of the MTCC (Branch 3, Iloilo City) not to resolve the question of ownership raised in resolving the issue of possession.

4.4

The RTC (the court a quo) erred when it ordered petitioners to vacate the premises subject of the case and turn over the same to the respondents.

4.5

The RTC (the court a quo) erred when it ordered the petitioners to pay respondents the amount of P20,000.00 as attorney's fees plus cost of the suit.”

THE ARGUMENTS

The petitioners'

The petitioners argue that the MTCC did not acquire jurisdiction over the complaint for “Unlawful Detainer” filed by the Sps. Castromayor (hereinafter respondents) on the ground that the said case was filed more than one (1) year after the demand to vacate was made. In fact, later on, the respondents changed their position averring, this time, that their complaint for unlawful detainer should instead be tried under the regular procedure and not under the Rule on Summary Procedure considering that the value of the subject property is less than P20,000.00.[24]

The petitioners stressed that the MTCC in its Order denying their motion to dismiss dated August 31, 2005 considered the respondents' complaint as one for accion publiciana or plenaria de posesion since said complaint was filed after the lapse of one-year from the demand to vacate made upon them.

Contrary to the findings of the MTCC and RTC, the petitioners consistently maintained that the MTCC did not have jurisdiction over the case filed by the respondents. The petitioners added that they have even insisted at the pre-trial that the issue of lack of jurisdiction be included as one of the issues to be argued in the parties' respective position paper but the MTCC presiding judge opined that there was no need to state the said issue in the pre-trial Order because it was already resolved and anyway, it can always be argued in the position paper. Although they, thru counsel, have always participated in the proceedings before the MTCC, their participation is, however, subject to their continuing objection and without prejudice to their insistence that the MTCC does not have jurisdiction over the case. This continuing objection was further manifested in their “Opposition to the Motion for Judgment on the Pleadings without prejudice and subject to the objection that this Court has no jurisdiction to try this case”.[25] Too, their continuing objection is further shown in their Comment to Formal Exhibits wherein they

objected to the tax declaration presented by the respondents since this was issued in 1997 and the case for unlawful detainer was filed in 2005. What is more, by its Order[26] dated 20 July 2007, the MTCC admitted, for the purpose for which they were offered, the tax declaration[27] covering the subject property issued for the tax year beginning in 2003 and the submarkings made thereon. On these grounds, the MTCC should have dismissed the respondents' complaint.

The petitioners also asseverated that the RTC erred when it affirmed the MTCC decision. It bears to stress that there is another case pending between the same parties and for the same cause. The case with the RTC was filed on April 24, 2004 while that of the respondents was filed more than one (1) year thereafter or only May 9, 2005. This just shows that the complaint they filed was way ahead of the complaint for unlawful detainer.

Too, the RTC erred, just like the MTCC, when it did not resolve the question of ownership. It is settled that title does not vest ownership and that, titling is just one of the modes of acquiring ownership. Therefore, the MTCC's reasoning that whosoever's name appears in the certificate of title is the absolute and indisputable owner thereof has no basis in law and jurisprudence. In fact, records show that they are the ones who have been religiously paying the monthly amortizations to the previous owner, this fact has never been denied nor rebutted by the respondents. As such, these are deemed judicial admissions provided for under the Rules of Evidence.

Interesting too is the respondents' allegation that they have been deprived of their substantial share in the income of the property. This just shows that the subject property is co-owned by the respondents with them. If, indeed, the respondents are the sole owners of the subject property, then there is no sharing to speak of.

With respect to the receipts issued by the previous owner of the subject property, it should be borne in mind that the Contract to Sell was executed in favor of the respondent-Castromayor since it was the latter who made the down payment of P5,000.00. Thus, it is not surprising if the receipts were issued to respondent-Castromayor and not in their names. In the Order dated January 3, 2006, their motion for correction of paragraphs 5 and 6 in the preliminary conference Order states that: "The defendants contend that it was the plaintiff who made a minimal down payment but the subsequent payments or installments were made by defendants out of the rental income from the boarders of the house itself."

As to the ownership of the boarding house, it is clear from the records that it is co-owned by the late Raul Cataloctocan and Nilda Cataloctocan-Castromayor having inherited the same from their parents. Thus, whatever income is derived from the house is equally shared by both of them. Since it is the rentals that were used to pay off the balance of the purchase price then it follows that both of them are co-owners of the lot being joint purchasers thereof.

Another error is when the lower court gave credence to the letter marked as Exhibit "D". This exhibit was objected to as it is a product of hearsay as this "was identified by a person other than the plaintiffs in this case who merely testified that it was given to her by the plaintiffs and it was only the plaintiffs who told them of the alleged source of the letter. As plaintiffs cannot be cross-examined and they deprived the defendants from cross-examining them for their refusal to attend the hearings of this case, the said exhibit is inadmissible in evidence."

Re: Comment of the respondents

Despite our grant of extension of time within which to file their Comment to the instant petition, the respondents still failed to file one. Hence, sans their comment, we submitted this case for decision.

THE ISSUES

The issues presented to us for resolution are the following, to wit:

(1)

whether the MTCC has jurisdiction over the respondents' complaint which initially was one for unlawful detainer but later on considered as an action for recovery of possession; and

(2)

whether the MTCC erred in not dismissing the respondents' complaint in view of the pending case between the same parties and for the same cause of action.

OUR RULING

The petition is meritorious insofar as the issue of jurisdiction is concerned.

“Whether a court has jurisdiction over the subject matter of a particular action is determined by the plaintiff's allegations in the complaint and the principal relief he seeks in the light of the law that apportions the jurisdiction of courts.”[28]

Subject in this instance is the respondents complaint for unlawful detainer which is governed by Rule 70 of the 1997 Rules of Civil Procedure, as amended, specifically Section 1 thereof, which provides, to wit:

“Section 1. Who may institute proceedings, and when. — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.”

What is more, “a complaint sufficiently alleges a cause of action for unlawful detainer if it states the following:

(a)

Initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff;

(b)

Eventually, such possession became illegal upon notice by the plaintiff to the defendant about the termination of the latter's right of possession;

(c)

Thereafter, the defendant remained in possession of the property and deprived the plaintiff of its enjoyment; and

(d)

Within one year from the making of the last demand to vacate the property on the defendant, the plaintiff instituted the complaint for ejectment.

In resolving whether the complaint states a cause of action or not, only the facts alleged in the complaint are considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for. Only ultimate facts, not legal conclusions or evidentiary facts, are considered for purposes of applying the test.”[29]

In their complaint for unlawful detainer, the respondents alleged that they, by mere tolerance and out of generosity, allowed the Sps. Cataloctocan to occupy the subject property. Now that they intend to make improvements on the building standing thereon, they have asked the petitioners to vacate the subject property but their demands remained unheeded. That, after efforts failed to arrive at an amicable settlement, they were constrained to hire the services of counsel. That, their counsel sent the petitioners a demand letter[30] dated February 10, 2004. That, for the petitioners' adamant refusal to vacate the subject property thus, in the process, depriving them of possession and enjoyment thereof, they were forced to file the instant complaint for unlawful detainer dated April 29, 2005 on May 9, 2005. (Underscoring ours)

The petitioners challenged the MTCC's jurisdiction.

We agree with the petitioners.

Based on the allegations in the complaint, it cannot be denied that the complaint for unlawful detainer was filed well beyond the one (1) year reglementary period within which to file a complaint for unlawful detainer reckoned from the formal demand to vacate. On this ground alone and guided by the above-quoted jurisprudence, the respondents' complaint was outright dismissible.

Regardless, where the one (1)-year period to file an action for unlawful detainer has already lapsed, “the suit must be commenced in the RTC via an accion publiciana. Accion publiciana is a suit for recovery of the right to possess. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. It also refers to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty.”[31] Under this circumstance, the MTCC indeed, acquired no jurisdiction over the respondents' complaint.

What is more, granting arguendo that the complaint was for recovery of possession, the assessed value of the subject property must be alleged therein. Here, the complaint does not contain such allegation although it would appear that the respondents submitted a tax declaration No. 39-04-006-01-101-101 for the tax year beginning in 1997 marked as Exhibit “F”[32] showing the assessed value of the subject property to be less than P20,000.00. The MTCC upheld the respondents' claim and accordingly, considered the respondents' complaint as one for recovery of possession of real property and assumed jurisdiction over the same.

Once again, the MTCC erred.

In order that an action for recovery of possession, other than for forcible entry or unlawful detainer, may prosper, it is indispensable that the complaint disclose the assessed value of the subject property. In the present case, the complaint does not allege the assessed value of the subject property. Indeed, “in no uncertain terms, the Court has already held that a complaint must allege the assessed value of the real property subject of the complaint or the interest thereon to determine which court has jurisdiction over the action. This is because the nature of the action and which court has original and exclusive jurisdiction over the same is determined by the material allegations of the complaint, the type of prayed for by the plaintiff and the law in effect when the action is filed, irrespective of

whether the plaintiffs are entitled to some or all of the claims asserted therein.”[33]

It is interesting to note, too, that want of jurisdiction on the part of the MTCC was made more apparent during the trial. As borne in the records, the petitioners adduced in evidence a tax declaration issued over the subject property for the tax year beginning in 2003 and which shows that the said property has an assessed value of more than P20,000,00. Thus, pursuant to Section 1 of RA 7691, amending Section 19 of Batas Pambansa Blg. 129, otherwise known as the “Judiciary Reorganization Act of 1980” viz -

"Section 19. Jurisdiction in civil cases. — Regional Trial Courts shall exercise exclusive original jurisdiction.

(1)

In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

"(2)

In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (P20,000.00) or, for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (P50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts;

x x x x.”

exclusive and original jurisdiction over the instant complaint lies not with the MTCC but with the RTC which has jurisdiction over the territory where the subject property is located.

Where the MTCC has no jurisdiction over the complaint of the respondents, all the proceedings therein, including the decision of the MTCC and the decision of the RTC which affirmed in toto the MTCC decision are null and void. The complaint should perforce be dismissed.

Lack of jurisdiction may be raised
at any stage of the proceedings

In the instant case, the MTCC opined that the petitioners cannot anymore raise the issue of jurisdiction since it has already been resolved even before the pre-trial stage. The MTCC continued that the petitioners are now estopped from questioning its jurisdiction since they failed to raise the issue of jurisdiction at the pre-trial conference. The MTCC added that issues not incorporated in the pre-trial order are deemed waived or relinquished.

On this matter, the RTC ratiocinated in its Order denying the petitioners' motion for reconsideration, that,

“x x x. Worth noting is the fact that the defendant-appellants did not challenge the court-a-quo's Order denying their motion to dismiss for lack of jurisdiction. They did not even file a reply to plaintiffs' opposition to their affirmative defenses and their motion to dismiss where the matter about the assessed value of the property was discussed/taken up. Because of the Court a quo's contention that it has jurisdiction to try the case as an accion publiciana, what started out supposedly as a summary action in an unlawful detainer, the case graduated into an ordinary civil proceeding where both parties were given a chance to adduce evidence. Worth of note is the fact that when it was their turn to adduce evidence, the defendant-appellants again brought up the matter about jurisdiction and the value of the property. Such evidence which, in effect, questions once again the court's jurisdiction was no longer considered in that light for their active participation in the proceedings estoppel them in questioning this again. Similarly, in *Racaza vs. Gozum*, the High Court ruled that 'while an order or decision rendered without jurisdiction is a total nullity and may be assailed at any stage, a party's active

participation in the proceedings in the tribunal which rendered the order or decision will bar such party from attacking its jurisdiction.”[34]

We do not agree with the MTCC and the RTC.

Worthy of note is that from the beginning, specifically in their Answer with Counterclaim and Motion to Dismiss, the petitioners have already challenged the MTCC's jurisdiction over the complaint. They vigorously maintained their opposition even after their motion to dismiss was denied by the MTCC. One proof that they have not abandoned their position about the MTCC's want of jurisdiction is very obvious in their pleading denominated as “Opposition to the Motion for Judgment on the Pleadings Without Prejudice and Subject to the Objection that this Court has no Jurisdiction to Try this Case.” [35] Also, the petitioners objected[36] to the tax declaration issued for the tax year beginning in 1997 adduced by the respondents at the trial and which shows that that the said declaration only covers the buildings (one is residential and the other one, commercial) standing thereon. Then, to further prove the MTCC's want of jurisdiction, the petitioners adduced during the trial on the merits a tax declaration[37] marked as Exhibit “1” issued for the tax year beginning in 2003 and which disclosed the assessed value of the subject property of more than P20,000.00. Significantly, by its ruling[38] dated 20 July 2007, the MTCC admitted Exhibit “1” and submarkings thereon for the purpose for which it was offered and as part of the testimony of the petitioners' witnesses. On these considerations, the petitioners cannot be perceived as to have waived or relinquished its objection to the MTCC's jurisdiction over the respondents' complaint.

Notwithstanding, in the case of *Duero v. CA*,[39] the Supreme Court took the occasion to explain that:

The fundamental rule is that, the lack of jurisdiction of the court over an action cannot be waived by the parties, or even cured by their silence, acquiescence or even by their express consent. Further, a party may assail the jurisdiction of the court over the action at any stage of the proceedings and even on appeal. The appellate court did not err in saying that the RTC should have declared itself barren of jurisdiction over the action. Even if private respondent actively participated in the proceedings before said court, the doctrine of estoppel cannot still be properly invoked against him because the question of lack of jurisdiction may be raised at anytime and at any stage of the action. Precedents tell us that as a general rule, the jurisdiction of a court is not a question of acquiescence as a matter of fact, but an issue of conferment as a matter of law. Also, neither waiver nor estoppel shall apply to confer jurisdiction upon a court, barring highly meritorious and exceptional circumstances. (Underscoring ours)

On the bottom, “. . . the trial court was duty-bound to take judicial notice of the parameters of its jurisdiction and its failure to do so, makes its decision a 'lawless' thing.”[40] Thus, we cannot countenance the individual ruling of the MTCC and RTC that petitioners are already estopped from raising the issue of jurisdiction.

Re: Sec. 8, Rule 40 does not apply
especially to the RTC decision

Section 8, Rule 40 of the 1997 Rules of Civil Procedure, as amended, specifically second paragraph thereof reads, to wit:

“Sec. 8. Appeal from orders dismissing case without trial; lack of jurisdiction. – If an appeal is taken from an order of the lower court dismissing the case without a trial on the merits, the Regional Trial Court may affirm or reverse it, as the case may be. In case of affirmance and the ground of dismissal is lack of jurisdiction over the subject matter, the Regional Trial Court, if it has jurisdiction thereover, shall try the case on the merits as if the case was originally filed with it. In case of reversal, the case shall be remanded for further proceedings.

If the case was tried on the merits by the lower court without jurisdiction over the subject matter, the Regional Trial Court on appeal does not dismiss the case if it has original jurisdiction thereof, but shall decide the case in accordance with the preceding section, but without prejudice to the admission of amended pleadings and

additional evidence in the interest of justice.”

Indeed, this rule does not apply herein, because,

Firstly. The first paragraph speaks of dismissal by the municipal trial court, without trial on the merits, of a complaint for want of jurisdiction. In this instance, there was no dismissal by the MTCC, without trial, instead the court rendered a judgment for the plaintiffs, the herein respondents.

Secondly. The second paragraph provides that if the lower court tried the case on the merits despite want of jurisdiction, the RTC shall not dismiss the case if it has original jurisdiction over it, instead, shall decide it in accordance with the Rules.

In the present case, the RTC, twice, pronounced that the MTCC has jurisdiction over the complaint. The first time was in its decision affirming the MTCC decision, viz -

“Defendants-appellants submission that the lower court lacked jurisdiction over the case does not convince.

As the lower court correctly ruled, jurisdiction is determined by the allegations in the complaint and therefore it can not be made to depend upon the pleas and defenses set up in a motion to dismiss, otherwise, jurisdiction would be dependent almost entirely upon the defendant, x x x.”

Defendants-appellants are confused.

The action was for unlawful detainer. x x x.”[41]

The second time was in its Order denying reconsideration, to wit:

“While this Court agrees with the view of the defendant-appellants that the statement of facts in the herein complaint vi[s]-a-vi[s] the actual filing thereof do not make out a case for unlawful detainer, records show, however, that the Court a quo very well recognized said point but then because possession of real property may be recovered by means of accion publiciana or plenaria de posesion, it has jurisdiction to try the same in view of the expanded jurisdiction of the Municipal Trial Court under RA 7691. x x x. However, if the assessed value of the real property involved does not exceed Php50,000.00 in Metro Manila and Php20,000.00 outside of Metro Manila, the municipal trial court exercises jurisdiction over actions to recover possession of real property.’ x x x.”[42]

On the first time, the RTC held that the MTCC correctly took cognizance of the case it being an action for unlawful detainer. On the second time, it once more held that the MTCC has jurisdiction over the complaint it being an action for accion publiciana or plenaria de posesion and the assessed value of the subject property is less than P20,000.00. On these two times, it cannot be denied that the RTC decided the case in the exercise of its appellate jurisdiction.

Plainly viewed, what we have before us is not an appeal of the decision of the RTC in the exercise of its original jurisdiction which must be brought under Rule 41 of the 1997 Rules of Civil Procedure, as amended, but a petition for review of its decision rendered in the exercise of its appellate jurisdiction and which is governed by Rule 42 of the said Rules. We have to differentiate. As explained in *Macababba, Jr. v. Masirag*,[43] thus -

“In *Murillo v. Consul*,[44] this Court had the occasion to clarify the three (3) modes of appeal from decisions of the RTC, namely: (1) ordinary appeal or appeal by writ of error, where judgment was rendered in a civil or criminal action by the RTC in the exercise of original jurisdiction, covered by Rule 41; (2) petition for review, where judgment was rendered by the RTC in the exercise of appellate jurisdiction, covered by Rule 42; and (3) x x x. The first mode of appeal is taken to the CA on questions of fact or mixed questions of fact and law. The second mode of appeal is brought to the CA on questions of fact, of law, or mixed questions of fact and law. x x x.” (Footnoting ours)

Nevertheless,

Re: recovery for possession of realty
may proceed independently of pending
case for cancellation of title, etc.

“An accion publiciana is an action for the recovery of the right to possess and is a plenary action in an ordinary civil proceeding to determine the better right of possession of realty independently of title”[45] or of the action which the petitioners have brought before the RTC to enforce or protect their claim of ownership over the subject property. On this note, the RTC correctly ruled, to wit – (Underscoring ours)

“Re the second assigned error, the ruling in Leonin vs. CA comes in hand viz: 'the pending action for declaration of nullity of respondent's deed of sale and title does not abate an ejectment case.' There, therefore, is no need for the Court to await the resolution of defendant-appellant's complaint for cancellation of title under Civil Case No. 05-139 before this case could be entertained.

x x x An accion publiciana is a suit for recovery of the right to possess. x x x. The objective of the plaintiffs in accion publiciana is to recover possession only, not ownership. The herein quoted doctrines repeated in so many cases of the same nature affirm the court a quo's findings which zeroed in only on possession and evaded defendant's theory of ownership. x x x. A separate action is necessary to raise the issue of ownership. In accion publiciana, the principal issue is possession and ownership is merely ancillary thereto.”[46]

WHEREFORE, the petition is GRANTED insofar as the issue of jurisdiction is concerned. Accordingly, the complaint filed in Civil Case No. 05-139 is hereby DISMISSED on ground of lack of jurisdiction.

SO ORDERED.

Abella Maxino, P.A., and Francisco, R.C., JJ., concur.

[1] Rollo, pp. 98-104.

[2] Rollo, pp. 113-117.

[3] Rollo, p. 103.

[4] Rollo, pp. 36-40. With Annexes.

[5] Rollo, pp. 41-43.

[6] Rollo, p. 44.

[7] Rollo, p. 45.

[8] Rollo, pp. 61-67.

[9] Rollo, pp. 47-55.

[10] As noted in the Summons, Rollo, p. 46.

[11] Rollo, pp. 118-119.

[12] Rollo, pp. 124-125.

[13] Rollo, pp. 120-121.

- [14] Rollo, p. 122.
- [15] Rollo, p. 126.
- [16] Rollo, pp. 75-83.
- [17] Rollo, p. 83.
- [18] Rollo, pp. 79-82.
- [19] Rollo, pp. 96-97.
- [20] Rollo, pp. 84-95.
- [21] Rollo, pp. 231-233.
- [22] Rollo, pp. 113-117.
- [23] Rollo, p. 117.
- [24] Rollo, p. 123.
- [25] Rollo, pp. 56-66.
- [26] Rollo, p. 126.
- [27] Rollo, p. 122.
- [28] Heirs of Generoso Sebe, et. al. v. Heirs of Veronico Sevilla and Technology and Livelihood Resource Center, G.R. No. 174497, October 12, 2009.
- [29] Dolores Adora Macaslang v. Renato and Melba Zamora, G.R. No. 156375, May 30, 2011.
- [30] Rollo, p. 45.
- [31] Salud D. Lopez , et. al. v. Robert P. David, Jr., et. al., G.R. No. 152145, March 30, 2004.
- [32] As indicated in Comment to Formal Offer of Exhibits marked as Annex “A” of the petition, Rollo, pp. 124-125.
- [33] Victorino Quinagoran v. Hon. Court of Appeals and The Heirs of Juan de la Cruz, G.R. No. 155179, August 24, 2007.
- [34] RTC Order denying reconsideration, Rollo, p. 115.
- [35] Rollo, pp. 56-60.
- [36] Comment to Formal Offer of Exhibits, Rollo, pp. 124-125.
- [37] Rollo, p. 122.
- [38] Rollo, p. 126.
- [39] Gabriel L. Duero v. Hon. Court of Appeals and Bernardo A. Erade, G.R. No. 13128, January 4, 2002.
- [40] Ibid.
- [41] Rollo, pp. 99-100.
- [42] Rollo, p. 115.

[43] Perfecto Macababbad, Jr. (deceased), Substituted by his Heirs Sophia Macababbad, etc., and et. al., vs. Fernando G. Masirag, et. al., G.R. No. 161237, January 14, 2009.

[44] Resolution of the Court En Banc in UDK-9748 dated March 1, 1990; See also Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals, G.R. No. 115104, October 12, 1998, 297 SCRA 602

[45] Lopez v. David, *supra*.

[46] Order of the RTC denying reconsideration, Rollo, p. 116.

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