

FE NOBLEZA, CELEDONIO ACLAN, EDELIZA UNIDA AND MELCHOR OBERO, PETITIONERS, VS. AMELITA TAN, RESPONDENT.

Ponente: REYES, JR., J.C., J.

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REYES, JR., J.C., J.:

This resolves the Petition for Review filed under Rule 42 of the 1997 Rules of Civil Procedure seeking to set aside the January 12, 2012 Decision (Rollo, pp. 14-16) issued by the Regional Trial Court (RTC) of Pateros, Metro Manila, Branch 262 in the exercise of its appellate jurisdiction, which affirmed the January 25, 2011 Decision (Rollo, pp. 49-52) of the Metropolitan Trial Court (MeTC) of Pateros, Metro Manila, Branch 73, in SCA No. 3578 (MTC Civil Case No. 1347-09).

The case arose from the Amended Complaint for Ejectment filed by respondent Amelita Tan against petitioners Fe Nobleza, Celedonio Aclan, Edeliza Unida and Melchor Obero. It was alleged that respondent Amelita Tan is the lawful and previous possessor of the house situated at 1148 Interior P. Rosales, Barangay Sta. Ana, Pateros, Metro Manila. The lot, where the said house was built, was actually owned by Winnie and Boyet Raon. The latter allegedly allowed respondent Amelita to build the subject house and occupy the same since 1970 until 1989. In 1989, respondent Amelita Tan decided to leave the place and momentarily transferred to nearby Pembo, Makati City because of the constant flooding in Pateros. Respondent Amelita Tan actually did not give up her house in Pateros, but instead, she allegedly asked petitioner Fe Nobleza, to act as the caretaker of the premises, in charge of leasing out portions of the house to others and to demand, collect and receive the rents for and in behalf of respondent Amelita Tan. It was their understanding that part of the proceeds of the rents shall be given to petitioner Fe Nobleza as her salary as caretaker.

In June 2008 however, respondent Amelita Tan through her son Alfredo Jimenez, informed petitioner Fe Nobleza, of the former's need to repossess the subject property for her personal use. Accordingly, all occupants of the subject property were duly notified thereof and was granted three (3) months to look for a place to transfer and vacate the said property. Petitioners, however, refused, claiming that they have the right over the premises they occupy. The matter was later referred to the barangay court for conciliation proceeding. Despite the concerted efforts of the Lupon members towards conciliation among the parties, the same however proved to be futile.

In a complete turn-around, petitioner Fe Nobleza denied being a mere caretaker of the subject property and asserted her right over the same. The other defendants (petitioners) likewise maintained a similar position and refused to recognize the right of respondent Amelita Tan as owner of the house. On September 18, 2009, respondent Amelita Tan, in letter dated March 22, 2009 formally demanded from petitioners that they vacate the subject property. Petitioners however refused to heed the said demand prompting respondent Amelita Tan to institute the instant suit for ejectment with prayer for moral damages.

In their Answer (Rollo, pp. 30-34) to the Complaint, petitioners interposed a common defense and denied the material allegations in the complaint. They insisted that they have the better right of possession over the subject property and claimed that they have been in open, continuous and notorious possession of the property adverse to that of respondent Amelita Tan.

After both parties submitted their respective position papers (Rollo, 37-41; 42-48) stating the facts and the laws relied upon to support their causes of action and defenses, the MeTC of Pateros, Metro Manila, Branch 73, rendered a Decision in favor of respondent Amelita Tan, the dispositive portion of which reads as follows:

“WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff Amelita Tan and against defendants FE NOBLEZA, CELEDONIO ACLAN, EDELIZA UNIDA and MELCHOR OBERO, ordering the latter and all persons claiming rights under them to vacate the subject premises occupied by them located at A. 148 Int. P. Rosales St. Brgy., Sta. Ana, Pateros, Metro Manila, and to pay the sum of PHP500.00 a month per defendant as reasonable compensation for the use of the subject property from January 2010 when the amended complaint was filed until the same is finally vacated.

Costs against the defendants.” (Rollo, p. 53).

Dissatisfied with the foregoing Decision of the MeTC, petitioners filed an appeal with the RTC of Pateros, Branch 262, which after careful review of the records, affirmed the findings of the MeTC. Thus, the RTC ruled:

“The Court finds that the issues raised by the defendants-appellants had been properly passed upon by the court-a-quo and finds no cogent reason to depart therefrom.

As correctly stated by the court a quo, it is very clear that the defendants had admitted their status as mere lessees on the property as evidence by Exhibits “F” and “G”, and recognized ownership thereof by the plaintiff. By acknowledging plaintiff’s ownership over the subject property, the defendants have likewise recognized her rightful possession. Verily, the possession of the defendants during the lease was legal, and became unlawful only when the lease agreement was terminated and demand was made for the defendants to return the possession of the house.

x x x x x x x x” (Rollo, p. 15).

Thereafter, petitioners filed a Motion for Reconsideration of the said RTC Decision, but said Motion was denied for lack of merit in an Order dated May 28, 2012 (Rollo, p. 17).

Feeling aggrieved, petitioners filed the instant Petition for Review with this Court, raising the following errors to have been committed by the RTC, to wit:

- The trial court erred in taking cognizance of the complaint of the respondent and the allegations contained therein.
- The instant case sought to be reviewed by the Honorable Court of Appeals is an accion publiciana cognizable by the Regional Trial Court (Rollo, p. 6).

At the outset, petitioners faulted the RTC for affirming the act of the MeTC's of taking cognizance of the instant case despite respondent's failure to state how she (respondent) acquired the subject property, which petitioners believe is a material averment in the complaint.

Well-settled is the rule that what determines the nature of the action as well as the court which has jurisdiction over the case are the allegations in the complaint (*Sarmienta vs. Manalite Homeowners Association, Inc.*, 632 SCRA 538, 545 [2010]). In ejectment cases, the complaint should embody such statement of facts as to bring the party clearly within the class of cases under Section 1, Rule 70 of the 1997 Rules of Civil Procedure, as amended (*ibid.* at 545-546). Thus:

“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.”

The foregoing provision contemplates two kinds of action – one is forcible entry and the other, unlawful detainer.

In forcible entry, the complaint must necessarily allege that one in physical possession of a land or building has been deprived of that possession by another through force, intimidation, threat, strategy or stealth (*Pagadora vs. Ila*, 662 SCRA 14, 31 [2011]). In other words, the plaintiff must allege that he, prior to the defendant's act of dispossession by force, intimidation, threat, strategy or stealth had been in prior physical possession of the property (*ibid.*).

In unlawful detainer, there must be an allegation in the complaint of how the possession of defendant started or continued, that is, by virtue of lease or any contract, and that defendant holds possession of the land or building "after the expiration or termination of the right to hold possession by virtue of any contract, express or implied." (*Sarmienta vs. Manalite Homeowners Association, Inc.*, 632 SCRA 538, 546-547 [2010]).

Based on the allegations in respondent's amended complaint, the instant case falls under the category of unlawful detainer. Indeed, a complaint sufficiently alleges a cause of action for unlawful detainer if it recites that: (a) initially, 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 plaintiff to defendant of the termination of the latter's right of possession; (c) thereafter, defendant remained in possession of the property and deprived plaintiff of the enjoyment thereof; and (d) within one year from the last demand on defendant to vacate the property, plaintiff instituted the complaint for ejectment (*Optimum Development Bank vs. Spouses Jovellanos*, G. R. No. 189145, December 4, 2013).

As per allegations in the amended complaint, respondent Amelita Tan tapped her tenant, petitioner Fe Nobleza to act as the caretaker of the premises in charge of leasing out portions thereof to others and to demand, collect and receive rents for and in behalf of respondent. It was also alleged that respondent Amelita Tan and petitioner Fe Nobleza agreed that part of the proceeds of the rents shall be given to petitioner as her salary as caretaker. When respondent needed the property, she demanded petitioner Fe and all persons occupying the premises (the other petitioners) to vacate. However, petitioners refused claiming that they have right over the premises. This refusal to vacate prompted the respondent to file the instant ejectment suit, which was made within one-year from the date of the last demand. The importance of making a demand cannot be overemphasized, as it is jurisdictional in nature (*Mirallosa vs. Carmel Development, Inc.*, G.R. No. 194538, November 27, 2013). Case law has it that where there were more than one demand to pay and vacate, the reckoning point of one year for filing the unlawful detainer is from the last demand (*Esteban vs. Marcelo*, G.R. No. 197725, July 31, 2013). The reason for this is that the other party has the right to waive the right of action based on previous demands and to let the possessor remain on the premises for the meantime (*Mirallosa vs. Carmel Development, Inc.*, G.R. No. 194538, November 27, 2013). As in this case, the last demand letter to vacate dated March 22, 2009 was sent to petitioners on September 18, 2009 (See: MeTC Decision, Rollo, p. 49) while the instant case for Ejectment was filed with the MeTC on October 21, 2009 (Rollo, p. 18). No doubt, the instant ejectment case was filed well within the one year period from the date of the last demand.

It is to be noted that while the term “tolerate” was not alleged in the complaint, this does not affect the nature of the action for the rules do not require the plaintiff in an eviction suit to use the exact language of the law (See: *Pagadora vs. Ila*, 662 SCRA 14 [2011]). As long as there is an allegation of an implied agreement (or contract)

between the parties - for one party to allow the other to possess the premises; an allegation of a demand to vacate within the one year period; an allegation of the refusal to heed the demand to vacate thereby depriving the other party of the enjoyment of the property, the complaint is sufficient to make out a case for unlawful detainer. The bottomline is that as long as these allegations demonstrate a cause of action for unlawful detainer, the court acquires jurisdiction over the subject matter. This principle holds, even if the facts proved during the trial do not support the cause of action thus alleged, in which instance the court — after acquiring jurisdiction — may resolve to dismiss the action for insufficiency of evidence (*Canlas vs. Tubil*, September 25, 2001 SCRA 147, 158 [2009]). Thus, contrary to petitioners' protestation, the MeTC correctly took cognizance of the ejectment case as the complaint averred the jurisdictional facts constitutive of an unlawful detainer suit.

We now proceed to the issue of whether or not the allegations averred in the complaint were supported by sufficient evidence. In the case at bar, petitioners question the right of the respondent to institute the instant ejectment case as respondent only alleged that she is the lawful and previous possessor of the disputed property without proof to that effect. On the other hand, respondent Amelita Tan, in order to prove her case, anchored her right to possess the subject land on her claim that she was allowed by the lot owners (the spouses Roan) to build a structure on the subject lot. Respondent Amelita Tan then permitted petitioners to occupy the same through an implied agreement that Fe Nobleza would manage the property (as caretaker) then lease it out to the latter's co-petitioners.

The rule is that the party who asserts, not he who denies, must prove. Indeed, the party who alleges an affirmative fact has the burden of proving it because mere allegation of the fact is not evidence of it (*Far East Bank & Trust Co vs. Chante*, G.R. No. 170598, October 9, 2013). In this case, it is the respondent (plaintiff) who bears the burden of proving her allegations that there exists an agreement between her and petitioners to occupy the land as caretaker or lessees of the subject property with the understanding that upon demand, they would vacate it.

However, a careful perusal of the records of the case revealed that respondent failed to substantiate her allegation that there was an implied contract between her and petitioner Fe Nobleza for the latter to act merely as caretaker of the subject property. No evidence was presented showing that respondent has entered into an implied agreement with the petitioners to occupy the subject land. Neither did she adduce proof that she received rentals from petitioners so as to establish the so-called agreement which she claimed they had. Also bereft from records are evidence of her claimed prior possession over the subject property. Not even a single witness was presented to testify as to the fact that respondent Amelita Tan occupied the subject premises during the period which she claimed.

Apparently, the MeTC, in its decision, mentioned about some admission made by petitioners during the Barangay conciliation that they were merely paying rents. Aside from the fact that this minutes of the barangay conciliation cannot be found on the records, there was a vehement denial on the part of petitioners that they made such admission. They maintained that no lessor-lessee relationship existed between them and respondent Amelita Tan, considering that they have been in possession of the subject premises for quite some time. To prove their actual possession, they presented as evidence the Barangay Clearance and Certificate (Rollo, pp. 35 & 36) attesting that petitioners Unida and Aclan were registered voters and residents of the subject property from the year 2000 to 2010. Petitioner Fe Nobleza also executed an Affidavit under oath stating that she has been living and occupying the subject property since she was 13 years old (Rollo, p. 60). The other petitioners (Aclan, Unida, Obero) also executed a Joint Affidavit, also under oath, stating that they were residents of the said subject property since the year 2000 up to the present (Rollo, p. 61). Petitioners also stated that there is yet no definite ruling as to who owned the land. The Spouses Roans, who were mentioned by respondent as the one who allowed her to build a house thereon cannot likewise be considered as lawful owners because their application for registration of title

over the said property was dismissed by the Court of Appeals in a Decision (Decision, Rollo, pp. 119-125) dated August 20, 2008. The said Decision became final and executory as no appeal was taken therefrom. Records would also show that to date, petitioners have pending applications with the government to award the subject property to them with a request that the awarding must be based on an “As is and Where is basis”. (See: Rollo, pp. 137, 138 & 139). Although freshly filed, these requests/applications show that indeed, the subject parcel of land is not yet owned by anyone, except the state.

Considering the foregoing, it is clear therefore that respondent Amelita Tan failed to prove her rightful claim to the subject parcel of land considering that she failed to adduce evidence of even an implied contract/agreement between her and petitioners, or that she is receiving rentals from them or of fact of her prior possession over the subject property. Petitioners, on the other hand, has proven that they have been in possession of the subject property for quite some time and that they have a pending application for patent with the government. On this score, We find for the petitioners. But our adjudication in this case centers only on the issue of physical possession. This is not conclusive as to the issue of ownership.

It bears to stress that the only issue to be resolved in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties involved (*Samelo vs. Manotok Service, Inc.*, 675 SCRA 132, 138-139 [2012]). However, where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property (*Silverio vs. Marcelo*, 696 SCRA 694, 708 [2013]). This adjudication is only an initial determination of ownership for the purpose of settling the issue of possession, the issue of ownership being inseparably linked thereto (*Cabrera vs. Getaruela*, 586 SCRA 129, 138 [2009]), citing the case of *Pascual vs. Coronel*, 527 SCRA 474, 482 [2007]). It is merely provisional and would not bar or prejudice an action between the same parties involving title to the property (*Silverio vs. Marcelo*, 696 SCRA 694, 708 [2013]).

WHEREFORE, in view of the foregoing, the questioned Decision dated January 12, 2012 of the Regional Trial Court (RTC) of Pateros, Metro Manila, Branch 262, in SCA No. 3578 is SET ASIDE. Accordingly, respondent's Complaint for Unlawful Detainer is DISMISSED.

SO ORDERED.

Lopez, and Inting, JJ., concur.

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