

GIL D. TABIJE, JR., CARMENCITA D. TABIJE AND ALL PERSONS OR ENTITIES CLAIMING RIGHTS FROM THEM, PETITIONERS, VS. ANGELO D. TONG, RESPONDENT.

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GONZALES-SISON, M., J.:[*]

Before this Court is a Petition for Review[1] of the decision of the Regional Trial Court of Quezon City, Branch 85 dated 30 September 2013 in Civil Case No. Q-13-72726. The said decision overturned the earlier 24 January 2013 decision of the Metropolitan Trial Court of Quezon City, Branch 41 which denied respondent's complaint for unlawful detainer for insufficiency of evidence.

Briefly, the facts of the case, are as follows:

At the heart of the controversy is a house and lot with an area of 620 square meters located at #6 Neptune St., Congressional Village, Tandang Sora, Quezon City and covered by Transfer of Certificate of Title No. 49550 (subject property) in the name of respondent Angelo D. Tong (Tong).

According to Tong, the subject property was once owned by Gil D. Tabije and Carmen Tabije (Spouses Tabije) under Transfer of Certificate of Title (TCT) No. 48962 until Gil Tabije, sold it to Tong. After the title to the subject property was transferred to Tong, he mortgaged the same to the Bank of the Philippine Islands (BPI) on 8 December 2005. Thereafter, Tong allowed the family of the Spouses Tabije to stay in the subject property by tolerance because Gil Tabije was a very close friend of Tong.

In the latter part of 2008, Tong demanded from Gil Tabije to leave the property, but to no avail. Subsequently, Tong engaged the services of a lawyer who sent a demand letter to Gil Tabije to vacate the subject property, but the same was also left unheeded. Left without any recourse, Tong filed a case for unlawful detainer against Gil Tabije and all persons or entities claiming rights under him which case later landed before the Metropolitan Trial Court of Quezon City, Branch 41 (MeTC).

In their position paper, the Spouses Tabije denied having sold the subject property to Tong. They were in fact surprised that their certificates of title and tax declaration over the same have been canceled and that new certificates were issued under Tong's name. Further, the Spouses Tabije averred that there is no copy of the alleged Deed of Sale between them and Tong before the Registry of Deeds of Quezon City and the National Archives of the Philippines. As a result, the Spouses Tabije filed a case for reconveyance of title, annulment of mortgage, declaration of deed of sale as void and reduction of interest against Tong and BPI Family Saving Bank before the Regional Trial Court of Quezon City, Branch 220.

In a decision rendered on 24 January 2013, the MeTC dismissed the complaint of Tong for insufficiency of evidence. According to the MeTC, Tong failed to prove that the Spouses Tabije's possession of the subject property was due to Tong's tolerance, a crucial component in a case for unlawful detainer. The decretal portion of the decision of the MeTC reads:

“WHEREFORE, judgment is hereby rendered DISMISSING the complaint of unlawful detainer against the

defendants for insufficiency of preponderance of evidence. On the other hand, the counterclaim of the defendants is also ordered DISMISSED for lack of evidence.

SO ORDERED.”[2]

On appeal, the Regional Trial Court of Quezon City, Branch 85 (RTC) reversed and set aside the decision of the MeTC. According to the RTC, the issue of manner of entry in the subject property is not a jurisdictional question but only delves on the issue of the timeliness of the filing of the complaint. Consequently, the RTC ruled that it was enough that Tong was able to establish his ownership over the subject property through TCT No. 49550; that the Spouses Tabije were occupying the subject property because of Tong's tolerance; that Tong sent a demand letter to the Sps. Tabije to vacate the subject property but refused to do so; and that the complaint was filed within one(1) year from the time the last demand to vacate in order for a case of unlawful detainer to prosper. The RTC thus decreed:

“WHEREFORE, the Decision dated 24 January 2013 of the Metropolitan Trial Court of Quezon City, Branch 41, in Civil Cases No. 39433, is hereby reversed and set aside.

The Court hereby renders judgment in favor of the plaintiff-appellant Angelo D. Tong and against the defendant-appellee Gil. E. Tabije and all persons claiming rights under him, as follows:

- 1) ordering the defendants-appellee(sic) and all persons claiming rights under him to vacate the subject property covered by TCT No. 49550, located at No. 6 Neptune Street, Tandang Sora, Quezon City;
- 2) ordering the defendant-appellee and all persons claiming rights under him to pay the plaintiff-appellant the sum of Php500.00 per month from the date of service of the Notice to Vacate on them, i.e., 4 March 2009, until the defendant-appellee fully vacates the premises in favor of the plaintiff-appellant;
- 3) the defendant-appellee and all persons claiming rights under him to pay the plaintiff-appellant the duly receipted amount of Php3,735.00 for the filing and docket fees;
- 4) the defendant-appellee and all persons claiming rights under him to pay the plaintiff-appellant attorney's fees in the amount of Php20,000.00; and
- 5) the defendant-appellee and all persons claiming rights under him to pay the costs of suit.

SO ORDERED.”[3]

Aggrieved by the above findings of the RTC, herein petitioners Gil E. Tabije, Jr. and Carmencita D. Tabije who substituted the Spouses Tabije[4] filed this instant Petition for Review and in support thereof assign the following issues for this Court's consideration:

I. THE PUBLIC RESPONDENT JUDGE MARIA FILOMENA SINGH GRAVELY ERRED IN RENDERING THE QUESTIONED DECISION GRANTING EJECTMENT AS THE SAID PRIVATE RESPONDENT ANGELO TONG HAS NEVER SUBMITTED HIS AFFIDAVIT AND/OR AFFIDAVITS OF HIS WITNESSES TO PROVE HIS ALLEGATIONS IN THE COMPLAINT.

II. PUBLIC RESPONDENT COMMITTED A SERIOUS ERROR AND/OR GRAVE MISCONDUCT IN FURNISHING A COPY OF THE QUESTIONED DECISION UNTO THE OFFICE OF THE COURT ADMINISTRATOR.

III. THE REGIONAL TRIAL COURT ERRED IN AWARDING POSSESSION IN FAVOR OF PRIVATE RESPONDENT ANGELO TONG AS THE LATTER IS NOT EVEN THE LAWFUL OWNER OF THE PROPERTY IN QUESTION.

IV. THE PUBLIC RESPONDENT JUDGE MA. FILOMENA GRAVELY ERRED IN NOT UPHOLDING OUR CONTENTION THAT THE ALLEGED LETTER OF DEMAND IS NO LETTER OF DEMAND AT ALL.

V. THE PUBLIC RESPONDENT JUDGE MA. FILOMENA SINGH COMMITTED A SERIOUS ERROR IN NOT SUSPENDING PROCEEDINGS AS PRAYED FOR IN THE DEFENDANTS-APPELLEES MEMORANDUM ON APPEAL.

After sifting through the facts of the case, as guided by the applicable laws and jurisprudence, We find merit in this instant Petition for Review.

We would discuss first the minor issues presented to us by the petitioners before we delve on the crux of the present controversy.

First, we resolve the issue of suspension of proceedings. As a general rule, an ejectment suit cannot be abated or suspended by the mere filing of another action raising ownership of the property as an issue. However in rare instances, suspension of ejectment proceedings is warranted to await the outcome of a pending action such as when there is a demolition of the house that would create confusion, disturbance, inconvenience, and expense or where the court would be wasting much time and effort by proceeding to a stage wherein the outcome would at best be temporary but the result of enforcement would be permanent, unjust and probably irreparable.[5]

The position of the petitioners that they have been living in the subject property for 41 years hardly falls within the exceptions cited above. For said reason, this Court adheres to the settled jurisprudence that suits involving ownership may not be successfully pleaded in abatement of an action for ejectment.

Second, with respect to the sufficiency of the demand letter, the petitioners claim that the letter dated 27 February 2009[6] sent by Tong's counsel is a mere “advise” as it uses such word instead of “demand”. A pertinent portion of the letter reads:

“We write on behalf of our client, Mr. Angelo D. Tong, the lawful and registered owner of the property and its improvements which you currently occupy thru his tolerance, covered by Transfer Certificate of Title No. 49550 of the Registry of Deeds of Quezon City.

Our client hereby advises you to leave the aforesaid property and turn over possession thereof within fifteen (15) days from receipt hereof. Otherwise, we shall initiate the necessary actions against you costs of which shall be charged to your account”(underscoring supplied)

To our mind the letter is a demand letter contemplated by law. Siapian v. Hon. Court of Appeals,[7] reminds us not be too dogmatic as to restrict ourselves to literal interpretation of words, phrases and sentences. A complete and wholistic view must be taken in order to render a just and equitable judgment. Verily, a “demand” is defined as an imperative request preferred by one person to another, under a claim of right, requiring the latter to do or yield something or to abstain from some act.[8] Clearly, the import of the above letter is a demand for the Gil Tabije to vacate the subject property owned by Tong otherwise, consequences await. Hence, it is a demand letter sufficient for the prosecution of a case for unlawful detainer.

Third, as to the issue of ownership, it is worth mentioning that the sole issue for resolution in an unlawful detainer case is physical or material possession. All that the trial court can do is to make an initial determination of who is the owner of the property, so that it can resolve who is entitled to its possession absent other evidence to resolve ownership.[9] Here, Tong was able to produce a certificate of title under his name covering the subject property, hence by preponderance of evidence, the issue of ownership in this proceeding is tilted in favor of Tong. It goes without saying then that the invocation of true ownership of the subject property by the petitioners is insufficient to overturn the assailed decision of the RTC. Consequently, whether there was fraud in the procurement of the certificate of title of Tong should be threshed out in the suit for annulment of title before the Regional Trial Court of Quezon City, Branch 220 and not before the ejectment proceedings where conclusion of ownership is merely

prima facie.

Fourth, the fact that a copy of the assailed decision was furnished to the Office of the Court Administrator (OCA) does not lead to a veritable conclusion that any irregularity attended the proceedings below the RTC. It is possible that the sending of a copy of the assailed decision to the OCA is part of the monthly reportorial requirement imposed upon the first and second level courts.[10] At any rate, mere imputation of judicial misconduct in the absence of sufficient proof to sustain the same will never be countenanced.[11] Here, the petitioners are questioning the credibility of the presiding judge of the RTC based merely on speculations and insinuations which we cannot give credence.

Lastly, we resolve the issue of “tolerance”. On this score, it is worth mentioning the key jurisdictional facts for unlawful detainer, viz.:

- (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;
- (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter’s right of possession;
- (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and
- (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[12] (underscoring and emphasis supplied)

In the midst of conflicting opinions of whether or not the issue of tolerance is fatal to Tong’s action, we seek guidance from the latest jurisprudence on the matter, the case of *Suarez v. Emboy*,[13] which finds similarities in the case at bar. In *Suarez*, the Supreme Court held that the complainant must show in his complaint the facts regarding his alleged tolerance in order to make a case for unlawful detainer, failure of which would result in the dismissal of the action. The Supreme Court thus ruled:

“In the case at bar, the first requisite mentioned above is markedly absent. Carmencita failed to clearly allege and prove how and when the respondents entered the subject lot and constructed a house upon it. Carmencita was likewise conspicuously silent about the details on who specifically permitted the respondents to occupy the lot, and how and when such tolerance came about. Instead, Carmencita cavalierly formulated a legal conclusion, sans factual substantiation, that (a) the respondents’ initial occupation of the subject lot was lawful by virtue of tolerance by the registered owners, and (b) the respondents became deforciants unlawfully withholding the subject lot’s possession after Carmencita, as purchaser and new registered owner, had demanded for the former to vacate the property. It is worth noting that the absence of the first requisite assumes even more importance in the light of the respondents’ claim that for decades, they have been occupying the subject lot as owners thereof.

Again, this Court stresses that to give the court jurisdiction to effect the ejectment of an occupant or deforciant on the land, it is necessary that the complaint must sufficiently show such a statement of facts as to bring the party clearly within the class of cases for which the statutes provide a remedy, without resort to parol testimony, as these proceedings are summary in nature. In short, the jurisdictional facts must appear on the face of the complaint. When the complaint fails to aver facts constitutive of forcible entry or unlawful detainer, as where it does not state how entry was effected or how and when dispossession started, the remedy should either be an *accion publiciana* or *accion reivindicatoria*.” (underscoring and emphasis supplied)

Indeed, the general averment that Tong tolerated Gil Tabije and his family’s occupation of the subject property because of friendship, is nothing more but a conclusion of law. The questions on how and when the tolerance started and who Tong talked to remain unanswered. Such mysteries are further compounded by the inability of Tong to produce the alleged Deed of Sale between him and Gil Tabije further fanning the assumption that they have not talked to each other about the subject property. It then bears stressing that “[m]ere tolerance always

carries with it "permission" and not merely silence or inaction for silence or inaction is negligence, not tolerance.[14]

Suffice it to state that even if the issue of "tolerance" is not jurisdictional, the same still goes into the heart of evidentiary proof. Hence, in the case of *Dr. Carbonilla v. Abiera*,[15] it was ruled that proof of tolerance is imperative in a case for unlawful detainer, viz.:

A requisite for a valid cause of action in an unlawful detainer case is that possession must be originally lawful, and such possession must have turned unlawful only upon the expiration of the right to possess. It must be shown that the possession was initially lawful; hence, the basis of such lawful possession must be established. If, as in this case, the claim is that such possession is by mere tolerance of the plaintiff, the acts of tolerance must be proved.

Petitioner failed to prove that respondents' possession was based on his alleged tolerance. He did not offer any evidence or even only an affidavit of the Garcianos attesting that they tolerated respondents' entry to and occupation of the subject properties. A bare allegation of tolerance will not suffice. Plaintiff must, at least, show overt acts indicative of his or his predecessor's permission to occupy the subject property.(underscoring and emphasis supplied)

The same doctrine is echoed in the case of *Padre v. Malabanan*,[16] where it was held that:

To stress, the respondent very much placed in issue the alleged tolerance of the petitioners, including the question of whether or not the latter were ever in possession at all of the subject premises. In the law of evidence, allegations are not proofs, more so when, as here, the other party very much denied those allegations. The fatal error committed by the MeTC and perpetuated on appeal by the RTC is that both courts mistook allegations as proofs, ignoring the fact that those allegations were all denied by the respondent.

As correctly observed by the CA, evidence is totally wanting as to when and under what circumstances was the alleged tolerance came about. In fact, judging from the records, the respondent was already on the property even before the petitioners obtained their TCT. (underscoring and emphasis supplied)

Since Tong was not able to prove by preponderance of evidence that he "tolerated" the possession of Gil Tabije and his family of the subject property, a key ingredient in an action for unlawful detainer, the MeTC was correct in denying Tong's complaint for "insufficiency of evidence".

In fine, we cannot dispossess the petitioners over the subject property which they have held for 41 years, simply because Tong used the word "tolerance" without sufficient evidence to support it.

WHEREFORE, premises considered, the instant Petition for Review is GRANTED, such that the assailed decision of the Regional Trial Court of Quezon City, Branch 85 dated 30 September 2013 is hereby REVERSED and SET ASIDE, while the decision of the Metropolitan Trial Court of Quezon City, Branch 41 dated 24 January 2013 is hereby REINSTATED.

SO ORDERED.

Ybañez E.A.,[**] and Sorongon, E.D. JJ., concur.

[*] Vice J. Carandang per Office Order No. 485-14 RSF dated November 24, 2014.

[**] Vice J. Gonzales-sison per Office Order No. 485-14-RSF dated November 24, 2014.

[1] Rollo, p. 3.

[2] Rollo, p. 93.

[3] Rollo, pp. 32-33.

[4] Spouses Gil and Carmen Tabije passed away on 27 September 2013 and 22 October 2010 respectively, Rollo, pp. 26 and 27.

[5] Spouses Samonte v. Century Savings Bank, G.R. No. 176413, 25 November 2009.

[6] Rollo, p. 156.

[7] G.R. No. 111928, 1 March 2000.

[8] Black's Law Dictionary, Fifth Edition, p. 386.

[9] Soriente v. The Estate of Concepcion, G.R. No. 160239, 25 November 2009.

[10] Administrative Circular No. 67-2001, 8 October 2001.

[11] Mataga v. Judge Rosete, A. M. No. MTJ-03-1488, 13 October 2004.

[12] Corpuz v. Sps. Agustin, G.R. No. 183822, 18 January 2012.

[13] G.R. No. 187944, 12 March 2014.

[14] G.R. No. 177637, 26 July 2010.

[15] Id.

[16] G.R. No. 165620, 8 September 2006.

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