

**FORTUNATO DE LA CRUZ AND DIEGA RAMOS-DE LA CRUZ,
PETITIONER, VS. HON. CRISPIN V. BAUTISTA, COURT OF FIRST
INSTANCE OF BULACAN, FIFTH JUDICIAL DISTRICT, BRANCH III,
AND JOSE I. R...**

G.R. No. L-39695. June 14, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

The issue posed for resolution in this petition is whether the decision of the former court of first instance, affirming the judgment of the then municipal court which ordered the ejectment of herein petitioners after finding that no tenancy relationship existed between them and herein private respondent, had still to be referred to the Secretary of the Department of Agrarian Reform for purposes of certification pursuant to Presidential Decree No. 316.

In a complaint[1] filed before the Municipal Court of Obando, herein private respondent, as plaintiff, sought the ejectment of herein petitioners, as defendants, alleging, inter alia, that plaintiff is the owner of two (2) parcels of land, consisting of 302 square meters, located in Lawa, Obando, Bulacan; that sometime in April, 1967, defendants occupied said parcels of land and built a residential house and other improvements thereon on mere consent and tolerance of herein plaintiff; that since April 11, 1970, plaintiff had demanded that defendants vacate said premises, but defendants refused and failed to do so up to the present.

Defendants filed a motion to dismiss[2] alleging that they have been tenants of the aforesaid parcels of land since 1941 up to the present; that, as tenants, defendants are entitled to a homelot and they cannot be deprived of the same unless it is decreed by a final and executory decision of a competent court for causes provided by law; that there is a prejudicial question as to whether or not a tenancy relationship exists between plaintiff and defendants; and that this case falls within the original and exclusive jurisdiction of the Court of Agrarian Relations, pursuant to Section 154(1) of Republic Act No. 1267.

Plaintiff filed an opposition[3] to the motion to dismiss stating that the subject matter of the action is a residential lot and is not for cultivation; and that mere allegations that there exists an agricultural tenancy relation between defendants and plaintiff do not divest the municipal court of its jurisdiction to try the unlawful detainer case.

In an order dated June 3, 1971,[4] the municipal court denied the motion to dismiss, holding that there is nothing in the allegations in the complaint which speaks of tenancy relationship between the parties, and that since the allegations in the complaint determine the jurisdiction of the courts, it properly acquired jurisdiction over the ejectment case. Defendants' motion for reconsideration of the order denying their motion to dismiss was likewise denied.

Thereafter, defendants filed their answer with counterclaim,[5] alleging that since 1941 up to the present they have been occupying and cultivating the parcels of land owned by plaintiff; that they have been tenants of plaintiff

since 1941 up to the present; that the question of whether or not there exists a tenancy relation between the parties falls within the exclusive jurisdiction of the Court of Agrarian Relations; and that defendants have filed a complaint for security of tenure before the Court of Agrarian Relations docketed as CAR Case No. 362.

After hearing and presentation of evidence by both parties, herein petitioners again filed another motion to dismiss dated January 6, 1973,[6] alleging that "(w)hile it is true that the jurisdiction of the court in a suit for ejectment or forcible entry is determined by the allegations in the complaint, yet where tenancy is averred as a defense and, upon hearing, is shown to be the real issue, the court should dismiss the case for want of jurisdiction."

Without resolving this second motion to dismiss, the Municipal Court of Obando rendered a decision, dated March 28, 1973,[7] ordering the defendants to vacate the parcels of land in question; to pay plaintiff a monthly rental thereon of P30.00 from September 7, 1970 until they vacate the premises; and to pay attorney's fees in an amount equivalent to ten percent (10%) of the total amount of rentals due to plaintiff. Petitioners appealed to the Court of First Instance of Bulacan, Branch III, which rendered judgment on June 7, 1974[8] affirming the municipal court's decision, except as to attorney's fees.

No appeal having been taken from this decision of the Court of First Instance, upon motion of herein private respondent said court issued a writ of execution. However, before the same could be implemented, petitioners filed a motion for referral of the case to the Secretary of Agrarian Reform, dated October 1, 1974.[9] After hearing the arguments of both parties, the Court of First Instance issued an order, dated October 10, 1974,[10] denying the aforesaid motion. The instant petition involves and assails the said denial order.

We hold that the motion to refer the ejectment case to the Secretary of Agrarian Reform was properly denied by respondent court.

1. Section 8 of Republic Act No. 3844, otherwise known as the Code of Agrarian Reforms, provides:

"SEC. 8. Extinguishment of Agricultural Leasehold Relation. - The agricultural lease-hold relation established under this Code shall be extinguished by:

x x x

"(2) Voluntary surrender of the landholding by the agricultural lessee, written notice of which shall be served three months in advance;"

x x x

Petitioners admit that they have voluntarily surrendered their landholding to private respondent. However, they submit that they agreed to surrender their landholding on the condition that the lot where their house is constructed will belong to them. This contention is bereft of merit. There is nothing in the law which imposes a consideration, of whatever kind and nature, for the surrender by the tenant of his landholding. What it requires is a mere written notice in order that voluntary surrender will terminate the tenancy relation. While there is jurisprudence to the effect that Section 8 of Republic Act No. 3844 does not prohibit the parties from attaching conditions to the agreement on the surrender of the landholding by the tenant, we are convinced, on the basis of the evidence presented by private respondent which is neither denied nor confirmed by petitioners, that the alleged condition adverted to by petitioners was never agreed upon.

The records show, and it is not disputed, that in a letter dated April 11, 1970,[11] private respondent advised petitioners that he is giving them thirty (30) days from receipt thereof within which to elect whether or not to buy the parcel of land occupied by them. When petitioners failed to reply, it was then that private respondent

demanding that they vacate the premises and pay the rentals. Petitioners likewise do not deny that they were allowed by private respondent to purchase the lot adjoining that on which their house is constructed, with the promise that they will transfer their house to the adjoining lot.[12] We find no plausible reason why petitioners would still transfer their house to the adjoining lot if it were true, as they claim, that the land on which their house stands actually belongs to them. The filing of the complaint for ejectment only serves to strengthen the fact that the subject premises did not belong to petitioners. Thus, there is sufficient basis to conclude that petitioners had surrendered their landholding to herein private respondent.

Considering that by the voluntary surrender of the landholding the tenancy relationship, if any, was terminated, it follows that the land ceased to be within the contemplation of Presidential Decree No. 316. Consequently, the mandatory provisions in Section 2 thereof, requiring referral of the case to the Secretary of Agrarian Reform, could no longer be invoked.

2. Petitioners argue that, pursuant to Section 2 of Presidential Decree No. 316, it is necessary for said secretary to determine whether or not a tenancy relationship exists between the parties herein, because it is only when said official finds that no such relationship exists that the ejectment case may proceed for further proceedings in the Court of First Instance.

Section 2 of Presidential Decree No. 316 provides:

"SEC. 2. Unless certified by the Secretary of Agrarian Reform as a proper case for trial or hearing by a court or judge or other officer of competent jurisdiction, no judge of the Court of Agrarian Relations, Court of First Instance, municipal or city court, or any other tribunal or fiscal shall take cognizance of any ejectment case or any other case designed to harass or remove a tenant of an agricultural land primarily devoted to rice and corn, and if any such cases are filed, these cases shall first be referred to the Secretary of Agrarian Reform or his authorized representative in the locality for a preliminary determination of the relationship between the contending parties. If the Secretary of Agrarian Reform finds that the case is a proper case for the court or judge or other hearing officer to hear, he shall so certify and such court, judge or other hearing officer may assume jurisdiction over the dispute of controversy."

It is readily apparent that the aforesaid provision applies only if what is involved is agricultural land primarily devoted to rice and corn. In the case at bar, it has been sufficiently established by the evidence presented and the facts found, both in the aforesaid Municipal Court and Court of First Instance, that the two parcels of land on which petitioners' house is located are residential in nature. We cannot, therefore, accept the theory advanced by petitioners that the trial court can proceed to hear the ejectment case filed before it only after the Secretary of Agrarian Reform has certified that no tenancy relationship exists between the parties.

Even assuming *arguendo* that the land is indeed agricultural, petitioners' submission must still fail.

Section 2 of Presidential Decree No. 1038, which is aimed at strengthening the security of tenure of tenant-tillers in non-rice/corn producing private agricultural lands, in conjunction with Section 2 of Presidential Decree No. 316 hereinbefore quoted, provides:

"SEC. 2. No judge of the courts of agrarian relations, courts of first instance, city or municipal courts, or any other tribunal or fiscal shall take cognizance of any ejectment case or any other case designed to harass or remove a tenant of an agricultural land primarily devoted to rice and/or corn, unless certified by the Secretary of Agrarian Reform as a proper case for trial or hearing by a court or judge or other officer of competent jurisdiction and, if any such case is filed, the case shall first be referred to the Secretary of Agrarian Reform or his authorized representative in the locality for a preliminary determination of the relationship between the contending parties. If the Secretary of Agrarian Reform or his authorized representative in the locality finds that the case is a proper case for the court or judge or other hearing officer to hear, he shall so certify and such

court, judge or other hearing officer may assume jurisdiction over the dispute or controversy.

"The preliminary determination of the relationship between the contending parties by the Secretary of Agrarian Reform, or his authorized representative, is not binding upon the court, judge or hearing officer to whom the case is certified as a proper case for trial. Said court, judge or hearing officer may, after due hearing, confirm, reverse or modify said preliminary determination as the evidence and substantial merits of the case may warrant."

We had the occasion to apply the aforequoted provision of law in *Puertollano, et al. vs. Hon. Intermediate Appellate Court, et al.*,^[13] where we held that:

"From the foregoing provisions of the law it is clear that the trial court cannot take cognizance of any 'ejectment case or any other case designed to harass or remove a tenant of an agricultural land primarily devoted to rice and corn' without first referring the same to the Secretary of Agrarian Reform or his authorized representative in the locality for a preliminary determination of the relationship between the contending parties. If said officer finds that the case is proper for determination by the court it shall so certify and thence said court may assume jurisdiction over the dispute or controversy. Such preliminary determination of the relationship, however, is not binding upon the court. Said court may after due hearing confirm, reverse or modify said preliminary determination as the evidence and substantial merit of the case may warrant."

This was reiterated in the more recent case of *Graza, et al. vs. Hon. Court of Appeals, et al.*,^[14] which specifically underscores the fact that the secretary's certificate on the supposed tenancy relationship between the contending parties is only preliminary and cannot be conclusive on the courts.

Petitioners insist that Presidential Decree No. 316 should apply in the instant case considering their allegation, both in their motion to dismiss and answer, that there exists a tenancy relationship between the parties.

Basic is the rule that the material averments in the complaint, which in this case is for ejectment, determine the jurisdiction of the court. And, jurisprudence dictates that the court does not lose its jurisdiction over an ejectment case by the simple expedient of a party raising as a defense therein the alleged existence of a tenancy relationship between the parties.

A perusal of the complaint for ejectment filed by private respondent shows that there is nothing in the averments therein which establishes or tends to establish the existence of a tenancy relation between private respondent and petitioners. We have specifically ruled in *Concepcion vs. Presiding Judge, etc., et al.*,^[15] that:

"Arguing on the merits of his petition for relief, petitioner's main contention is that the court a quo did not acquire jurisdiction over the nature or subject matter of Civil Case No. SM-243 and therefore, its decision dated December 18, 1969, as well as the writ of execution dated April 15, 1972 and the order of demolition dated July 5, 1972 issued to implement said decision, were all null and void. According to petitioner, the case involves an agrarian dispute and an established tenancy relationship between the parties, hence, it should fall squarely within the original and exclusive jurisdiction of the Court of Agrarian Relations (CAR).

"The contention is without merit. It cannot be controverted that the allegations of the Complaint filed by herein private respondents in the court below (Civil Case No. SM-243) constitute a cause of action for ejectment and damages against petitioner. Private respondents, as complainants therein, claimed ownership over the parcel of land in question identified as Lot No. 2604-B but which was allegedly in the possession of petitioner who had been unlawfully depriving them of their right to possess the property for several years. In other words, they filed an *accion publiciana*, a plenary action for the recovery of possession of real property, properly cognizable by the court of first instance. x x x The Court does not lose nor is it deprived of its jurisdiction by a defense of tenancy but has the authority to hear the evidence for the purpose of determining whether or not it has jurisdiction (*Evangelista vs. CAR Iloilo, et al.*, 109 Phil. 957).

"Thus, in the case at bar, petitioner's defense of tenancy in his Answer to private respondents' complaint did not automatically divest the lower court, a court of first instance, of its jurisdiction over Civil Case No. SM-243. It merely gave the court authority to receive evidence to determine the tenability of the claim of tenancy. x x x."

In the case at bar, the court a quo categorically declared in its decision that the land is residential and, therefore, no tenancy relation exists between the parties. This was affirmed on appeal by respondent court. Such factual finding laid to rest the issue of jurisdiction raised by petitioners in the first instance and removed the case from the ambit of Presidential Decree No. 316.

3. Petitioners further claim that since the execution of the decision would result in the ejectment of a tenant-farmer, the ejectment case should be referred to the Secretary of Agrarian Reform in accordance with Memorandum Circular No. 29, Series of 1973, of said department. Said memorandum circular provides:

"In the implementation of Presidential Decree No. 316, in relation to Presidential Decree No. 27, the following guidelines shall be strictly observed.

I. CASES COVERED BY THE DECREE

1. Those within the exclusive jurisdiction of the Court of Agrarian Relations;
 - a. Ejectment cases;
 - b. Other cases designed to harass or remove the tiller of the land and/or the tenant-farmer.
2. Those within the jurisdiction of the Court of First Instance or City or Municipal Court;
 - a. Civil cases which involve question of possession;
 - b. Civil cases involving other issues where there is allegation of tenancy relationship or actual cultivation and use of the land appearing in the pleading of the plaintiff or defendant, or in the records of the case.

x x x

II. WHEN REFERRAL SHALL BE MADE

1. With respect to agrarian or civil cases newly filed or pending - at any stage of the proceedings;
2. With respect to agrarian or civil cases submitted for decision or pending execution - before decision is rendered or before execution of decision where such decision or execution would result in the ejectment of the actual tiller or the tenant-farmer in order to determine whether the defendant has become a beneficiary or a recipient of a Land Transfer Certificate pursuant to Presidential Decree No. 27."

x x x

It must be noted that the above circular speaks of "actual tiller" and "tenant-farmer." There is no question that only a tenant may avail of the beneficent provisions of Memorandum Circular No. 29.

The essential requisites set by law for a tenancy relationship are as follows: (1) the parties are the landholder and the tenant; (2) the subject is agricultural land; (3) the purpose is agricultural production; and (4) there is consideration. It is understood that there is consent to the tenant to work on the land, there is personal cultivation by him and the consideration consists of sharing the harvest.[16] All these requisites are necessary in order to create tenancy relationship between the parties and the absence of one or more requisites does not make the alleged tenant a de jure tenant as contradistinguished from a de facto tenant. Unless a person has established his

status as a de jure tenant, he is not entitled to security of tenure.

Considering our earlier finding that the subject premises are residential lands and, therefore, there is no tenancy relationship in this case, the inescapable conclusion is that petitioners' claims must be rejected. Verily, even Memorandum Circular No. 29 finds no proper application to the case at bar.

WHEREFORE, the order of respondent Court of First Instance of Bulacan, Branch III, dated October 10, 1974, is hereby AFFIRMED. The temporary restraining order issued by this Court on March 12, 1975 is hereby lifted.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Petition, Annex A; Rollo, 6.

[2] Id., Annex B; *ibid.*, 8.

[3] Id., Annex C; *ibid.*, 11.

[4] Id., Annex D; *ibid.*, 14.

[5] Id., Annex H; *ibid.*, 23.

[6] Id., Annex J; *ibid.*, 27.

[7] Id., Annex L; *ibid.*, 42.

[8] Id., Annex M; *ibid.*, 48.

[9] Id., Annex N; *ibid.*, 54.

[10] Id., Annex O; *ibid.*, 58.

[11] Exhibit B, Rollo, 77.

[12] Comment, 7; *id.*

[13] 156 SCRA 188 (1987).

[14] 163 SCRA 39 (1988).

[15] 119 SCRA 222 (1982).

[16] Hilario, et al. vs. Intermediate Appellate Court, et al., 148 SCRA 573 (1987).

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