

ESMERALDO M. GATCHALIAN, DULY REPRESENTED BY SAMUEL C. GATCHALIAN, PETITIONER, VS. CESAR FLORES, JOSE LUIS ARANETA, CORAZON QUING AND CYNTHIA FLORES, RESPONDENTS.

Ponente: SORONGON, E.D., J.

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SORONGON, E.D., J.

This is a Petition for Review[1] under Rule 42 of the 1997 Rules of Civil Procedure filed by Esmeraldo M. Gatchalian (petitioner), as represented by Samuel C. Gatchalian which seeks to set aside the following issuances of the Regional Trial Court of Parañaque City, Branch 196 in Civil Case No. 12-0050, to wit: (i) Decision[2] dated June 8, 2012; (ii) Order[3] dated August 22, 2012; and (iii) Amended Order[4] dated August 23, 2012.

The material and relevant facts leading to the filing of the instant petition are as follows:

Petitioner is one of the co-owners of a parcel of land (hereinafter referred to as Road Lot 23) covered by Transfer Certificate of Title No. 79180 located at Brgy. Vitalez, Parañaque City. Road Lot 23 is registered under the name of petitioner's parents, spouses Sixto Gatchalian and Liceria Gatchalian. On June 2, 2011, petitioner filed a Complaint for Ejectment with Damages against respondents Cesar Flores, Jose Paolo Araneta, Corazon Quing and Cynthia Flores (respondents) with the Metropolitan Trial Court (MeTC) of Parañaque City, Branch 77 and docketed as Civil Case No. 2011-49.

The survey[5] conducted on the property established that the lot of Segundo Mendoza encroached a portion of Road Lot 23 which the Gatchalian's had tolerated. But after several years, the lot of Segundo Mendoza was sold and subdivided among the new owners including herein respondents. The latter demonstrated acts of gross ingratitude to the Gatchalian family that petitioner was constrained to withdraw their tolerated possession, use and occupation of the portion of Road Lot 23. Verbal and written demands to vacate were then served upon them but remained unheeded.[6] Their dispute reached the Lupong Tagapamayapa but all in vain.[7] Hence, the filing of the ejectment case against the respondents.

For their part, respondents denied that they usurped the property of petitioner. In fact, it was the Gatchalians who have encroached on Road Lot 23 when they put up a fence in their (respondents) property. They insisted that Road Lot 23 is a public road and is now known as "Don Juan Street Gat-Mendoza". In the subdivision plan of the GAT Mendoza Housing area, Road Lot 23 is constituted as a right of way. Respondents believed that petitioner has no cause of action against them and has no authority to file the instant case because it is the City Government of Parañaque which has the right to do so.

On December 9, 2011, the MeTC issued a decision in favor of petitioner and against respondents, the dispositive portion of which reads:

"Wherefore, premises considered, judgment is hereby rendered as follows ordering the defendants CESAR FLORES, JOSE PAOLO ARANETA, CORAZON QUING AND CYNTHIA FLORES and all persons claiming rights under them, to wit:

1. to vacate the 140.50 square meter portion of the Road (Lot 23) encroached by them which is covered by TCT No. 79180 and located at Don Juan St. Barangay Vitalez, Parañaque City;
2. to pay reasonable amount of rental in the amount of P20,000.00 a month plus legal rate of interest reckoned from June 2, 2011, until the defendants shall have fully vacated the encroached portion of the Road (Lot 23);
3. [to pay] P20,000.00 as and for Attorneys fees;
4. [to pay the] cost of suit.

SO ORDERED.”

In ruling for the petitioner, the MeTC rationalized: a) petitioner was able to show that the subject property was encroached by the respondents; b) there is no record showing that Road Lot 23 was donated to the government, therefore it is a private property; and (c) petitioner is a real party in interest to bring the ejectment suit, being one of the co-owners of the disputed property the title of which is in the name of his predecessors-in-interest.

From the aforecited decision, respondents appealed to the Regional Trial Court (RTC) of Parañaque where they obtained a reversal of the said ruling. The RTC Decision dated June 8, 2012, disposed the case as follows:

“WHEREFORE, premises considered, the appealed Decision dated December 9, 2011 by Branch 78 of the Metropolitan Trial Court of Parañaque docketed under Civil Case No. 2011-49 is REVERSED, and the Complaint dated June 2, 2011 is herewith DISMISSED for lack of merit.

SO ORDERED.”

The RTC opined that since what is involved in the case at bar is a road lot, the provisions of Articles 703, 704 and 707 of the New Civil Code^[8] on Nuisance should be the governing law. Thus, the complaint filed by petitioner is misplaced because the latter may not ask for damages arising from a nuisance. Further, since the case is not about ejectment, the MeTC had no jurisdiction over the case.

Aggrieved, petitioner now seeks redress to this Court based on the following assigned errors:

WHETHER OR NOT THE REGIONAL TRIAL COURT (EXERCISING APPELLATE JURISDICTION) GRAVELY ERRED IN DISMISSING PETITIONER'S COMPLAINT FOR EJECTMENT WITH DAMAGES FOR LACK OF JURISDICTION PREMISED ON ALLEGED FAILURE TO AVAIL THE PROPER REMEDY, THAT IS, ABATEMENT OF NUISANCE WITH DAMAGES.

WHETHER OR NOT THE REGIONAL TRIAL COURT (EXERCISING APPELLATE JURISDICTION) GRAVELY ERRED IN CONCLUDING THAT THE SUBJECT REAL PROPERTY IS BEYOND THE COMMERCE OF MAN.

WHETHER OR NOT THE REGIONAL TRIAL COURT (EXERCISING APPELLATE JURISDICTION) GRAVELY ERRED WHEN IT DID NOT RULE ON PETITIONER'S MOTION TO DISMISS RESPONDENTS' APPEAL FOR FAILURE TO COMPLY WITH RULE 40 SECTION 7 OF THE 1997 RULES OF CIVIL PROCEDURE.

WHETHER OR NOT THE REGIONAL TRIAL COURT (EXERCISING APPELLATE JURISDICTION) GRAVELY ERRED IN RESOLVING THE ISSUE OF JURISDICTION IN FAVOR OF RESPONDENTS WHEN THE SAME HAS NOT BEEN RAISED BY THE LATTER BEFORE THE LOWER COURT, AS IN FACT, THEY ACTIVELY PARTICIPATED THEREIN.

WHETHER OR NOT PETITIONER'S MOTION FOR RECONSIDERATION DATED JUNE 26, 2012 MAY BE EXPUNGED FOR HAVING BEEN RECEIVED BY RESPONDENTS' ONLY A DAY BEFORE THE HEARING DATE.

On the basis of the foregoing assignment of errors, we simplify the issues to the following:

1. Whether or not the MeTC has jurisdiction over the case.
2. Whether or not Road Lot 23 is a public property.
3. Whether or not respondent did not comply with Rule 40 Section 7 of the Rules on Civil Procedure.

We discuss the issues in seriatim.

Our indepth review of the case revealed that the RTC erred in declaring that the MeTC had no jurisdiction over the nature of the action.

In the case of *Padlan vs. Dinglasan*[9], it was held that:

However, in order to determine which court has jurisdiction over the action, an examination of the complaint is essential. Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.

What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted.

A reading of the material allegations of the complaint shows that a cause of action for unlawful detainer has been sufficiently alleged, thus:

1. Initially, possession of Road Lot 23 by the respondents were by tolerance of the petitioner;
2. Eventually, such possession became illegal upon notice by petitioner to the respondents of the termination of the latter's right of possession;
3. Thereafter, the respondents remained in possession of Road Lot 23 and deprived the petitioner of the enjoyment thereof; and
4. Within one year from the last demand on respondents to vacate the property, the petitioner instituted the complaint for ejectment.

The ratiocination of the RTC shows that the moment it was apprised that the subject property was a road lot, it quickly concluded that the case should have been a case for removal of nuisance thereby making Road Lot 23 a public property. This is a grave error. The RTC should not have immediately jumped into such conclusion in light of the clear allegation that the subject property is still titled in the name of petitioner's predecessors.

This now brings to the fore the second issue. Contrary to the ruling of the RTC, We express our agreement with the MeTC that Road Lot 23 is still a private property. In fine, there is nothing in the record to support the RTC's view that the same is public in character and thus, the case should have been for removal of a nuisance.

In the case of *Woodridge School, Inc., et al., vs. ARB Construction Co., Inc.*, [10] the Supreme Court ruled that:

In the case of *Abellana, Sr. v. Court of Appeals*, the Court held that "the road lots in a private subdivision are private property, hence, the local government should first acquire them by donation, purchase, or

expropriation, if they are

to be utilized as a public road." Otherwise, they remain to be private properties of the owner-developer.

Contrary to the position of petitioners, the use of the subdivision roads by the general public does not strip it of its private character. The road is not converted into public property by mere tolerance of the subdivision owner of the public's passage through it. To repeat, "the local government should first acquire them by donation, purchase, or expropriation, if they are to be utilized as a public road."

In fine, absent any overt and positive act on the part of the petitioner conveying the ownership of Road Lot 23 to the local government of Pasay or Barangay Vitalez, the ownership thereof remains with the owner as stated in the title. On this point, We cannot give credence to the efficacy of Ordinance No. 88-04 series of 1988[11] declaring Road Lot 23 as a barangay road because, precisely, the government cannot just take or declare said private property as its own without following the necessary steps as prescribed by law and the above cited jurisprudence.

We note too that petitioner's stance that Road Lot 23 was encroached by private respondents' property has not been fully met with contrariant evidence. It is very evident that respondents had maintained an evasive stand on this case by throwing counter arguments which are not in point. Pertinent to this is their allegation that it was petitioner who encroached upon Road Lot 23. Verily, the evidence showing that there was such an encroachment stands.

Now, on the last issue. We are of the view that the RTC committed grave error in failing to pass upon the motions duly filed before it for consideration. At any rate, the appeal of respondents before the RTC is dismissible for its failure to strictly comply with the provisions of Section 7 of Rule 40[12]. Indeed, this is yet another ground why the RTC's Decision should be corrected and reversed.

With all the foregoing in set, however, we opted to resolve the case on the merits and set aside the technical issues of this case consistent with the principle that strict application of technical rules of procedure should be shunned when they hinder rather than promote substantial justice.[13] The instant petition ought to be granted on the basis of the above discussion and the decision of the MeTC must necessarily be reinstated.

WHEREFORE, the Petition for Review is GRANTED. The assailed Decision dated June 8, 2012 of the Regional Trial Court of Parañaque, Branch 196 in Civil Case No. 12-0050 is REVERSED AND SET ASIDE. Accordingly, the Decision of the Metropolitan Trial Court, Branch 77, of Parañaque City in Civil Case No. 2011-49 is hereby ordered REINSTATED.

SO ORDERED.

Reyes, Jr., A.B., Chairperson, and Rosario, R.R., JJ., concur.

[1] Rollo, pages 3-23.

[2] Rollo, pages 31-45.

[3] Rollo, page 29.

[4] Rollo, page 30.

[5] Rollo, page 71.

[6] Rollo, pages 73-75

[7] Rollo, page 66.

[8] Article 703. A private person may file an action on account of a public nuisance, if it is specially injurious to himself.

Article 704. Any private person may abate a public nuisance which is specially injurious to him by removing, or if necessary, by destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. But it is necessary:

- (1) That demand be first made upon the owner or possessor of the property to abate the nuisance;
- (2) That such demand has been rejected;
- (3) That the abatement be approved by the district health officer and executed with the assistance of the local police; and
- (4) That the value of the destruction does not exceed three thousand pesos.

Article 707. A private person or a public official extrajudicially abating a nuisance shall be liable for damages:

- (1) If he causes unnecessary injury; or
- (2) If an alleged nuisance is later declared by the courts to be not a real nuisance.

[9] G.R. No. 180321, March 20, 2013.

[10] G.R. No. 157285, February 16, 2007

[11] Rollo, pages 189-191; 251-254.

[12] Section 7. Procedure in the Regional Trial Court. —

- (a) Upon receipt of the complete record or the record on appeal, the clerk of court of the Regional Trial Court shall notify the parties of such fact.
- (b) Within fifteen (15) days from such notice, it shall be the duty of the appellant to submit a memorandum which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within fifteen (15) days from receipt of the appellant's memorandum, the appellee may file his memorandum. Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal.
- (c) Upon the filing of the memorandum of the appellee, or the expiration of the period to do so, the case shall be considered submitted for decision. The Regional Trial Court shall decide the case on the basis of the entire record of the proceedings had in the court of original and such memoranda as are filed. (n)

[13] Tan vs. Planters Products, Inc., G.R. No. 172239, March 28, 2008.

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