

**THE INCOMPETENT, CARMEN CAÑIZA, REPRESENTED BY HER
LEGAL GUARDIAN, AMPARO EVANGELISTA, PETITIONER, VS.
COURT OF APPEALS (SPECIAL FIRST DIVISION), PEDRO ESTRADA
AND HIS WIFE, LEO...**

G.R. No. 110427. February 24, 1997

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

On November 20, 1989, being then ninety-four (94) years of age, Carmen Cañiza, a spinster, a retired pharmacist, and former professor of the College of Chemistry and Pharmacy of the University of the Philippines, was declared incompetent by judgment[1] of the Regional Trial Court of Quezon City, Branch 107,[2] in a guardianship proceeding instituted by her niece, Amparo A. Evangelista.[3] She was so adjudged because of her advanced age and physical infirmities which included cataracts in both eyes and senile dementia. Amparo A. Evangelista was appointed legal guardian of her person and estate.

Cañiza was the owner of a house and lot at No. 61 Tobias St., Quezon City. On September 17, 1990, her guardian Amparo Evangelista commenced a suit in the Metropolitan Trial Court (MetroTC) of Quezon City (Branch 35) to eject the spouses Pedro and Leonora Estrada from said premises.[4] The complaint was later amended to identify the incompetent Cañiza as plaintiff, suing through her legal guardian, Amparo Evangelista.

The amended Complaint[5]pertinently alleged that plaintiff Cañiza was the absolute owner of the property in question, covered by TCT No. 27147; that out of kindness, she had allowed the Estrada Spouses, their children, grandchildren and sons-in-law to temporarily reside in her house, rent-free; that Cañiza already had urgent need of the house on account of her advanced age and failing health, "so funds could be raised to meet her expenses for support, maintenance and medical treatment;" that through her guardian, Cañiza had asked the Estradas verbally and in writing to vacate the house but they had refused to do so; and that "by the defendants' act of unlawfully depriving plaintiff of the possession of the house in question, they ** (were) enriching themselves at the expense of the incompetent, because, while they ** (were) saving money by not paying any rent for the house, the incompetent ** (was) losing much money as her house could not be rented by others." Also alleged was that the complaint was "filed within one (1) year from the date of first letter of demand dated February 3, 1990."

In their Answer with Counterclaim, the defendants declared that they had been living in Cañiza's house since the 1960's; that in consideration of their faithful service they had been considered by Cañiza as her own family, and the latter had in fact executed a holographic will on September 4, 1988 by which she "bequeathed" to the Estradas the house and lot in question.

Judgment was rendered by the MetroTC on April 13, 1992 in Cañiza's favor,[6] the Estradas being ordered to vacate the premises and pay Cañiza P5,000.00 by way of attorney's fees.

But on appeal,[7] the decision was reversed by the Quezon City Regional Trial Court, Branch 96.[8] By judgment

rendered on October 21, 1992,[9] the RTC held that the "action by which the issue of defendants' possession should be resolved is accion publiciana, the obtaining factual and legal situation ** demanding adjudication by such plenary action for recovery of possession cognizable in the first instance by the Regional Trial Court."

Cañiza sought to have the Court of Appeals reverse the decision of October 21, 1992, but failed in that attempt. In a decision[10] promulgated on June 2, 1993, the Appellate Court[11] affirmed the RTC's judgment in toto. It ruled that (a) the proper remedy for Cañiza was indeed an accion publiciana in the RTC, not an accion interdictal in the MetroTC, since the "defendants have not been in the subject premises as mere tenants or occupants by tolerance, they have been there as a sort of adopted family of Carmen Cañiza," as evidenced by what purports to be the holographic will of the plaintiff; and (b) while "said will, unless and until it has passed probate by the proper court, could not be the basis of defendants' claim to the property, ** it is indicative of intent and desire on the part of Carmen Cañiza that defendants are to remain and are to continue in their occupancy and possession, so much so that Cañiza's supervening incompetency can not be said to have vested in her guardian the right or authority to drive the defendants out." [12]

Through her guardian, Cañiza came to this Court praying for reversal of the Appellate Court's judgment. She contends in the main that the latter erred in (a) holding that she should have pursued an accion publiciana, and not an accion interdictal; and in (b) giving much weight to "a xerox copy of an alleged holographic will, which is irrelevant to this case." [13]

In the responsive pleading filed by them on this Court's requirement,[14] the Estradas insist that the case against them was really not one of unlawful detainer; they argue that since possession of the house had not been obtained by them by any "contract, express or implied," as contemplated by Section 1, Rule 70 of the Rules of Court, their occupancy of the premises could not be deemed one "terminable upon mere demand (and hence never became unlawful) within the context of the law." Neither could the suit against them be deemed one of forcible entry, they add, because they had been occupying the property with the prior consent of the "real owner," Carmen Cañiza, which "occupancy can even ripen into full ownership once the holographic will of petitioner Carmen Cañiza is admitted to probate." They conclude, on those postulates, that it is beyond the power of Cañiza's legal guardian to oust them from the disputed premises.

Carmen Cañiza died on March 19, 1994,[15] and her heirs -- the aforementioned guardian, Amparo Evangelista, and Ramon C. Nevado, her niece and nephew, respectively -- were by this Court's leave, substituted for her.[16]

Three issues have to be resolved: (a) whether or not an ejectment action is the appropriate judicial remedy for recovery of possession of the property in dispute; (b) assuming desahucio to be proper, whether or not Evangelista, as Cañiza's legal guardian had authority to bring said action; and (c) assuming an affirmative answer to both questions, whether or not Evangelista may continue to represent Cañiza after the latter's death.

I

It is axiomatic 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.[17] An inquiry into the averments of the amended complaint in the Court of origin is thus in order.[18]

The amended Complaint alleges:[19]

"6. That the plaintiff, Carmen Cañiza, is the sole and absolute owner of a house and lot at No. 61 Scout Tobias, Quezon City, which property is now the subject of this complaint;

** ** *

9. That the defendants, their children, grandchildren and sons-in-law, were allowed to live temporarily in the house of plaintiff, Carmen Cañiza, for free, out of her kindness;
10. That the plaintiff, through her legal guardian, has duly notified the defendants, for them to vacate the said house, but the two (2) letters of demand were ignored and the defendants refused to vacate the same. **
11. That the plaintiff, represented by her legal guardian, Amparo Evangelista, made another demand on the defendants for them to vacate the premises, before Barangay Captain Angelina A. Diaz of Barangay Laging Handa, Quezon City, but after two (2) conferences, the result was negative and no settlement was reached. A photocopy of the Certification to File Action dated July 4, 1990; issued by said Barangay Captain is attached, marked Annex "D" and made an integral part hereof;
12. That the plaintiff has given the defendants more than thirty (30) days to vacate the house, but they still refused to vacate the premises, and they are up to this time residing in the said place;
13. That this complaint is filed within one (1) year from the date of first letter of demand dated February 3, 1990 (Annex "B") sent by the plaintiff to the defendants, by her legal guardian -- Amparo Evangelista;
14. By the defendants' act of unlawfully depriving the plaintiff of the possession of the house in question, they are enriching themselves at the expense of the incompetent plaintiff, because, while they are saving money by not paying any rent for the house, the plaintiff is losing much money as her house could not be rented by others;
15. That the plaintiff's health is failing and she needs the house urgently, so that funds could be raised to meet her expenses for her support, maintenance and medical treatment;
16. That because of defendants' refusal to vacate the house at No. 61 Scout Tobias, Quezon City, the plaintiff, through her legal guardian, was compelled to go to court for justice, and she has to spend P10,000.00 as attorney's fees."

Its prayer[20] is quoted below:

"WHEREFORE, in the interest of justice and the rule of law, plaintiff, Carmen Cañiza, represented by her legal guardian, Amparo Evangelista, respectfully prays to this Honorable Court, to render judgment in favor of plaintiff and against the defendants as follows:

1. To order the defendants, their children, grandchildren, sons-in-law and other persons claiming under them, to vacate the house and premises at No. 61 Scout Tobias, Quezon City, so that its possession can be restored to the plaintiff, Carmen Cañiza: and
2. To pay attorney's fees in the amount of P10,000.00;
3. To pay the costs of the suit."

In essence, the amended complaint states:

- 1) that the Estradas were occupying Cañiza's house by tolerance -- having been "allowed to live temporarily ** (therein) for free, out of ** (Cañiza's) kindness;"
- 2) that Cañiza needed the house "urgently" because her "health ** (was) failing and she ** (needed) funds ** to meet her expenses for her support, maintenance and medical treatment;"
- 3) that through her general guardian, Cañiza requested the Estradas several times, orally and in writing, to give back possession of the house;
- 4) that the Estradas refused and continue to refuse to give back the house to Cañiza, to her continuing

prejudice; and

5) that the action was filed within one (1) year from the last demand to vacate.

Undoubtedly, a cause of action for desahucio has been adequately set out. It is settled that in an action for unlawful detainer, it suffices to allege that the defendant is unlawfully withholding possession from the plaintiff is deemed sufficient,[21] and a complaint for unlawful detainer is sufficient if it alleges that the withholding of possession or the refusal to vacate is unlawful without necessarily employing the terminology of the law.[22]

The Estradas' first proffered defense derives from a literal construction of Section 1, Rule 70 of the Rules of Court which inter alia authorizes the institution of an unlawful detainer suit when "the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied." They contend that since they did not acquire possession of the property in question "by virtue of any contract, express or implied" -- they having been, to repeat, "allowed to live temporarily ** (therein) for free, out of ** (Cañiza's) kindness" -- in no sense could there be an "expiration or termination of ** (their) right to hold possession, by virtue of any contract, express or implied." Nor would an action for forcible entry lie against them, since there is no claim that they had "deprived (Cañiza) of the possession of ** (her property) by force, intimidation, threat, strategy, or stealth."

The argument is arrant sophistry. Cañiza's act of allowing the Estradas to occupy her house, rent-free, did not create a permanent and indefeasible right of possession in the latter's favor. Common sense, and the most rudimentary sense of fairness clearly require that act of liberality be implicitly, but no less certainly, accompanied by the necessary burden on the Estradas of returning the house to Cañiza upon her demand. More than once has this Court adjudged 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 an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against him.[23] The situation is not much different from that of a tenant whose lease expires but who continues in occupancy by tolerance of the owner, in which case there is deemed to be an unlawful deprivation or withholding of possession as of the date of the demand to vacate.[24] In other words, one whose stay is merely tolerated becomes a deforciant illegally occupying the land or property the moment he is required to leave.[25] Thus, in *Asset Privatization Trust vs. Court of Appeals*,[26] where a company, having lawfully obtained possession of a plant upon its undertaking to buy the same, refused to return it after failing to fulfill its promise of payment despite demands, this Court held that "(a)fter demand and its repudiation, ** (its) continuing possession ** became illegal and the complaint for unlawful detainer filed by the ** (plant's owner) was its proper remedy."

It may not be amiss to point out in this connection that where there had been more than one demand to vacate, the one-year period for filing the complaint for unlawful detainer must be reckoned from the date of the last demand,[27] the reason being that the lessor has the option to waive his right of action based on previous demands and let the lessee remain meanwhile in the premises.[28] Now, the complaint filed by Cañiza's guardian alleges that the same was "filed within one (1) year from the date of the first letter of demand dated February 3, 1990." Although this averment is not in accord with law because there is in fact a second letter of demand to vacate, dated February 27, 1990, the mistake is inconsequential, since the complaint was actually filed on September 17, 1990, well within one year from the second (last) written demand to vacate.

The Estradas' possession of the house stemmed from the owner's express permission. That permission was subsequently withdrawn by the owner, as was her right; and it is immaterial that the withdrawal was made through her judicial guardian, the latter being indisputably clothed with authority to do so. Nor is it of any consequence that Carmen Cañiza had executed a will bequeathing the disputed property to the Estradas; that

circumstance did not give them the right to stay in the premises after demand to vacate on the theory that they might in future become owners thereof, that right of ownership being at best inchoate, no transfer of ownership being possible unless and until the will is duly probated.

Thus, at the time of the institution of the action of *desahucio*, the Estradas had no legal right to the property, whether as possessors by tolerance or sufferance, or as owners. They could not claim the right of possession by sufferance, that had been legally ended. They could not assert any right of possession flowing from their ownership of the house; their status as owners is dependent on the probate of the holographic will by which the property had allegedly been bequeathed to them -- an event which still has to take place; in other words; prior to the probate of the will, any assertion of possession by them would be premature and inefficacious.

In any case, the only issue that could legitimately be raised under the circumstances was that involving the Estradas' possession by tolerance, i.e., possession *de facto*, not *de jure*. It is therefore incorrect to postulate that the proper remedy for Cañiza is not ejectment but *accion publiciana*, a plenary action in the RTC or an action that is one for recovery of the right to possession *de jure*.

II

The Estradas insist that the devise of the house to them by Cañiza clearly denotes her intention that they remain in possession thereof, and legally incapacitated her judicial guardian, Amparo Evangelista, from evicting them therefrom, since their ouster would be inconsistent with the ward's will.

A will is essentially ambulatory; at any time prior to the testator's death, it may be changed or revoked;^[29] and until admitted to probate, it has no effect whatever and no right can be claimed thereunder, the law being quite explicit: "No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court" (ART. 838, *id.*).^[30] An owner's intention to confer title in the future to persons possessing property by his tolerance, is not inconsistent with the former's taking back possession in the meantime for any reason deemed sufficient. And that in this case there was sufficient cause for the owner's resumption of possession is apparent: she needed to generate income from the house on account of the physical infirmities afflicting her, arising from her extreme age.

Amparo Evangelista was appointed by a competent court the general guardian of both the person and the estate of her aunt, Carmen Cañiza. Her Letters of Guardianship^[31] dated December 19, 1989 clearly installed her as the "guardian over the person and properties of the incompetent CARMEN CAÑIZA with full authority to take possession of the property of said incompetent in any province or provinces in which it may be situated and to perform all other acts necessary for the management of her properties ** "[32] By that appointment, it became Evangelista's duty to care for her aunt's person, to attend to her physical and spiritual needs, to assure her well-being, with right to custody of her person in preference to relatives and friends.^[33] It also became her right and duty to get possession of, and exercise control over, Cañiza's property, both real and personal, it being recognized principle that the ward has no right to possession or control of his property during her incompetency.^[34] That right to manage the ward's estate carries with it the right to take possession thereof and recover it from anyone who retains it,^[35] and bring and defend such actions as may be needful for this purpose.^[36]

Actually, in bringing the action of *desahucio*, Evangelista was merely discharging the duty to attend to "the comfortable and suitable maintenance of the ward" explicitly imposed on her by Section 4, Rule 96 of the Rules of Court, viz.:

"SEC. 4. Estate to be managed frugally, and proceeds applied to maintenance of ward. — A guardian must

manage the estate of his ward frugally and without waste, and apply the income and profits thereof, so far as maybe necessary, to the comfortable and suitable maintenance of the ward and his family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell or encumber the real estate, upon being authorized by order to do so, and apply to such of the proceeds as may be necessary to such maintenance."

Finally, it may be pointed out in relation to the Estradas's defenses in the ejectment action, that as the law now stands, even when, in forcible entry and unlawful detainer cases, the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts nevertheless have the undoubted competence to resolve. "the issue of ownership ** only to determine the issue of possession." [37]

III

As already stated, Carmen Cañiza passed away during the pendency of this appeal. The Estradas thereupon moved to dismiss the petition, arguing that Cañiza's death automatically terminated the guardianship, Amparo Evangelista lost all authority as her judicial guardian, and ceased to have legal personality to represent her in the present appeal. The motion is without merit.

While it is indeed well-established rule that the relationship of guardian and ward is necessarily terminated by the death of either the guardian or the ward, [38] the rule affords no advantage to the Estradas. Amparo Evangelista, as niece of Carmen Cañiza, is one of the latter's only two (2) surviving heirs, the other being Cañiza's nephew, Ramon C. Nevado. On their motion and by Resolution of this Court [39] of June 20, 1994, they were in fact substituted as parties in the appeal at bar in place of the deceased, in accordance with Section 17, Rule 3 of the Rules of Court, viz.: [40]

"SEC. 18. Death of a party. — After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and be substituted for the deceased within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian ad litem for the minor heirs.

To be sure, an ejectment case survives the death of a party. Cañiza's demise did not extinguish the desahucio suit instituted by her through her guardian. [41] That action, not being a purely personal one, survived her death; her heirs have taken her place and now represent her interests in the appeal at bar.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals promulgated on June 2, 1993 -- affirming the Regional Trial Court's judgment and dismissing petitioner's petition for certiorari -- is REVERSED and SET ASIDE, and the Decision dated April 13, 1992 of the Metropolitan Trial Court of Quezon City, Branch 35, in Civil Case No. 3410 is REINSTATED and AFFIRMED. Costs against private respondents.

SO ORDERED.

Davide, Jr., Melo, Francisco, and Panganiban, JJ., concur.

[1] Petition, Annex "D", Rollo, pp. 41-43.

[2] Presided over by Judge Delilah Vidallon-Magtolis

- [3]Docketed as SP. PROC. No. Q-89-2603 of Branch 107, entitled "Petition for Guardianship of the Person and Estate of the Incompetent Carmen Cañiza, Amparo A. Evangelista, Petitioner"
- [4] Docketed as Civil Case No. 3410 for Ejectment with Damages
- [5] Petition, Annex "K", Rollo, pp. 55-59
- [6] Petition, Annex "B," Rollo, pp. 33-35.
- [7]Docketed as Civil Case No. Q-92-12554
- [8] Presided Over by Judge Lucas P. Bersamin
- [9] Rollo, pp. 36-40
- [10] Rollo, pp. 27-32
- [11] Special First Division composed of Vailoces, J., ponente, with Lantin and Mabutas, Jr., JJ., concurring.
- [12] CA Decision, p. 4, Rollo, p. 30
- [13] Petition, p. 11, Rollo p. 18
- [14] Rollo, pp. 97-112
- [15] Manifestation dated March 25, 1994
- [16] Second Division Resolution dated June 20, 1994
- [17] Sumulong vs. Court of Appeals, 232 SCRA 372 [1994], citing Abrin vs. Campos, 203 SCRA 420 [1991]; Mariategui vs. Court of Appeals, 205 SCRA 337 [1992]; Abad vs. Court of First Instance, 206 SCRA 567 [1992]; Del Castillo vs. Aguinaldo, 212 SCRA 169 [1992]; Santos vs. Court of Appeals, 214 SCRA 162 [1992]; Ganadin vs. Ramos, 99 SCRA 6132 (1980); Ramirez v. Chit, 21 SCRA 1364 [1967]; Mediran vs. Villanueva, 37 Phil. 752 [1918]
- [18] Sarmiento vs. Court of Appeals, 150 SCRA 108 [1995]
- [19] Rollo, pp. 56-57, underscoring in original text
- [20] Rollo, pp. 57-58
- [21]Sumulong vs. Court of Appeals, 232 SCRA 372 [1994], citing Maddamu vs. Judge of Municipal Court of Manila, 74 Phil. 230 [1943]
- [22] Sumulong vs. Court of Appeals, supra, citing Co Tiamco vs. Diaz, 75 Phil. 672 [1946]; Valderama Lumber Manufacturer's Co. vs. L.S. Sarmiento Co., 5 SCRA 287 [1962, Pangilinan vs. Aguilar, 43 SCRA 136 [1972]
- [23] Yu vs. de Lara, 6 SCRA 785 [1962]; Pangilinan vs. Aguilar, 43 SCRA 136 [1972], Dakudao vs. Consolacion, 122 SCRA 877 [1983]; Peran vs. Presiding Judge, Br. II, CFI, Sorsogon, 125 SCRA 78 [1983]; Banco de Oro Savings and Mortgage Bank vs. Court of Appeals, 182 SCRA 464 [1990]
- [24] Vda. de Catchuela vs. Francisco, 98 SCRA 172 [1980] citing Calubayan vs. Pascual, 21 SCRA 146, 148 [1967]
- [25]Odsigue vs. Court of Appeals, 233 SCRA 626 [1994]

[26] 229 SCRA 627, 636 [1994]

[27] Sarmiento vs. Court of Appeals, 250 SCRA 108 [1995] citing Saron, et al vs. Villegas, et al, 22 SCRA 1257 [1968]

[28] Peñas, Jr. vs. Court of Appeals, 233 SCRA 744 [1994] citing Racaza vs. Susana Realty, Inc. 18 SCRA. 1172 [1966].

[29] ART. 828, Civil Code

[30] ART. 838, Civil Code

[31] Petition, Annex "E", Rollo, p. 44

[32] Emphasis supplied

[33] Francisco, The Revised Rules of Court in the Philippines, 1970 Ed., Vol. V-B, p. 457, citing Ex-parte Fletcher, 142 So. 30; 39 C.J.S. 86

[34] Francisco, The Revised Rules of Court in the Philippines, 1970 Ed. Vol. V-B, p. 458, citing 39 C.J.S. 114-115.

[35] Castillo v. Bustamante, 64 Phil. 839 [1937], cited in Moran, Comments on the Rules of Court, Vol. 3, 1980 ed., p. 570

[36] Conchita Juachon vs. Felix Manalo, G.R. No. L-42, 77 Phil. 1092, [January 20, 1947 unreported], cited in Moran, Comments on the Rules of court, 1979 Ed., Volume I, p. 176

[37] Sec. 3, R.A. No. 7691, amending Sec. 33 of B.P. 129; SEE Wilmon Auto Supply Corp. vs. Court of Appeals, 208 SCRA 108 [1992].

[38] Francisco, The Revised Rules of Court in the Phils., Vol. V-B, 1970 Ed., citing 25 Am. Jur. 37

[39] Second Division; SEE footnote 17, supra

[40] Emphasis supplied

[41] Vda. de Salazar vs. Court of Appeals, et al., 250 SCRA 305 (Nov. 23, 1995) citing Vda. de Haberes vs. Court of Appeals, 104 SCRA 534 [1981]; Republic vs. Bagtas, 6 SCRA 242 [1962]; Florendo Jr. vs. Coloma, 129 SCRA 304 [1984].

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