

ALFREDO SERING, PETITIONER, VS. RESTITUTO PLAZO AND GERTRUDES SUAN, RESPONDENTS.

G.R. No. L-49731. September 29, 1988

Ponente: NARVASA, J.

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NARVASA, J.:

The application of settled principles is all that is needed resolve the instant appeal. Article 487 of the Civil Code provides that anyone of the co-owners of an immovable may bring an action ejectment. A co-owner may thus bring an ejectment action without joining the other co-owners, the suit being deemed instituted for the benefit of all.[1] And the term, "action in ejectment," includes a suit of forcible entry (detentacion) or unlawful detainer (desahucio).[2]

The proceeding at bar had its inception in a forcible entry suit filed by petitioner Sering against respondent Spouses Restituto Plazo and Gertrudes Suan with the then Municipal Court of del Carmen, Surigao del Norte.[3] The case resulted in a judgment against the Plazos who thereupon appealed to the Court of First Instance of Surigao del Norte. In the latter court the Plazos learned that the property subject of the suit was not owned solely by Sering but was owned in common by him and others. This prompted the Plazos to move for the impleading of the other co-owners as parties plaintiff, on the theory that they were indispensable parties.[4] The Court agreed and ordered Sering to amend his complaint so as to include his co-owners as co-plaintiffs. Sering demurred claiming that under the law anyone of the co-owners could bring suit for ejectment without joining the others.[5] The Plazos contended, on the other hand, that the provision invoked by Sering had no application to forcible entry actions, but only to suits of unlawful detainer. Because Sering failed to comply with the Court's order for amendment of the complaint, the Trial Court dismissed his complaint.[6] It also thereafter denied his motion for reconsideration.[7] Sering has come to this Court praying for the nullification and reversal of said order of dismissal and that denying his plea for reconsideration.

The orders complained of are indeed tainted by serious error and should therefore be reversed and set aside, upon the considerations set out in the opening paragraph of this resolution. The same issues had been raised and resolved as early as eight (8) years before promulgation of the contested orders. In *Vencilao v. Camarento*, decided in 1969,[8] this Court pertinently ruled as follows:[9]

"2. Anent the question of whether an action of forcible entry and detainer should be brought in the name of all co-owners, We hold that under Article 487 of the new Civil Code, any of the co-owners may bring the action **.

In forcible entry and detainer action(s), the matter to be determined is simply the question of prior physical possession. It having been alleged in the complaint that the plaintiff was in actual possession of the properties, certainly the plaintiff alone, who was in actual possession, could file the complaint."

The Court has been cited to no reason of substance for modifying or overruling this doctrine.

WHEREFORE, the challenged Orders -- dismissing the petitioner's complaint for ejectment and denying reconsideration of the dismissal decree[10] -- are REVERSED AND SET ASIDE, and the case is REMANDED

to the Regional Trial Court for resolution, with all deliberate dispatch, of the respondents' appeal from the judgment of the inferior court. This Resolution is immediately executory.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] ..as also, an accion publiciana or accion reivindicatoria: Sentencias of the Supreme Court of Spain dated April 8, 1968 and June 5, 1918, cited in Tolentino, Civil Code, 1983 ed., Vol. II, p. 157; and it is noteworthy that at common law the word "ejectment" also has a broad signification as "a form of action by which possessory titles to corporeal hereditaments may be tried and possession obtained ** (or) which lies to regain the possession of real property, with damages for the unlawful detention (Bouvier's Law Dictionary)

[2] Vencilao v. Camarenta, 29 SCRA 473, 481-482

[3] The action was commenced on October 14, 1974 and was docketed as Civil Case No. 82

[4] Rollo, p. 26

[5] Id., pp. 24-25

[6] Id., pp. 26-29 (the Order of dismissal is dated July 15, 1977)

[7] Order, December 7, 1977

[8] 29 SCRA 473, 481-482; SEE footnote 2, supra

[9] Italics supplied

[10] Dated July 15, 1977 and December 7, 1977, respectively

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