

SPOUSES AGOSTO MUNOZ AND ROSARIO MUNOZ, SPS. JESSIE (JESUS) CAGUIOA AND EMMA FUMAR, SPS. RICARDO LOPEZ AND APOLONIA FABIAN, ZACARIA MARCELINO, MR. CRISANTO CLARIN, MR. HONORIO Y...

G.R. No. 102693. September 23, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This case has its origin from a complaint[1] for unlawful detainer filed by Nicolas P. Garcia (herein respondent) on August 15, 1988 before the Municipal Circuit Trial Court, Masantol-Macabebe, Masantol, Pampanga. The complainant alleged that he is a co-owner of an agricultural land identified as Lot No. 2790 of Subdivision Plan, Cad. 378-D, Macabebe, Cadastre, situated in the Barrio of Caduang Tete (Saplad David) of the same municipality; that he and his co-owners acquired the lot by succession from their deceased father, Pedro B. Garcia who died on April 6, 1939; that the said lot is tenanted by Loreto Garcia; that the defendants (herein petitioners) constructed their houses on a portion of the lot without the knowledge and consent of the owners; that he sent letters of demand on June 6, 1988 asking the defendants to remove their houses from the lot within fifteen (15) days from receipt of the letters and that despite the demands made by him, the defendants refused to vacate their houses (pp. 21-22, CA Records).

In their answer, (pp. 44-47, CA Records), the defendants denied the allegations of Nicolas Garcia and alleged that the tenant, Loreto Garcia is already deemed the owner of the land pursuant to P.D. 27. The answering defendants also invoked the following alternative defenses, among others: (1) lack of jurisdiction on the part of the Municipal Trial Court, the case being an accion publiciana which is exclusively cognizable by the Regional Trial Court; (2) no prior conciliation before the Lupong Tagapayapa; (3) misjoinder of parties since defendants occupy lots distinct from each other; (4) that the different lots they are occupying form part of the shore of a navigable river and partly the shoulder of a public road, hence, of public ownership; (5) that they are farmworkers of the lot, and are entitled to security of tenure on the land pursuant to Section 6 of RA 6657 and that they had erected their houses and had continuously resided on the premises in issue since 1976 or for a period of twelve years before the filing of the complaint.

After the issues had been joined, the Municipal Circuit Trial Court heard the case under the Rules on Summary Procedure and decided the case on the basis of the position papers of the parties.

On December 7, 1988, the municipal court rendered a decision in favor of the plaintiff Nicolas Garcia, the dispositive portion of which states:

"WHEREFORE, judgment is hereby rendered, ordering:

- 1) The defendants and all persons claiming rights under them to remove their houses from Lot 2790 of Subdivision Plan Cad. 378-D, Macabebe Cadastre, situated at Saplad David, Caduang Tete, Macabebe, Pampanga; and to surrender the possession of the same to the plaintiff;

- 2) Every defendant to pay to the plaintiff the sum of Five Thousand Pesos (P5,000.00) attorney's fees; and
- 3) Every defendants to pay One Hundred Pesos (P100.00) reasonable monthly rental of the land occupied by said defendants from the filing of the complaint on August 15, 1988 up to the time the possession of the land occupied by said defendants is vacated plus the costs." (pp. 72-73, CA Records).

The Municipal Circuit Trial Court found that the plaintiff is one of the co-owners of Lot 2790 of Subdivision Plan Cad. 378-D of Macabebe Cadastre, consisting of five (5) hectares. As such, he had every right to exercise his rights as owner and possessor of the property and to demand the removal of defendants' houses. The Municipal Court added that while the defendants assert that the premises is of public ownership considering that their houses occupy a part of a shore of a navigable river and part of the shoulder of the public road, this assertion runs counter to the very claim of defendants that they are farmhands in the landholding for more than 12 years. Finally, the Municipal Court also held that since the issue involved in the case is mere possession and the defendants did not claim ownership, therefore, unlawful detainer is the proper action for plaintiff's recovery of possession.

The defendants appealed to the Regional Trial Court which reversed the decision of the municipal court and dismissed the complaint. The Regional Trial Court held that:

"From all the foregoing consideration, the Court finds that plaintiff-appellee fails to establish his proof of prior physical possession over the land subject matter of this case where the respective houses of the defendants-appellants were erected, considering that the case at bar only deals with possession de facto and not possession de jure. The Court also believes that the subject matter of this Court is beyond the jurisdiction of the Municipal Circuit Trial Court.

"WHEREFORE, premises considered, the decision of the Municipal Circuit Trial Court of Macabebe, Masantol-Macabebe, Pampanga is hereby reversed. The said case is dismissed with costs against the plaintiff." (p. 82, CA Records)

On June 27, 1989, Nicolas Garcia filed a motion for reconsideration of the Regional Trial Court's decision. The reconsideration sought was denied by order of the same court dated October 11, 1989.

Nicolas Garcia filed a petition for review with the Court of Appeals which rendered a decision on August 6, 1991 in CA-G.R. SP No. 19154 reversing and setting aside the decision of the Regional Trial Court and reinstating the decision of the Municipal Circuit Trial Court. The reconsideration sought by the defendants before the appellate court was denied on November 11, 1991.

Hence, this petition.

The principal question for resolution in this petition is whether or not the complaint filed by the private respondent before the Municipal Circuit Trial Court was for the summary proceeding of forcible entry or unlawful detainer or an accion publiciana. In the latter case, the Regional Trial Court and not the Municipal Trial Court has the exclusive jurisdiction to hear and try the complaint.

The petitioner is of the view that with the following allegations in the complaint, to wit:

"2. That the plaintiff is a co-owner of an agricultural land located at Saplad, David, Macabebe, Pampanga identified as lot no. 2790, of the Subdivision Plan, Cad. 378--D, Macabebe, Cadastre, x x x;

"x x x.

"4. That the aforesaid agricultural land is presently tenanted by one farmer in the name of Loreto Garcia with an area of more than five (5) hectares;

"5. That the defendants have constructed their houses on a portion of the said lot no. 2790 without the

knowledge and consent of his co-owners;

"6. That the plaintiff has sent the defendants demand letters dated June 6, 1988 asking said defendants to remove their houses from the said lot within a period of fifteen (15) days from their receipt of said letters, x x x." (pp. 21-22, Records)

the complaint which the private respondent filed before the municipal court was an accion publiciana and not one for unlawful detainer as he had captioned it. An accion publiciana is exclusively cognizable by the Regional Trial Court and not by the Municipal Court.

For his part, the private respondent alleged that the action which he filed before the municipal court was an action for unlawful detainer. The demand to vacate dated June 6, 1988 which was served upon the petitioners was well within the one (1) year period required by the rules for the filing of the summary action for unlawful detainer the jurisdiction of which belongs to the municipal trial court.

The summary actions for unlawful detainer and forcible entry may be distinguished from each other, as follows:

"4. x x x

"a. In forcible entry, the possession of the land by the defendant is unlawful from the beginning as he acquires possession thereof by force, intimidation, threat, strategy or stealth; while in unlawful detainer, the possession of the defendant is inceptively lawful but it becomes illegal by reason of the termination of his right to the possession of the property under his contract with the plaintiff (*Dikit v. Icasiano*, 89 Phil. 44).

"b. In forcible entry, the law does not require a previous demand for the defendant to vacate the premises; but in unlawful detainer, the plaintiff must first make such demand, which is jurisdictional in nature (*Sec. 2; Medel v. Militante*, 41 Phil. 44).

"c. In forcible entry, the plaintiff must prove that he was in prior physical possession of the premises until he was deprived thereof by the defendant; in unlawful detainer, the plaintiff need not have been in prior physical possession (*Maddamu v. Judge*, 74 Phil. 230; *Aguilar v. Cabrera*, 74 Phil. 666; *Banayos v. Susana Realty, Inc.* L-30336, June 30, 1976; *Pharma Industries, Inc. v. Pajarillaga, et al.* L-53788, Oct. 17, 1980).

"d. In forcible entry, the one-year period is generally counted from the date of actual entry on the land; in unlawful detainer, from the date of last demand (*Sarona, et al. v. Villegas, et al.*, L-22984, Mar. 27, 1968) or last letter of demand (*DBP v. Canonoy*, L-29422, Sept. 30, 1970; *Calibayan v. Pascual*, L-22645, Sept. 18, 1967; *Racaza v. Susana Realty, Inc.*, L-20330, Dec. 22, 1966). (*Regalado, Florenz D., Remedial Law Compendium*, Vol. 1, 5th Revised Edition, pp. 503-504)

The complaint subject of this case was captioned as "unlawful detainer." However, the private respondent alleged therein that from the start, the possession of the petitioner was unlawful as it was stated that the defendants have constructed their houses on the questioned premises stealthily, that is, without the knowledge and consent of his co-owners. This allegation clearly characterized the complaint as one for forcible entry and not for unlawful detainer.

The questions to be resolved in an action for forcible entry are: First, who had actual possession over the piece of real property? Second, was the possessor ousted therefrom within one year from the filing of the complaint by force, threat, strategy or stealth? And lastly, does the plaintiff ask for the restoration of his possession? (*Dizon v. Concina, et al.*, G.R. No. L-23756, December 27, 1969).

There was no mention in the complaint nor in the position paper of the private respondent that he or his co-owners were in prior possession of the property. There was an allegation that the property "is presently tenanted" but it did not state when the tenant started to possess the property. While it is true that possession of the tenant is

possession of the owner, the complaint failed to state that Loreta Garcia was in prior possession of the property at the time of entry by the petitioners. And, while the complaint stated that the petitioners obtained possession of the premises through stealth, it failed to aver when this entry was accomplished or when the private respondent learned of such entry. The failure of the private respondent to allege the time when unlawful deprivation took place is fatal because this will determine the start of the counting of the one year period for the filing of the summary action of forcible entry. 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 action should either be accion publiciana or reivindicatoria in the Court of First Instance (now Regional Trial Court) (Sarona et al., v. Villegas, et al., supra).

The respondent appellate court erred in holding that this case is one for unlawful detainer. It failed to consider the basic distinction that in forcible entry, possession is illegal at the inception while in unlawful detainer, possession is legal until demand is made to recover such possession or until the possessor does or fails to do an act which makes his continued possession of the premises illegal. The fact that a demand was made by the private respondent for the petitioners to vacate the subject premises cannot change the nature of the latter's possession of the property and convert the former's action from forcible entry to one for unlawful detainer. The respondent appellate court likewise erred in applying in this case the doctrine that - "a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by the implied promise that he will vacate upon demand, failing which, a summary action for ejectment is proper remedy against them" - because, as We have said here, the possession by defendants was illegal at the inception as alleged in the complaint, hence, there was no tolerance. As explained in *Sarona v. Villegas*, G.R. No. L-22984, March 27, 1968, 22 SCRA 1257:

"But will this rule as to tolerance hold true in a case where there was forcible entry at the start, but the lawful possessor did not attempt to oust the intruder for over one year, and only thereafter filed forcible entry suit following demand to vacate?

"x x x.

"A close assessment of the law and the concept of the word 'tolerance' confirms our view heretofore expressed that such tolerance must be present right from the start of possession sought to be recovered, to categorize a cause of action as one of unlawful detainer - not of forcible entry. Indeed, to hold otherwise would espouse a dangerous doctrine. And for two reasons. First. Forcible entry into the land is an open challenge to the right of the possessor. Violation of that right authorizes the speedy redress - in the inferior court - provided for in the rules. If one year from the forcible entry is allowed to lapse before suit is filed, then the remedy ceases to be speedy; and the possessor is deemed to have waived his right to seek relief in the inferior court. Second, if a forcible entry action in the inferior court is allowed after the lapse of a number of years, then the result may well be that no action for forcible entry can really prescribe. No matter how long such defendant is in physical possession, plaintiff will merely make a demand, bring suit in the inferior court - upon a plea of tolerance to prevent prescription to set in - and summarily throw him out of the land. Such a conclusion is unreasonable. Especially if we bear in mind the postulates that proceedings of forcible entry and unlawful detainer are summary in nature, and that the one year time bar to suit is but in pursuance of the summary nature of the action.

"It is well to remember that after the lapse of the one year period, suit must be started in the Court of First Instance in an accion publiciana.

It is also the contention of petitioners that private respondents' claim of ownership had no basis. He should have at least, introduced muniments of title to show the extent and character of his possession. Moreover, mere allegations of ownership does not ipso facto entitle a person to possession of the property claimed.

The main issue in an action for forcible entry and detainer is one of priority of possession. If the plaintiff can prove prior possession in himself, he may recover such possession even from the owner. This rule however has no application in this case. It is true that the private respondent in this case claimed that he is one of the co-owners of the lot in question. However, he has not presented any evidence in support of such claim of ownership by virtue of which he is entitled to its possession. Moreover, he had not shown nor claimed in his complaint that he was in prior possession of the property. On the contrary, it is the petitioners who claimed possession of the property for more than twelve years.

If the private respondent is indeed the owner of the premises and that possession thereof was deprived from him for more than twelve years, he should present his claim before the Regional Trial Court in an accion publiciana or an accion reivindicatoria and not before the Municipal Trial Court in a summary proceeding of unlawful detainer or forcible entry. For even if he is the owner, possession of the property cannot be wrested from another who had been in possession thereof for more than twelve (12) years through a summary action for ejectment.

"Although admittedly petitioner may validly claim ownership based on the muniments of title it presented, such evidence does not responsibly address the issue of prior actual possession raised in a forcible entry case. It must be stated that regardless of actual condition of the title to the property, the party in peaceable quiet possession shall not be turned out by a strong hand, violence or terror. Thus, a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his prior possession, if he has in his favor priority in time, he has the security that entitles him to remain on the property until he is lawfully ejected by a person having a better right by accion publiciana or accion reivindicatoria. (German Management and Services Inc. v. CA, 76216-17, September 14, 1988, 177 SCRA 495, 499)

ACCORDINGLY, the petition is GRANTED. The decision of the Court of Appeals is SET ASIDE and the decision of the Regional Trial Court of Macabebe, Pampanga is REINSTATED.

SO ORDERED.

Griño-Aquino and Bellosillo, JJ., concur.
Cruz, J., (Chairman), on leave.

[1] Civil Case No. 80 (20).

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