

**JESUSA LAOANG, PETITIONER, VS. KISHORE M. RAMNANI,
MARYLOUISE F. SAGUI, RESPONDENTS.**

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before this Court is a Petition for Review[1], under Rule 42 of the Revised Rules of Court, seeking the reversal of the Decision, dated January 6, 2014[2], rendered by the Regional Trial Court, Branch 167, of Pasig City in SCA Case No. 3798 which affirmed the Decision of the Metropolitan Trial Court, Branch 68, of Pasig City in Civil Case No. 16031, ordering herein petitioner to immediately vacate the property covered by Transfer Certificate of Title No. PT-140432[3] located at Barangay Rosario, Pasig City and to peacefully surrender possession thereof to herein respondents.

The facts, as culled from the records, are as follows:

On March 30, 2009, respondents Kishore M. Ramnani and Marylouise F. Sagui filed a complaint[4] for unlawful detainer against petitioner in the Metropolitan Trial Court of Pasig City, alleging that they are the absolute and registered co-owners of a parcel of land located at Barangay Rosario, Pasig City. Respondents narrated that petitioner Jesusa Laoang has been in possession of the portion of the said property and probably succeeded in encroaching upon the property by unlawfully altering the boundary marks thereof. Respondents allegedly tolerated the petitioner's possession even as no contract between them exists. Sometime in October of 2008 and February of 2009, however, respondents sent demand letters[5] to the petitioner, directing her to vacate the subject premises. Despite demand, petitioner refused to vacate, claiming that the portion she was occupying was hers, sans title.

In an Answer[6] filed on April 23, 2009, petitioner raised the issue of jurisdiction, arguing that the court a quo had no jurisdiction over the case as it involves an issue of ownership and not of possession. Petitioner has allegedly been in possession of the subject premises since 1990 as she agreed to purchase the property from the former owner named Mark Enrique. In 1990, she also commenced paying in installment for the value of the property. It was however only in the year 2004 when Mark Enrique executed a deed of absolute sale[7] in her favor. Petitioner then paid all the taxes[8] and fees for the sale and transfer of title but could not effect the actual transfer of title of the property since Mark Enrique did not give her the owner's duplicate of title of the land. In 2006, a certain Romeo Sagui started to harass her, claiming that he owns the property. Left with no other alternative, petitioner executed an Affidavit of Adverse Claim, dated June 15, 2007[9], to protect her interests.

In the assailed Decision dated February 21, 2013, the Metropolitan Trial Court cited Section 51 of Presidential Decree No. 1529 in ruling that the Transfer Certificate of Title in the name of herein respondents is a conclusive evidence of their ownership of the subject property. Since petitioner, had not adduced evidence to prove better right of possession, it can only be concluded that the said possession was merely by tolerance of the respondents. Hence, the dispositive portion of the said Decision states as follows:

“WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the

defendant, as follows:

“1. Ordering the defendant and all persons claiming rights and authority under her to immediately vacate the property covered by Transfer Certificate of Title No. PT-140432 located at Barangay Rosario, Pasig City and peacefully surrender the possession thereof to the plaintiff;

“2. Ordering the defendant to pay the plaintiff the amount of P10,000.00 as attorney's fees; and

“3. Ordering the defendant to pay plaintiff the costs of suit.

SO ORDERED.”[10]

Petitioner appealed from the above-quoted Decision to the Regional Trial Court of Pasig City. In the challenged Decision, dated January 6, 2014, the Regional Trial Court adopted by way of reference the findings of fact of the Metropolitan Trial Court and dismissed petitioner's appeal. The fallo of the Regional Trial Court's decision reads as follows:

“WHEREFORE, finding the Decision appealed from to be more consistent with the facts and jurisprudence on the matter, the same is hereby AFFIRMED in toto. Costs against the defendant-appellant.

SO ORDERED.”

Feeling aggrieved, the petitioner filed the instant petition for review, with the following assignment of errors, to wit:

I.

THE REGIONAL TRIAL COURT ERRED IN NOT HOLDING THAT THE COMPLAINT FOR UNLAWFUL DETAINER HAS NO FACTUAL AND LEGAL BASIS.

II.

THE REGIONAL TRIAL COURT ERRED IN UPHOLDING THE MUNICIPAL TRIAL COURT'S RULING THAT THE PETITIONER WAIVED THE RIGHT TO HAVE THE CASE DISMISSED FOR LACK OF BARANGAY CONCILIATION.

We shall first discuss the second issue raised by petitioner. Petitioner insists that the absence of a barangay certificate to file action is detrimental to the complaint and that she did not waive the right to have the case dismissed on the ground of lack of barangay conciliation.

Respondents shed light on this matter in the Comment, dated March 3, 2014, filed before this Court. Averring that a barangay conciliation is not mandatory in the instant case, the respondents revealed that petitioner is a resident of Peter Ali Compound, C. Raymundo St., Brgy. Rosario, Pasig City and respondent Kishore Ramnani has his residence at Brgy. Bagong Ilog, Pasig City while respondent Marylouise Sugui lives in Cainta, Rizal. Seemingly, this is admitted by petitioner in her Petition for Review[11], in her enumeration of the parties and their corresponding residences, and by the fact that she no longer addressed this matter in her Reply to Comment, dated March 25, 2014[12], filed before this Court. Hence, although both petitioner and respondent Kishore Ramnani live in Pasig City (from different barangays), respondent Marylouise Sugui lives in Cainta City. It would not serve the purpose of the law in discouraging litigation among members of the same barangay through conciliation where the other parties reside in barangays other than the one where the Lupon is located and where the dispute arose.[13] Therefore, the Local Government Code, making conciliation a precondition to filing of complaints in court, provides exceptions, to wit:

“SEC. 408. Subject Matter for Amicable Settlement; Exception Therein. – The lupon of each barangay shall

have authority to bring together the parties actually residing in the same city or municipality for amicable settlement of all disputes except:

xxx xxx xxx

(f) Disputes involving parties who actually reside in barangays of different cities or municipalities, except where such barangay units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate lupon;"

Under the above-quoted provision, a certificate to file action is thus not necessary.

This notwithstanding, we find the petition is impressed with merit, as a careful scrutiny of the first issue raised by petitioner indeed calls for the reversal of the findings of the court a quo.

Petitioner argues in her first assignment of error that the Court a quo should have dismissed the complaint for ejectment because, allegedly, it cannot state whether it is a complaint for forcible entry or unlawful detainer. Moreover, petitioner believes that, if the situation is neither a case of forcible entry or unlawful detainer because it involves a double sale, the proper case is one for recovery of possession or accion publiciana and not ejectment.

The petition, on this point, is meritorious.

We are guided by the elementary principle that what determines the nature of an action as well as which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought.[14] A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following:

- (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.[15]

With these requirements in mind, we reproduce the unsubstantiated and confusing parts of the complaint for unlawful detainer filed by respondents as follows:

"3. Plaintiffs are the absolute are registered co-owners of a parcel of land located at Barangay Rosario, Pasig City, covered by Transfer Certificate of Title No. PT-97203 issued by the Register of Deeds of Pasig City, and more particularly described as follows:

TRANSFER CERTIFICATE OF TITLE
NO. PT-97203

'A parcel of land xxx xxx xxx situated in the Barangay of Rosario, Mun. of Pasig, Metro, Manila, xxx xxx xxx containing an area of ONE HUNDRED SQUARE METERS (100), more or less.'

"4. Defendant has been in possession of the portion of the above-described property.

"5. The exact area of the above-described property occupied by defendant is One Hundred (100) Square Meters.

"6. Plaintiffs have found that the defendant has been in possession of that portion of the above-described property when they found that the defendant's house in the adjoining lot has encroached upon that portion of the above-described property.

XXX XXX XXX

“7. The defendant probably succeeded in encroaching upon the plaintiff’s property by unlawfully and erroneously altering the boundary marks or monuments of her property, in conspiracy with other persons.

“8. Nevertheless, the plaintiffs tolerated that possession by the defendant and all persons claiming rights under her. There is definitely no contract between the plaintiffs, on the one hand, and the defendant, on the other hand, to cover that possession.

“9. In October 2008, the plaintiffs sent a demand letter to the defendant to vacate that portion of the above-described property occupied by her. Despite demand, defendant refused to vacate. Worse, despite the fact that she holds definitely no title to the property, the defendant conveniently claimed that the portion she occupied was hers, and simply does not want to leave.”[16]

Verily, respondents alleged in paragraph seven (7) of their complaint that the petitioner entered their property by unlawfully and erroneously altering the boundary marks or monuments of her own property which, as stated in paragraph six (6) of the complaint, was adjoining the lot of petitioners. Consequently, the possession of the subject property by the petitioner was unlawful from the start. The law and jurisprudence leave no doubt in our mind that what determines the cause of action is the nature of defendants’ entry into the land. If entry is illegal, then the cause of action which may be filed against the intruder within one year therefrom is forcible entry. If, on the other hand, entry is legal but thereafter possession became illegal, the case is one of illegal detainer which must be filed within one year from the date of the last demand.[17]

A case for forcible entry however may not prosper as it was never alleged that respondents were in prior physical possession. Respondents likewise did not even indicate in their complaint the date when petitioner unlawfully entered the property for the purpose of counting the one-year period. All that we know is that petitioner has been in possession of the subject property since 1990, based on her Answer and Position Paper filed before the Metropolitan Trial Court of Pasig City.

Section 1 of Rule 70 of the Rules of Court requires that, in actions for forcible entry, the plaintiff is allegedly deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth and that the action is filed any time within one (1) year from the time of such unlawful deprivation of possession. This requirement implies that, in such cases, the possession of the land by the defendant is unlawful from the beginning as he acquires possession thereof by unlawful means. The plaintiff must allege and prove that he was in prior physical possession of the property in litigation until he was deprived thereof by the defendant. The one-year period within which to bring an action for forcible entry is generally counted from the date of actual entry on the land except that, when entry was made through stealth, the one year period is counted from the time the plaintiff learned thereof. If the alleged dispossession did not occur by any of the means stated in Section 1 of Rule 70 of the Rules of Court, the proper recourse is to file a plenary action to recover possession with the regional trial court.[18]

Even taking into consideration the documentary evidence submitted by respondents in support of their complaint, the case remains non-suited for unlawful detainer. A perusal of the allegations of respondents show that, under paragraph 8 of the complaint, respondents allegedly tolerated the possession of petitioner. Such tolerance however utterly lacks basis in the face of the evidence on record. Hence, the sale of the subject property to respondents was annotated in the Transfer Certificate of Title No. PT-97203 in this manner:

“Entry No. PT-1764/PT-140432 – SALE in favor of MARYLOUISE F. SAGUI, single and KISHORE M. RAMNANI, single, Vendees; covering the property described herein for the sum of P680,000.00, in accordance with Doc. No. 152, Page No. 31, Book No. 44, s. of 2008 of Not. Pub. For Pasig City, Gaudencio

A. Barboza Jr., by virtue of which this certificate of title is hereby cancelled and TCT No. PT-140432/T-703-II has been issued. Date of instrument – October 27, 2008 Date of the inscription – November 4, 2008 at 1:45 p.m.”

Considering that there is no allegation of the actual date of when the subject property was transferred to respondents and there was no copy of a Deed of Sale of the subject property in favor of respondents submitted to this Court, we can only rely on the annotation in the Transfer Certificate of Title which states that the “date of instrument” was October 27, 2008.

Prescinding from the foregoing, when the respondents sent petitioner the first demand letter dated October 21, 2008, they were not yet even owners of the subject premises. Yet, from the tenor of the said demand letter, it can easily be gleaned that, at the time when the property was not yet registered to them, they did not tolerate the possession thereof. The demand letter thus states as follows:

“It appears that you have encroached upon the portion of the above-described property when you built an improvement in the adjoining lot.

“This encroachment is absolutely not consented and not covered with any lease agreement.” (Emphasis supplied).[19]

This is in consonance with the allegation of the petitioner before the lower courts that, even as early as in the year 2006, Romeo Sagui, a person whose surname is the same as that of respondent Marylouise Sagui, had been harassing her and claiming that he owns the property.

Meanwhile, in the second demand letter dated February 13, 2009, when the property was already registered to respondents, they continually refused to tolerate the possession of petitioner and even accused petitioner of altering boundaries and landmarks thereof. Thus, the second demand letter stated their protest against the possession of the petitioner of the subject property in this wise:

“Per our clients, you, in conspiracy with other persons, have unlawfully and erroneously altered the boundary marks or monuments of their property adjacent to your property. This is a clear breach of Article 313 of the Revised Penal Code.”[20]

From the foregoing, tolerance is obviously absent. It is settled that one whose stay is merely tolerated becomes a deforciant illegally occupying the land the moment he is required to leave. It is essential in unlawful detainer cases of this kind that the plaintiff's supposed acts of tolerance must have been present right from the start of the possession which is later sought to be recovered.[21] This is where respondents' cause of action fails. The alleged tolerance was not only unsubstantiated but contrary to the evidence on record.

Article 537 of the New Civil Code provides that —

"Acts merely tolerated, and those executed clandestinely and without the knowledge of the possessor of a thing, or by violence, do not affect possession".

Tolentino explains the concept of tolerance under the said article thus: —

"Acts merely tolerated are those which by reason of neighborliness or familiarity, the owner of property allows his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who permits them out of friendship or courtesy. They are acts of little disturbances which a person, in the interest of neighborliness or friendly relations, permits others to do on his property, such as passing over the land, tying a horse therein, or getting some water from the well. Although this is continued for a long time, no right will be acquired by prescription.

“There is tacit consent of the possessor to the acts which are merely tolerated. Thus, not every case of knowledge and silence on the part of the possessor can be considered mere tolerance. By virtue of tolerance that is considered as an authorization, permission or license, act of possession are realized and performed. The question reduces itself to the existence or non-existence of permission.”[22]

The alleged tolerance in the instant case certainly does not fall within the afore-quoted definition. In paragraph 5 of the complaint, respondents alleged that the exact area of the property occupied by defendant is One Hundred (100) Square Meters. This is also the same size of the property registered under respondents' names, as described in paragraph 3 of the complaint. Hence, it can be deduced that petitioner is occupying the entire property of respondents. This is not the “little disturbances” which, by reason of “neighborliness or familiarity”, the owner of the property tolerates.

Hence, although we uphold the age-old rule “that the person who has a Torrens Title over a land is entitled to possession thereof,”[23] the fact remains that the case filed by petitioner against respondents was one for unlawful detainer. There are two distinctions between the summary ejectment suits (unlawful detainer and forcible entry) and accion publiciana. The first lies in the period within which each one can be instituted. Actions for unlawful detainer and forcible entry must be filed within one year from the date possession is lost, while an accion publiciana may be filed only after the expiration of that period but within the period prescribed in the statute of limitations. The second distinction involves jurisdiction. An accion publiciana may only be filed with the RTC, while a complaint for unlawful detainer or forcible entry may only be filed with the first level courts earlier mentioned.[24] 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 affected or how and when dispossession started, the remedy should either be an accion publiciana or an accion reivindicatoria in the proper regional trial court.[25]

In view of the foregoing, the case filed by the respondents against petitioner for unlawful detainer in the Metropolitan Trial Court of Pasig City must be dismissed.

On a final note, we take notice of respondents' objection to the instant petition as stated in the respondents' Comment[26], dated March 3, 2014, averring that the person who filed this petition was not duly authorized with the proper Special Power of Attorney. Hence, said Special Power of Attorney merely authorized Virgilio dela Cruz Calesnao under paragraph one thereof “to file and prosecute the appeal of the Decision of the MTC-Branch 68 in Pasig City in the case of KISHORE M. RAMNANU and MARYLOUISE F. SAGUI vs JESUSA LAOANG with Civil Case No. 16031.”[27]

In petitioner's Reply to Comment[28] dated March 25, 2014, she pointed out that, under paragraph two of the above-mentioned Special Power of Attorney, Virgilio dela Cruz Calesnao was also authorized “to sign and verify Appeal Brief and pleadings related to the appeal”. At any rate, to cut short the legal ambiguity, the petitioner submitted a new Special Power of Attorney[29] in favor of Virgilio dela Cruz Calesnao, affirming his authority to represent petitioner and file the instant petition. This satisfies this Court that Virgilio dela Cruz Calesnao was duly authorized by the petitioner to file the instant appeal, the new Special Power of Attorney being executed in substantial compliance to the requirements of law and in the interest of justice.

WHEREFORE, the instant petition is GRANTED. The Decision, dated January 6, 2014, issued by the Regional Trial Court, Branch 167, of Pasig City in SCA Case No. 3798 upholding the Decision of the Metropolitan Trial Court, Branch 68 of Pasig City in Civil Case No. 16031 is REVERSED and SET ASIDE. Consequently, the complaint for unlawful detainer filed by respondents against petitioner is hereby DISMISSED.

SO ORDERED.

Paredes[*] and Galapate-Laguilles,**] JJ., concur.

[*]Acting Senior Member per Office Order No. 258-14-ABR dtd. June 2, 2014

**] Acting Junior Member per Office Order No. 258-14-ABR dtd. June 2, 2014

[1] Rollo, Petition pp. 3-29

[2] Ibid., Decision, pp. 30-32

[3] Ibid., Transfer Certificate of Title, pp. 45-46

[4] Ibid., Complaint, pp. 37-44

[5] Ibid., Demand Letters, pp. 48-50

[6] Ibid., Answer, pp. 51-57

[7] Ibid., Deed of Absolute Sale pp. 58-59

[8] Ibid., Tax Clearance Certificate, pp. 60-62

[9] Ibid., Affidavit of Adverse Claim, pp. 48-50

[10] Ibid., Decision, page 36

[11] Ibid., Petition ("The Parties"), pp. 3-4

[12] Ibid., Reply to Comment, pp. 154-156

[13] Candido vs Macapagal G.R. No. 101328, April 7, 1993.

[14] Heirs of Bejar vs Caluag G.R. No. 171277, February 15, 2007

[15] Cabrera vs Getaruela, G.R. No. 164213, April 21, 2009

[16] Rollo, Complaint, pp. 38- 39

[17] Sarona vs Villegas, G.R. No. L-22984, March 27, 1968

[18] Ong vs Parel, G.R. No. 143173, March 28, 2001

[19] Rollo, Demand Letter dated October 21, 2008, page 48

[20] Ibid., Demand Letter dated February 13, 2009, page 50

[21] Go vs Court of Appeals, G.R. No. 142276, August 14, 2001

[22] Tolentino, Civil Code of the Philippines, 1972 ed., Vol. 2, pp. 253-254

[23] See Corpuz vs Agustin G.R. No. 183822, January 18, 2012

[24] Heirs of Bejar vs Caluag G.R. No. 171277, February 15, 2007

[25] Valdez, Jr. vs Court of Appeals, G.R. No. 132424, May 2, 2006

[26] Rollo, Comment, pp. 146-153

[27] Ibid., Special Power of Attorney, page 26

[28] Ibid., Comment, pp. 154-156

[29] Ibid., second Special Power of Attorney, page 161

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