

PHILIPPINE NATIONAL BANK, PETITIONER, VS. HON. PEDRO SAMSON C. ANIMAS, JUDGE OF THE COURT OF FIRST INSTANCE OF SOUTH COTABATO AND ABI OLIPON-DAMBONG, RESPONDENTS.

G.R. No. L-31053. October 23, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal by certiorari from an order of the Court of First Instance of South Cotabato, dismissing the complaint for Ejectment with Damages, docketed as Civil Case No. 1044, on the ground that "the principal cause of action is within the original exclusive jurisdiction of the City Court."

Petitioner Philippine National Bank, on May 13, 1969, filed with the Court of First Instance of South Cotabato, Branch II, a complaint for "Ejectment with Damages," the pertinent allegations of which are as follows:

"3. That the plaintiff is the owner of a parcel of unregistered agricultural land located at Sitio Lamcanal, Barrio of Malungon, Municipality of General Santos, Province of South Cotabato, Philippines, more particularly described as follows:

Lot No. 458

'A parcel of unregistered agricultural land, containing an area of 13.0000 hectares, more or less, bounded on the N. by Batigon Apud; on the S., by Elon Dambong; on the E., by Tinagacan Road; and on the W., by Hasan Dambong.'

which property formerly formed part of an unsurveyed parcel of land containing an area of 24 hectares, more or less, and is assessed at P3,280.00 under Tax Declaration No. 412 in the name of the Philippine National Bank, the same having been acquired from Diamalud Dambong pursuant to a writ of execution issued by the Court of First Instance of Cotabato in Civil Case No. 580 for 'Sum of Money' vs. Diamalud Dambong for the bid price of P100.00 on said whole parcel of 24 hectares, in an auction sale held by the Provincial Sheriff of Cotabato on September 11, 1954;

"4. That in compliance with law, the corresponding Certificate of Judicial Sale dated September 13, 1954 covering the said 24 hectares of land was executed and delivered by the Provincial Sheriff of Cotabato in favor of the plaintiff Bank and was duly registered in the Register of Deeds of Cotabato Province on September 20, 1954 pursuant to Act 3344;

"5. That after the expiration of the right to redeem said property within the one-year period counted from the date of the auction sale, as provided for in the Certificate of Judicial Sale, and in compliance with law, a Definite Deed of Sale dated June 11, 1956 was executed and delivered by the said Provincial Sheriff to the plaintiff Bank which was likewise registered in the Register of Deeds of Cotabato Province on August 20, 1956 pursuant to Act 3344;

"6. That notwithstanding said acquisition of ownership by the plaintiff Bank, defendant who is the surviving spouse of its former owner, Diamalud Dambong, has continued to occupy and possess said portion of land (Lot

No. 458), which possession by defendant has been merely tolerated by the plaintiff by reason of the pro-mises of defendant, Abi Olipon-Dambong and her son, Hasan Dambong to reacquire said property from the plaintiff Bank;

"7. That after failure on the part of defendant to make good her promise to reacquire said parcel of land, plaintiff thru its representatives, made verbal and written demands on defendant thru her son, Hasan Dambong, to vacate the premises thereof, or to deliver plaintiff's share of the income derived from the fruits of the land, the written demand being made on December 12, 1968; but defendant refused and still refuses to vacate the premises thereof or to deliver the plaintiff's share of the income derived from the fruits of the land, without any lawful cause or justification;

"8. That the net income from the coconuts and other crops such as corn being grown on the land is conservatively estimated at P1,450.00 per year, which plaintiff could have received if it were enjoying possession of the same;

"9. That by her deliberate acts of bad faith in not complying with her promise to reacquire said property from the plaintiff, and in not placing plaintiff in its peaceful possession thereby de-priving plaintiff its right to sell the same to interested buyers, defendant should be liable for exemplary damages, the assess-ment of which is left to the sound discretion of the Court." (Underscoring supplied)

Within the time to answer, private respondent Abi Olipon Dambong, on August 12, 1969, filed a Motion to Dismiss on the ground that the allegations in the complaint are clearly statements of facts which constitute a case of unlawful detainer, hence, the Court of First Instance had no jurisdiction over the subject matter or nature of the action.

On August 26, 1969, Court of First Instance Judge Pedro Samson C. Animas, finding the motion to dismiss to be meritorious, issued the following order:

"Finding the MOTION TO DISMISS the complaint to be well taken, it appearing on the face of the complaint that the defendant unlawfully detained the property within a period of one-year after she was notified to vacate the same, hence, the principal cause of action is one of UNLAWFUL DETAINER which is within the original exclusive jurisdiction of the City Court, this case is hereby DISMISSED without pronouncement as to costs."

On September 9, 1969, petitioner filed a Motion for Reconsideration of the aforesaid order dated August 26, 1969. On September 13, 1969, respondent court issued an order as follows:

"For lack of merit, the MOTION FOR RECONSIDERATION is hereby denied."

Coming to this Court, petitioner alleged that the lower court erred: (1) in holding that respondent Abi Olipon-Dambong's possession or withholding of the land became unlawful only from the time demand to vacate the land was made; (2) in holding that since the complaint was filed within the period of one year after respondent Abi Olipon-Dambong was notified to vacate the land, the principal cause of action is one of unlawful detainer which is within the original exclusive jurisdiction of the city court.

It is the position of herein petitioner that since the ejectment case was filed on May 13, 1969, or almost fourteen (14) years after the expiration of the one-year period of redemption, the case falls within the exclusive jurisdiction of the Court of First Instance as a case "for illegal possession (accion publiciana)"; that the possession of the land became illegal after the expiration of the period of redemption which was on September 11, 1956; that for the action to prosper as an "illegal detainer it should have been filed within one year from the expiration of one-year period of redemption."

The contention is unmeritorious. It is a fact that private respondent was tolerated by herein petitioner to stay in the

property after September 11, 1956. It was only on December 12, 1968 when petitioner wrote private respondent "to vacate the premises thereof, or to deliver plaintiff's share of the income derived from the fruits of the land." Thus, it was only after written demand was made upon the defendant to leave the premises that her possession became unlawful. As held in the case of *Prieto vs. Reyes*, 14 SCRA 430 -

"x x x since there can be possession by tolerance, this Court has repeatedly held that possession or detainer becomes illegal only from the time that there is a demand to vacate. Hence, the year for bringing the action for illegal detainer should be counted only from such demand."

And, in the case of *Casilan vs. Tomassi*, 10 SCRA 267, it was held that "there is no legal obstacle for the owner to allow a defaulting tenant to remain in the rented property one month, one year, several years, or even decades. That consent, no matter how long it may last, makes lawful tenant's possession. Only when that consent is withdrawn and the owner demands tenant to leave the property is the owner's right of possession asserted and the tenant's refusal or failure to move out makes his possession unlawful, because it is violative of the owner's preferential right of possession."

In the case before Us, the demand letter for the respondent to vacate was on December 12, 1968, and the complaint was filed on May 13, 1969, or within the one-year period. Hence, the case for unlawful detainer should have been filed in the city court.

WHEREFORE, the order of the lower court dated August 26, 1969, dismissing the complaint is **AFFIRMED**, with costs against the petitioner.

SO ORDERED.

Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.
Teehankee, J., (Chairman), concurs in a separate opinion.

PNB vs Animas : L-31053 : October 23, 1982 : J. Teehankee : First Division : Concurring Opinion Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

CONCURRING OPINION

TEEHANKEE, J.:

In addition to concurring, I wish to state that the case apparently deals with a poor ignorant tribal-minority homesteader whose 24-hectare homestead, assessed at P3,280.00 with a "conservatively estimated" annual net income of P1,450.00[1] from the crops planted and produced therein by respondent's hard work, was acquired in 1954 at an execution sale by the Philippine National Bank for the unconscionable bid price of One Hundred Pesos (P100.00)[2] and title issued in the bank's name after expiration of the one-year period of redemption. Yet, the bank was apparently so appalled by its own onerous act that for fifteen (15) years after the sale, it left the homestead in the possession of respondent Abi Olipong-Dambong, surviving spouse of the original homesteader-owner, until it brought the present action in 1969. It is devoutly to be wished that in justice and equity, the bank may take the necessary steps to restore under fair and just terms the ownership of the homestead to respondent homesteader and her family, taking into consideration, inter alia, that the homestead appears to be an exempt property from execution[3], and that the bank was and is apparently willing to have respondent and her

son "reacquire said property from the bank"[4] whose stake in "acquiring" the property at the execution sale amounts to the "princely" sum of P100.00.

[1] Par. 3, Complaint, at page 2, main opinion.

[2] Par. 8, Complaint, at page 3, main opinion.

[3] Rule 39, section 12.

[4] Par. 6, Complaint, at page 3, main opinion.

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