

**LOLITA AMIGO AND ESTELITA VDA. DE SALINAS, PETITIONERS, VS.
THE HONORABLE COURT OF APPEALS, HONORABLE AUGUSTO V.
BREVA, AS JUDGE, RTC OF DAVAO, BRANCH X, THE SHERIFF OF THE
RTC ...**

G.R. No. 102833. February 09, 1996

Ponente: VITUG, J.

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VITUG, J.:

Challenged in the petition for review on certiorari is the decision of the Court of Appeals rendered on 12 November 1991[1] dismissing the petition to annul the writs of execution and demolition issued by the Regional Trial Court of Davao City, Branch 10,[2] in the implementation of its final judgment of eviction against herein petitioners in Civil Case No. 10363.

Petitioners Lolita Amigo and Estelita vda. de Salinas leased in 1961 from Mercedes Inigo, a parcel of land, also known as Lot 502-C-9, Psd-10752, located along Leon Garcia St., Agdao District, Davao City, registered in the lessor's name under TCT No. T-5454. Petitioners constructed their houses on the lot. Mercedes Inigo later sold and transferred her ownership of the land to Juan Bosquit and herein private respondent Jesus Wee Eng. TCT No. T-5454 was cancelled and another title, TCT No. 13659, was issued on 28 May 1964 jointly in the names of the two vendees.

On 17 December 1966, Bosquit and Wee entered into a deed of exchange with the City Government of Davao. Bosquit and Wee exchanged a portion of their Lot 502-C-9 for also a portion of Lot No. 502-C-11 under TCT No. T-5788 in the name of the city. The transaction was authorized and approved by the City Council of Davao.[3]

In order to delineate the portion of Lot 502-C-9 ceded to the city government, Bosquit and Wee caused the preparation of plan Psd-11-000258 subdividing the property into Lot 502-C-9-A and Lot 502-C-9-B. For its part, the city government caused the subdivision of Lot 502-C-11 into Lot 502-C-11-A and Lot 502-C-11-B. In consonance with the agreement, TCT No. T-13659 held by Bosquit and Wee was cancelled and in lieu thereof, two separate certificates of title were issued: TCT No. 46656 in the name of the City Government of Davao covering Lot 502-C-9-A, and TCT No. 46657 in the names of Bosquit and Wee corresponding to Lot 502-C-9-B. In turn, TCT No. T-5788 in the name of the city government, was cancelled and two separate titles were issued: TCT No. T-51826 in the names of Bosquit and Wee for Lot 502-C-11-A and TCT No. T-51827 in the name of the city government over Lot 502-C-11-B.

On 01 October 1969, Bosquit and Wee instituted an action for unlawful detainer against petitioners before the City Court of Davao (Civil Case No. 1561-A). After almost seven years, or on 19 July 1976, the city court finally dismissed the action on the technicality that the plaintiffs did not observe the required 15-day period from the sending of the letter of demand before filing the action, the letter having been sent instead on 19 September 1969 or only twelve days before the filing of the action.[4]

On 25 October 1976, Bosquit sold his rights and interests over Lots 502-C-9-B and 502-C-i 1-A to Wee. The titles over the property were thereupon cancelled and TCT No. T-53041 and TCT No. T-53042 were issued solely in the name of Wee.

On 22 July 1977, Wee, herein private respondent, filed a complaint (docketed Civil Case No. 10363) against petitioners in the then Court of First Instance of Davao, Branch III, for recovery of the real property in question. On 08 September 1978, after the petitioners had filed their answer, the court appointed Orville O. Bueno, a duly licensed geodetic engineer, its commissioner to conduct a relocation survey of the boundaries of the land. In his report, dated 27 November 1978, Bueno stated that -

"x x x portions of about two-thirds (2/3) of the houses of Lolita Amigo and that of Estelita Vda. de Salinas is inside of Lot 502-C-9-B, Psd-i 1-000258, covered by TCT No. T-53041, issued in the name of Jesus Wee Eng; the remaining one-third of it lies on the road widening and the creek respectively." [5]

Whereupon, private respondent sought an amendment of his complaint which was allowed by the lower court on 13 November 1979. [6] As so amended, the complaint prayed not only for the recovery of real property and damages but also for an abatement of nuisance [7] over the portion of the improvements introduced by petitioners that encroached on the sidewalk of Leon Garcia Street.

In their amended answer, petitioners denied the material allegations of the amended complaint. Petitioners stressed that their houses stood neither on private respondent's land nor on the sidewalk or shoulders of Leon Garcia Street but along the banks of the Agdao Creek.

Parenthetically, in 1982, during the pendency of Civil Case No. 10363, petitioners Amigo and Salinas were designated census-beneficiaries of their respective areas (Tag No. 82-A-0342 and Tag No. 82-A-0341) [8] under a so-called City of Davao RCDP-NHA Agreement.

After a full reception of the evidence, the trial court, on 23 September 1983, rendered its decision which held:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff:

"UNDER THE FIRST CA USE OF ACTION

"1. Ordering the defendants to vacate the portions of land occupied by them as appearing in the Commissioner's Report (Exhibits 'C' and 'D') and to deliver the same to the plaintiff; and

"2. To pay the plaintiff the amount of THIRTY (P30. 00) PESOS each per month for the use of plaintiff's land, to be reckoned from the date of judicial demand on July 22, 1977 until defendants shall have vacated the premises in question.

"UNDER THE SECOND CA USE OF ACTION

"1. The defendants are hereby ordered to demolish the portions of their houses constructed on the road widening of Leon Garcia Street which constitute a nuisance per se;

"2. To pay plaintiff the amount of TWO THOUSAND (P2,000.00) PESOS for and as attorney's fees; and

"3. To pay costs.

"All other claims and counterclaims are hereby DISMISSED.

"SO ORDERED." [9]

Petitioners appealed the decision to the Court of Appeals (AC-G.R. CV No. 02405). In its resolution of 29 November 1984, however, the appellate court dismissed the appeal for the failure of petitioners to file an appeal

brief.[10] A petition for relief from the order of dismissal was denied by the appellate court, in a resolution of 09 July 1985, for having been filed beyond the reglementary period’[11]

In due time, private respondent moved for execution of the judgment. The lower court, in its order of 28 October 1988, granted the motion and ordered the issuance of the corresponding writ.[12] An omnibus motion to quash the writ of execution[13] filed by petitioners was denied by said court on 27 January 1989.[14] Private respondent, forthwith moved for a special order of demolition which the court granted on 13 March 1989.[15]

Meanwhile, on 02 March 1989, petitioners filed with the Court of Appeals an action (docketed CA-G.R. SP No. 16979) for the annulment of the trial court’s decision of 23 September 1983, as well as all orders and proceedings subsequent thereto, including the various writs of execution and demolition.[16] Petitioners contended that the judgment rendered by the lower court was void for want of jurisdiction.

On 08 March 1989, the Court of Appeals granted petitioners’ prayer for a temporary restraining order.[17] The restraining order was lifted when, on 12 November 1991, the appellate court ultimately dismissed the petition.[18]

Petitioners instituted the instant petition for review on certiorari raising several questions:

1. Whether or not the court a quo acquired jurisdiction over the subject matter and their person in the case at bench;
2. Whether or not the Court of Appeals erred when it failed to consider the badges of fraud in the exchange of lots between private respondent and the City Government of Davao;
3. Whether or not their status as lessees in the disputed lot was affected by the said swapping or exchange of lots; and
4. Whether or not they are entitled to the so-called "right of first refusal" under Section 6 of P.D. No. 1417 and as such cannot be evicted from the disputed lot.

We deny the petition.

The Court must remind the parties that the case brought up to the Court of Appeals is an extraordinary action that has sought to annul the writs of execution and demolition issued under and by virtue of a final judgment that is alleged to be void for want of jurisdiction. The petition should not thus be used as a stratagem to once again reopen the entire controversy, and make a complete farce of a duly promulgated decision that has long become final and executory, such as by allowing matters outside the question of jurisdiction to be here litigated anew. Accordingly, this ponencia must and shall only deal with the first of the above-enumerated issues raised in the instant petition.

Petitioners maintain that the judgment of the trial court is void for being coram non iudice. Jurisdiction over the subject matter of a case is conferred by law[19] and determined by the allegations of the complaint. It should hardly be of any consequence that the merits of the case are later found to veer away from the claims asseverated by the plaintiff. The suit below is aimed at recovering real property, an action clearly well within the jurisdiction of the Regional Trial Court.[20] Incidentally, petitioners’ assertion that the litigated lots belong in ownership to the city government and not to private respondent is not borne out by the evidence on record. On the contrary, it appears that private respondent has been, and still is; the registered owner of both Lot 502-C-9-B and Lot 502-C-i 1-A, respectively, under TCT No. T-53041 and TCT No. T-53042.[21]

Neither may petitioners feign absence of jurisdiction over their persons. Jurisdiction over the person of the defendant in a civil action is acquired either by his voluntary appearance in court and his submission to its authority or by service of summons.[22] In this case, by their filing of an answer and later an amended answer,

petitioners must be deemed to have formally and effectively appeared before the lower court. As early as 1918, the essence of voluntary appearance has been explained by this Court; thus, in *Flores v. Zurbito*,^[23] we have said:

"A voluntary appearance is a waiver of the necessity of a formal notice. An appearance in whatever form, without expressly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person. While the formal method of entering an appearance in a cause pending in the courts is to deliver to the clerk a written direction ordering him to enter the appearance of the person who subscribes it, an appearance may be made by simply filing a formal motion, or plea or answer. This formal method of appearance is not necessary." (Italics supplied.)

Unlike the question of jurisdiction over the subject matter which may be invoked at any stage of the proceedings (even on appeal), the issue of jurisdiction over the person of the defendant, however, as has been so held lately in *La Naval Drug Corporation v. Court of Appeals*,^[24] must be seasonably raised, and it can well be pleaded in a motion to dismiss or by way of an affirmative defense in an answer. The records bear out the fact that petitioners have allowed the issue of jurisdiction to pass unquestioned until the rendition of the judgment. It is now too late in the day for petitioners to assail the jurisdiction of the lower court over their person, a somersault that neither law nor policy will sanction.^[25]

WHEREFORE, the instant petition for review on certiorari is hereby DENIED for lack of merit and the questioned decision of the Court of Appeals is AFFIRMED. Costs against petitioners.

SO ORDERED

Padilla (Chairman), Bellosillo, Kapunan and Hermosisima, Jr., JJ., concur.

[1] Penned by Associate Justice Emeterio C. Cui and concurred in by Associate Justices Regina G. Ordofiez-Benitez and Jose A. R. Melo.

[2] presided by then Judge Pacita Cafiizares-Nye.

[3] Resolution No. 584.

[4] Rollo, pp. 67-68.

[5] Ibid., p. 257

[6] Ibid., pp. 115-116.

[7] Ibid., pp. 110-114.

[8] Ibid., p. 198.

[9] Ibid., pp. 262-263.

[10] Ibid., p. 265.

[11] Ibid., pp. 268-269.

[12] Ibid., p. 271.

[13] Ibid., pp. 91-95.

[14] Ibid., p. 127.

[15] Ibid., pp. 127-128.

[16] Ibid., pp. 49-65.

[17] Ibid., p. 274.

[18] Ibid., pp. 26-29.

[19] Isidro v. Court of Appeals, 228 SCRA 503; Ilaw at Buklod ng Manggagawa (IBM) v. NLRC, 219 SCRA 536.

[20] The Judiciary Reorganization Act of 1980 (B.P. Big. 129) vests on said courts jurisdiction over "all civil actions which involve the title to, or possession of, real property, or any interest therein."

[21] Annexes 22 & 23 to Private Respondent's Comment on the Petition (Rollo, pp. 133-134).

[22] Munar v. Court of Appeals, 238 SCRA 372; Minucherv. Court of Appeals, 214 SCRA 242.

[23] 37 Phil. 746, 750; reiterated in Busuego v. Court of Appeals, 151 SCRA 376, 385.

[24] 236 SCRA 78, 91.

[25] Cloma vs. Court of Appeals, 234 SCRA 665, 673.

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