

MARCIANA SERDONCILLO, PETITIONER, VS. SPOUSES FIDEL AND EVELYN BENOLIRAO, MELITON CARISIMA, AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 118328. October 08, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

This petition for review assails the decision of the Court of Appeals dated July 14, 1994 in CA G.R. CV No. 39251[1] which affirmed the decision of the Regional Trial Court of Pasay City, (Branch 108) in Civil Case No. 7785, dated June 30, 1992 directing herein petitioner to demolish and remove all illegal structures which she constructed in front of the subject lots, to vacate the said property and right of way, and return possession thereof to the respondents.

The antecedent facts:

The subject premises was formerly part of the estate of H. V. Ongsiako, comprising of 1,806 square meters, more or less, located at the corner of Pilapil and N. Domingo Streets, Pasay City. The legal heirs of H.V. Ongsiako organized the United Complex Realty and Trading Corporation (UCRTC) which subdivided the property into fourteen (14) lots, Lots 555-A to 666-N. The subdivided lots were then offered for sale with first priority to each of the tenants, including the private respondents and petitioner.[2] Lot 666-H has an area of 248 square meters, consisting of two (2) parts. One part is the residential portion with an area of 112 square meters purchased by private respondents-spouses Benolirao[3] while the second part is the right of way for Lot 666-I and the aforesaid residential portion.[4] Private respondent Carisima purchased Lot 666-I. Petitioner, who was occupying the western end and front portions of the aforesaid lots declined the offer to purchase any of the lots offered for sale by UCRTC.[5]

Petitioner continued paying rentals to H.V. Ongsiako's wife, Mrs. Rosario de Jesus. Thereafter, the collection of rentals was stopped prompting petitioner to file on June 30, 1987, Civil Case No. 5456 before the Metropolitan Trial Court of Pasay City for consignment of rentals against UCRTC, Rosario de Jesus and the spouses Carisima. The consignment was granted by the trial court and was eventually affirmed on appeal by the Regional Trial Court of Pasay City, Branch 109 on October 25, 1989.[6]

On May 5, 1989, UCRTC executed a deed of absolute sale in favor of private respondents-spouses Benolirao for Lot 666-H.[7] This sale was annotated at the back of UCRTC's title on Lot 666-H .[8]

On June 2, 1989, after unsuccessful oral and written demands were made upon petitioner, UCRTC instituted an action against her for recovery of possession of the subject premises before the Regional Trial Court of Pasay City, Branch 114 docketed as Civil Case No 6652.[9] On July 15, 1990, the trial court rendered its decision dismissing the complaint of UCRTC, stating in part, to wit:

"It is clear, therefore, that plaintiff, not having been authorized in writing for the purpose, may not validly

bring an action to enforce a perceived easement of right of way pertaining to the owners of Lots 666-H and 666-I or the Benolirao and Carisima families. while Benjamin Ongsiako possessed the authority to institute the case (Exhibit "G"), plaintiff is not the real party in interest. Furthermore, the situation obtaining does not call for the enforcement of an easement of right of way. Defendant Serdoncillo is not the owner of and has never claimed ownership over the portion of Lot 666-H on which her house is erected. A servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner (Article 613, New Civil Code). In the present case, the ejectment of defendant Serdoncillo from the portion of Lot 666-H occupied by the house at the instance of the proper party (Renato Bolinarao's family) would remove the obstruction."

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"WHEREFORE, in view of all the foregoing considerations, the complaint against the defendant Marciana Serdoncillo, as well as defendant's counterclaim, is dismissed for lack of merit. Without pronouncement as to costs.

SO ORDERED."[10]

UCRTC did not appeal the aforesaid decision of the Regional Trial Court, hence, the same became final.

On November 20, 1989, Serdoncillo instituted Civil Case No. 7749 for the Exercise of Preferential Rights of First Refusal against UCRTC and private respondents-spouses Fidel and Evelyn Benolirao praying for the annulment of sale of a portion of lot 666-H sold to the Benolirao spouses on the ground that said transfer or conveyance is illegal. She claimed that she has the preferred right to buy the said property and that the same was not offered to her under the same terms and conditions, hence, it is null and void. UCRTC and private respondents prevailed and this case was dismissed. On appeal to the Court of Appeals, the same was dismissed on July 9, 1992.[11]

On November 20, 1990, private respondents made their final demand on petitioner reiterating their previous demands to vacate the property.[12] On December 13, 1990, private respondents filed their complaint for recovery of possession of the subject premises against petitioner before the Regional Trial Court of Pasay City, Branch 108, docketed as Civil Case No. 7785, which complaint alleges these material facts:

"5. That plaintiffs, being then registered owners of the properties designated as lot 666-H and 666-I, are likewise the owners/grantees of the right of way granted by United Complex Realty and Trading Corporation which was correspondingly annotated in its title (Annex "B-3") under Entry No. 205154/T-172291 of the Register of Deeds of Pasay City;

6. That since 1982 the defendant has built and constructed a residence and pig pen on the plaintiffs' right of way as well as on the front portions of the latter's properties leaving them virtually obstructed with no ingress or egress from the main road;

"7. That verbal and written demands made upon the defendant by the plaintiffs to remove and demolish her structures had been ignored, the last of which was on November 20, 1990, xerox copy of which is hereto attached as Annex "C" and taken as an integral part hereof, but despite such demands, the defendant failed and refused and still fails and refuses to remove and vacate her illegal structures on the portion of the properties as well as on the right of way of plaintiffs;

"8. That plaintiffs in compliance with the Katarungang Pambarangay Law lodged a complaint before the Barangay Captain, Barangay 84, Zone 10 of Pasay City, which certified filing of the same in court, xerox copy of said certification is hereto attached as Annex "D" and taken as integral part hereof;

"9. That due to the unjustified refusal of the defendant, the plaintiffs are suffering the unnecessary inconvenience of the absence of decent and sufficient ingress and egress on their properties, and will continue

to suffer the same unless the illegal structures are finally demolished and/or removed by the defendants;"[13]

Petitioner, in her Answer, put up the defense that she is the legitimate tenant of said lots in question since 1956, pertinent portions of which are quoted hereunder, thus:

"13. That Lot 666-H and Lot 666-I mentioned in the complaint are formerly portions of a big track(sic) of land consisting of 1,806 square meters then owned by H.V. Ongsiako;

"14. That since 1956 and before the 1,806 square meters of lot owned by H.V. Ongsiako was subdivided into fourteen (14) lots in 1982, defendant is (sic) already a legitimate tenant and occupant family of around 400 square meters of the 1,806 square meters of the said land then owned by H.V. Ongsiako by erecting her residential house thereon at the agreed monthly rental of P15.00 and increased to P100.00;

"15. That upon the death of H. V. Ongsiako his heirs continued collecting the monthly rental of the premises from the defendants;

"16. That the heirs of H. V. Ongsiako formed a corporation known as UNITED COMPLEX REALTY AND TRADING CORPORATION and the big parcel of land consisting of 1,806 square meters was transferred to the said corporation and subdivided in 1982 into fourteen (14) lots, two (2) of which lots are the very same lots leased by the defendant from H.V. Ongsiako and later from his heirs and then from United Complex Realty and Trading Corporation as alleged in the preceding pars. 13, 14, and 15;[14]

The issues having been joined, trial on the merits ensued. On June 30, 1992, the trial court rendered its decision in favor of private respondents, the dispositive portion of which reads:

"WHEREFORE, IN VIEW of the foregoing, and finding preponderance of evidence in plaintiffs' favor, judgment is hereby rendered as follows:

"1) Ordering the defendant to demolish and remove all illegal structures she constructed on the front portions of the subject lots and on the right of way of the plaintiffs;

"2) Ordering the defendant to vacate the property and right of way and return possession thereof to the plaintiffs;

"3) Ordering the defendant to pay the cost of suit.

"As to the damages (actual and moral) no award is given. In the absence of proof of fraud and bad faith by defendants, the latter are(sic) not liable for damages (Escritor Jr. vs. IAC, 155 SCRA 577).

"Actual and compensatory damages require substantial proof. In the absence of malice and bad faith, moral damages cannot be awarded (Capco vs. Macasaet, 189 SCRA 561).

"As to the attorney's fees, each party should shoulder his/her expenses.

SO ORDERED."[15]

Aggrieved by the trial court's decision, petitioner appealed to the Court of Appeals alleging that: 1) the lower court should have dismissed the complaint of private respondents considering that based on the letter of demand dated November 20, 1990, the action filed should have been unlawful detainer and not an action for recovery of possession; 2) the action filed by private respondents is barred by res judicata considering that the present action is identical with that of Civil Case No. 6652; 3) the lower court erred in not dismissing the complaint for lack of cause of action with respect to enforcement of right of way vis a vis defendant; and 4) the lower court erred in ordering that defendants vacate the properties in question since the lease of defendants thereon was still in existence and had not yet been terminated.[16]

On July 14, 1994, the respondent Court of Appeals rendered its decision sustaining the findings of the trial court and dismissed the appeal of petitioner, stating in part as follows:

"The issue as to the proper action has been resolved by the respondent court, to wit:

`The defense that what should have been filed is an ejectment case and not recovery of possession, is not also correct. The filing of this case for recovery of possession, instead of an ejectment case, is not altogether unjustified. The Benoliraos and Carisima became the owners as early as May, 1989. Verbal and written demands had been ignored. There is an immediate need for plaintiffs to use the right of way, which up to the present time is obstructed,. At most, what surfaced is a technicality which should be abandoned.'

"A plain reading of the complaint shows that plaintiff-appellees cause of action is for recovery of possession of their property which was encroached upon by defendant-appellant."[17]

A motion for reconsideration of the aforesaid decision filed by petitioner on August 8, 1994[18] was denied by the respondent on September 23, 1994.[19]

Hence, this petition.

Petitioner ascribes one single error committed by the respondent court, to wit:

THE RESPONDENT REGIONAL TRIAL COURT AND THE COURT OF APPEALS (Sp. Fifteenth Division) COMMITTED GRAVE ABUSE OF JURISDICTION IN DECIDING AS AN ACCION PUBLICIANA AN EJECTMENT OR UNLAWFUL DETAINER CASE (THE JURISDICTION OF WHICH CLEARLY PERTAINS TO THE INFERIOR COURT), A CASE BASICALLY INVOLVING AN EASEMENT OF RIGHT OF WAY.

Petitioner asserts that the respondent court erred in sustaining the trial court's finding that the complaint filed by private respondents for recovery of possession of the subject premises is an accion publiciana notwithstanding the fact that the action was filed within one (1) year from demand. Petitioner contends that private respondents should have filed an action for unlawful detainer and not an action for recovery of possession against petitioner. Consequently, the trial court is without jurisdiction to hear and determine Civil Case No. 7785. In support of her contention, petitioner cited the cases of Bernabe vs. Luna[20] and Medina vs. Court of Appeals,[21] which she states is strikingly similar to the facts of this case. Consequently, the rulings of this Court in these two cases are squarely applicable and controlling in the case at bar.

Private respondents, however, aver that they were merely successors-in-interest of UCRTC and therefore step into the shoes of the latter. They claim that the demand to vacate required by law should at the very least be reckoned from June 2, 1989, the date of the filing of the complaint in Civil Case No. 6652 considering that their demands are simply a reiteration of UCRTC's demands against petitioner. Private respondents further contend that the allegations in the complaint determine the jurisdiction of the court. Thus, the complaint in Civil Case No. 7785 specifically alleged that private respondents are the owners of lots 666-I and 666-H as evidenced by transfer certificates of title and prayed for recovery of possession of a portion thereof including its right of way illegally and unlawfully possessed by petitioner.

Petitioner's position is without merit.

It is an elementary rule of procedural law that jurisdiction of the court over the subject matter is determined by the allegations of the complaint irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. As a necessary consequence, the jurisdiction of the court cannot be made to depend upon the defenses set up in the answer or upon the motion to dismiss, for otherwise, the question of jurisdiction would almost entirely depend upon the defendant.[22] What determines the jurisdiction of the court is the nature

of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted.[23] Accordingly, the issues in the instant case can only be properly resolved by an examination and evaluation of the allegations in the complaint in Civil Case No. 7785.[24]

In this regard, to give the court jurisdiction to effect the ejectment of an occupant or deforciant on the land, it is necessary that the complaint must sufficiently show such a statement of facts as to bring the party clearly within the class of cases for which the statutes provide a remedy, without resort to parol testimony, as these proceedings are summary in nature.[25] In short, 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 effected or how and when dispossession started, the remedy should either be an accion publiciana or an accion reivindicatoria.[26]

In the case of *Javier vs. Veridiano II*[27] this Court held that the doctrine in *Emilia v. Bado*,[28] decided more than twenty-five years ago, is still good law. It preserved the age-old remedies available under existing laws and jurisprudence to recover possession of real property, namely: (1) accion interdictal, which is the summary action for either forcible entry or detentacion, where the defendant's possession of the property is illegal ab initio; or for unlawful detainer or desahucio, where the defendant's possession was originally lawful but ceased to be so by the expiration of his right to possess, both of which must be brought within one year from the date of actual entry on the land, in case of forcible entry, and from the date of last demand, in case of unlawful detainer, in the proper municipal trial court or metropolitan court; (2) accion publiciana which is a plenary action for recovery of the right to possess and which should be brought in the proper regional trial court when the dispossession has lasted for more than one year; and, (3) accion reivindicatoria or accion de reivindicacion which seeks the recovery of ownership and includes the jus possidendi brought in the proper regional trial court.

Accion reivindicatoria or accion de reivindicacion is thus an action whereby plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession. It is different from accion interdictal or accion publiciana where plaintiff merely alleges proof of a better right to possess without claim of title. In *Banayos vs. Susana Realty, Inc.*,[29] this Court held that:

"We have consistently held that a complaint for forcible entry, as distinguished from that of unlawful detainer, in order to vest jurisdiction upon the inferior court, must allege plaintiff's prior physical possession of the property, as well as the fact that he was deprived of such possession by any of the means provided in Section 1, Rule 70 of the Rules of Court, namely: force, intimidation, threats, strategy and stealth, "for if the dispossession did not take place by any of these means, the courts of first instance, not the municipal courts, have jurisdiction."

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"The aforesaid Rule 70 does not, however, cover all of the cases of dispossession of lands. Thus, "whenever the owner is dispossessed by any other means than those mentioned he may maintain his action in the Court of First Instance, and it is not necessary for him to wait until the expiration of twelve months before commencing an action to be repossessed or declared to be owner of the land." Courts of First Instance have jurisdiction over actions to recover possession of real property illegally detained, together with rents due and damages, even though one (1) year has not expired from the beginning of such illegal detention, provided the question of ownership of such property is also involved. In other words, if the party illegally dispossessed desires to raise the question of illegal dispossession as well as that of the ownership over the property, he may commence such action in the Court of First Instance immediately or at any time after such illegal dispossession. If he decides to raise the question of illegal dispossession only, and the action is filed more than one (1) year after such deprivation or withholding of possession, then the Court of First Instance will have original jurisdiction over

the case. The former is an accion de reivindicacion which seeks the recovery of ownership as well as possession, while the latter refers to an accion publiciana, which is the recovery of the right to possess and is a plenary action in an ordinary proceeding in the Court of First Instance."

A reading of the averments of the complaint in Civil Case No. 7785 undisputably show that plaintiffs (private respondents herein) clearly set up title to themselves as being the absolute owner of the disputed premises by virtue of their transfer certificates of title and pray that petitioner Serdoncillo be ejected therefrom. There is nothing in the complaint in Civil Case No. 7785 alleging any of the means of dispossession that would constitute forcible entry under Section (1) Rule 70 of the Rules of Court, nor is there any assertion of defendant's possession which was originally lawful but ceased to be so upon the expiration of the right to possess. It does not characterize petitioner's alleged entry into the land, that is, whether the same was legal or illegal nor the manner in which petitioner was able to construct the house and the pig pens thereon. The complaint merely avers that a portion of the lot owned by private respondents and its right of way have been occupied by petitioner and that she should vacate. The action therefore is neither one of forcible entry nor of unlawful detainer but essentially involves a dispute relative to the ownership of 4.1 square meters of land allegedly encroached upon by petitioner and its adjoining right of way. Indeed, the Ocular Inspection Report of the Branch Clerk of Court, states that:

"xxx (T)he right of way hit directly the defendant Serdoncillo's property consisting of a two-storey residential house made of wood and GI sheets and occupying the entire width of the rear portion of the right of way. A coconut tree stands on the middle of the road, at the back of which is a shanty made of rotten G.I. sheets around it which is used as pigpens and place of washing clothes extended from defendant's house. To gain access to plaintiff's property, the group turned right and passed between an "aratiris" tree and cemented firewall owned by Mr. Belarmino making only one person at a time to pass. This passageway has only a width of 0.5 meter which is being used by the defendant and her members of the family aside from the plaintiffs.

"xxx Two (2) monuments of the lot boundary of the plaintiff's property are existing, but the rest are nowhere to be found. According to Mrs. Benolirao, they are located within the premises of the defendant's house. At the back of Benolirao is a private property gutted by fire."

"xxx Upon request, the group was granted permission by the relatives of the defendant to inspect the place. The group further noticed that defendant's improvements were even encroaching on the plaintiff's lot by approximately 4.1 meters, more or less. The house of the defendant is facing the plaintiff's property; there is a small chicken house and there is also a dog house standing near it." [30]

It is noted that at the time of the filing of said complaint, Civil Case No. 7749, an action for annulment of the sale between UCRTC and private respondents Benolirao of Lot 666-H initiated by petitioner was likewise pending in another court. This case puts in issue the validity of private respondents' acquisition of the subject lots and ultimately their ownership of Lot 666-H.

Thus, what is noticeable in the complaint is that private respondents definitely gave petitioner notice of their claim of exclusive and absolute ownership, including their right to possess which is an elemental attribute of ownership.[31] It is immaterial whether or not private respondents instituted their complaint one month from date of last demand or a year thereafter. What is of paramount importance is that the allegations in the complaint are of the nature of either an accion publiciana or an accion reivindicatoria.

Petitioner's reliance on the Bernabe and Medina cases, which she claims to be squarely applicable under the circumstances herein, is entirely misplaced. While it is true that in these two cases the complaints were filed before the one-year period had expired from date of last demand, the allegations in the complaint failed to state material facts which are indicative of a case of either an accion publiciana or accion reivindicatoria. Thus, the Court in Bernabe stated that:

"In their complaint, plaintiffs (petitioners herein) allege that they are the owners of a parcel of land with an area of 199.4 square meters more or less, located in Tondo, Manila, that defendant (private respondent herein) constructed a house on said lot without plaintiff's permission; that on November 14, 1980, plaintiffs thru counsel made a written demand for the removal of said house as well as for the recovery of damages for the reasonable use and occupation thereof; and that defendant refused and failed to comply despite repeated demands.

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"We have noted that while petitioners allege in their complaint that they are the owners of the lot on which the house of the private respondent is constructed, their attached TCT shows that the lot is still in the name of Fejosera Investment Incorporated. Private respondent and said company entered into a contract of lease in 1950 for the use and occupation of said lot. Petitioners allegedly bought the lot in question in 1973, and they must have been fully aware of the occupancy of the private respondent of the premises in question. Yet, they did not take any action to remove the house of the private respondent or to inform the respondent that they had become the new owners of the lot in question. It is clear therefore that the lease was allowed to continue.

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"Consequently, the possession of private respondent over the lot in question became illegal only on November 14, 1980, when the formal demand to pay and vacate the premises was sent to him." [32]

The allegations in the complaint clearly show that plaintiffs were already the owners of the property when defendant constructed a house on the disputed lot without their permission. That despite formal demand defendant failed to vacate and surrender possession of the property to them. Indeed, the averments in plaintiffs' complaint present jurisdictional facts which do not illustrate plaintiffs' action as either an action publiciana or accion reivindicatoria but that of forcible entry or unlawful detainer. Thus, the trial court correctly dismissed plaintiffs' complaint, pertinent portion of which is quoted hereunder:

"It is clear on the face of the complaint that at the time of the filing of this case on February 19, 1981, the defendant was in possession, as tenant, of the premises. When plaintiff's counsel, therefore sent a written notice on November 4, 1980 requiring defendant to vacate the premises when this action was brought, the one (1) year period after the unlawful deprivation or withholding of possession has not yet set in. It is clear that this is an ejectment case within the exclusive jurisdiction of the City Court of Manila."

SO ORDERED.[33]

We likewise find the Medina case, relied upon by petitioner, to be inappropriate. The facts distinctly show that the complaint filed by the owners of the property before the Metropolitan Trial Court of Manila, Branch 47, was for unlawful detainer. It was the action resorted to by the plaintiffs after advising the defendant (the lessee of the premises in question) that a member of the family, Dr. Igama, urgently needed the house and after repeated demands to vacate made on the lessee proved to be unsuccessful. All these incidents, from notification to the filing of the complaint dated May 16, 1985, transpired within a period of six (6) months. Indeed, the factual background of this case is a classic illustration of an action for unlawful detainer. Verily, the facts are therefore diametrically opposite to the facts of the case at bar.

Petitioner has therefore no legal basis to insist that the present case is similar to the Bernabe and Medina cases and from which this Court should base its findings and conclusions. The doctrine laid down in Tenorio vs. Gomba is still controlling. In that case the Court ruled that courts of first instance have jurisdiction over all actions involving possession of land except forcible entry and illegal detainer, and therefore the lower court has jurisdiction over the action alleged in the appellant's complaint because it is neither of illegal detainer nor of forcible entry.[34]

Petitioner maintains that her leasehold right as a tenant of the subject premises had been settled in Civil Case No. 5456, an action for consignation, which she won before the Metropolitan Trial Court and affirmed on appeal by the Regional Trial Court of Pasay City, Branch 109. Said court ruled that the latter is a tenant of the site or premises in question and that she cannot be ejected therefrom, even on the assumption that her house and pig pen are allegedly standing on a right of way. She claims that pursuant to Section 49 (b) (now Section 47) Rule 39, Rules of Court, the issue of tenancy in said case is now conclusive between her and private respondents with respect to the subject premises in question.

Petitioner's contention is devoid of merit.

Section 49 (now Section 47), provides that:

Section 49. Effects of Judgments.- the effect of a judgment or final order rendered by a court or judge of the Philippines having jurisdiction to pronounce the judgment or order, may be as follows:

(a) xxx xxx xxx

"(b) In other cases the judgment or order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors-in-interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity;"

The fundamental principle upon which the doctrine of res judicata rests is that parties ought not be permitted to litigate the same issue more than once, that when the right or fact has been judicially determined, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.[35]

Thus, for res judicata to bar the institution of a subsequent action the following requisites must concur: (1) the former judgment must be final; (2) it must have been rendered by a court having jurisdiction of the subject matter and the parties; (3) it must be a judgment on the merits; and, (4) there must be between the first and second actions; (a) identity of parties; (b) identity of subject matter; and (c) identity of cause of action.[36]

There is no dispute as to the presence of the first three (3) requirements and the identity of the subject matter. The only issues remaining are whether as between Civil Case No. 5456 and Civil Case No. 7785, there is identity of parties and of causes of action in Civil Case No. 5456 to bar the institution of Civil Case No. 7785.

There is identity of parties. The record shows that the parties in Civil Case No. 5456 are petitioner as plaintiff while the defendants were UCRTC, the spouses Meliton and Efremia Carisima and Rosario de Jesus. Private respondents-spouses Fidel and Evelyn Benolirao acquired lot 666-H from UCRTC and are therefore the successors-in-interest of UCRTC by title subsequent to the commencement and termination of the first action. As such, private respondents merely stepped into the shoes of UCRTC and acquired whatever capacity and title the former had over the same property or subject matter of the action. Indeed, there is actual, if not substantial, identity of parties between the two actions.[37]

There is however, no identity of causes of action in both cases. In the case of Garcia vs. Court of Appeals,[38] this Court held that the test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and the present causes of action. Petitioner's complaint in Civil Case No. 5456 is an action for consignation of rentals while Civil Case No. 7785 is an action for recovery of possession.

In other words, the issue in Civil Case No. 5456 is whether or not consignation of rentals is proper under the

circumstances obtaining in that case. Private respondents action for recovery of possession requires them to present evidence of their claim or title to the subject premises and their right to possess the same from petitioner. Stated conversely, the evidence in Civil Case No. 5456 is entirely different to that in Civil Case No. 7785. Thus, the decision in Civil Case No. 5456 does not in any way affect nor bar Civil Case No. 7785.

Indeed, the Court noted that the parties had been at odds since 1987 when petitioner initiated Civil Case No. 5456, and then Civil Case No. 7749. Private respondents' predecessor UCRTC likewise initiated Civil Case No. 6652 and the present case under appeal, Civil Case No. 7785, all because of the use of a right of way and an encroachment of only 4.1 meters of the subject premises. At some point in time, all these squabbles must end. Thus, the respondent court stated that:

"It is true that it is the purpose and intention of the law that courts should decide all questions submitted to them 'as truth and justice require', and that it is greatly to be desired that all judgments should be so decided; but controlling and irresistible reasons of public policy and of sound practice in the courts demand that at the risk of occasional errors, judgment of the courts determining controversies submitted to them should become final at some definite time fixed by law." [39]

In passing, We reiterate the time-honored doctrine that findings of facts of the Court of Appeals are binding and conclusive upon the Supreme Court, and the Court will not normally disturb such factual findings unless the findings of the court are palpably unsupported by the evidence or unless the judgment itself is based on misapprehension of facts.[40] In this case, We find the said decision to be totally supported by the evidence on record.

Based on the foregoing premises, it is unnecessary to pass upon the other issues raised in the petition.

WHEREFORE, the petition for review is hereby DISMISSED and the decision of the Court of Appeals in CA-G.R. CV NO. 39251 is AFFIRMED. No pronouncements as to costs.

SO ORDERED.

Regalado, (Acting C. J.), Melo, Puno, and Mendoza, JJ., concur.

[1] Decided by the First Division, Court of Appeals composed of the Honorable Associate Justice Justo P. Torres, Jr., Ponente and Chairman of the Division (now retired Justice of the Supreme Court); Honorable Associate Justice Bernardo P. Pardo, Senior Member and Honorable Associate Justice Corona Ibay-Somera, Junior Member.

[2] Exhibit "D", Civil Case No. 6652, Letter dated November 13, 1982.

[3] Deed of Absolute Sale, Annex "A", pp. 1-2, Folder of Exhibits.

[4] ENTRY NO. 205154/T-17291-RIGHT OF WAY-GRANTED: By the registered owner herein covering a portion of the land herein as shown and marked in the subdivision Plan LRC Psd-158391 from points 1 to 14, of lot 666-H with the width of 3.12 meters as an access road to and from the existing road for the benefit and use of owners of Lot 666-I to 666-H of said Subdivision Plan. Doc. No. 434, Page No. 88, Book No. 9352, Series of 1980, Julian Florentino. Date of Instrument - December 11, 1980; Date of Inscription - December 12, 1980 at 10:25 a.m.

[5] Decision of the Regional Trial Court, Branch 114, Pasay City, pp. 13-18, *ibid*.

[6] Decision of the Regional Trial Court, Branch 109, Pasay City, pp. 25-28, Folder of Exhibits.

[7] Deed of Absolute Sale, Annex "A", pp. 1-2, *ibid*.

[8] Entry No. 89-105751/T-17291 - PORTION SALE - in favor of SPS. FIDEL and EVELYN BENOLIRAO, covering an area of ONE HUNDRED TWELVE (112) SQUARE METERS for the sum of FIFTY THOUSAND PESOS (50,000.00), other conditions set forth in Doc. No. 08, Page 15, Block VI, Series of 1989 of the Not. Register for Pasay City, Jeremias L. de Jesus, dated May 5, 1989. Date of Inscription, May 19, 1989 - 1:35 p.m..

[9] Complaint, Civil Case No. 6652, Exhibit "I", pp. 19-24, *ibid*.

[10] Decision of the Regional Trial Court, Branch 114, Pasay City, penned by the then Judge Fermin A. Martin, Exhibit "H", pp. 13-18, Folder of Exhibits.

[11] par. 3, *ibid*.

[12] Letter of Demand, page 11, Exhibit "F", *ibid*.

[13] Complaint, pages 5-9, Original Record.

[14] Answer with Special Affirmative Defenses and Counterclaim,, pages 14-19, *Ibid*.

[15] Decision of the Regional Trial Court, pp. 45-66, CA rollo.

[16] Appellant's Brief, pp. 15-42, CA Rollo. CA G.R. CV No. 39251.

[17] Decision of the Court of Appeals, pp. 64-70 *ibid*.

[18] Motion for Reconsideration, pp. 72-85, *ibid*.

[19] Resolution of the Court of Appeals, page 87, *ibid*.

[20] 148 SCRA 113.

[21] 181 SCRA 837.

[22] Caparros vs. Court of Appeals, 170 SCRA 758 (1989) ; Ganadin vs. Ramos, 99 SCRA 613, 621 (1973) ; Fuentes vs. Bautista , 53 SCRA 420 (1969) ; Simpao, Jr. vs. Lilles, 40 SCRA 180 (1971) ; Vencilao vs. Camarenta, 29 SCRA 473 (1969).

[23] Banayos vs. Susana Realty Inc., 71 SCRA 557 (1976).

[24] Sarmiento vs. Court of Appeals, 250 SCRA 108 (1995)

[25] 36 A C.J.S. Forcible Entry and Detainer, Sec 39, p. 2002; Ind. - Boxley vs. Collins, 4 Blackf. 320; Me. - Treat vs.. Brent., 51 Me. 478.

[26] Sarmiento vs. Court of Appeals, *supra*.; Accion reivindicatoria- An action for ejectment wherein the plaintiff sets up title in himself and prays that he be declared the owner, and given possession thereof. [Ledesma vs. Marcos, 9 Phil. 618 (1908)].

[27] 237 SCRA 565 (1994).

[28] 23 SCRA 183 (1968).

[29] 71 SCRA 557 (1976)

[30] Ocular Inspection Report, September 10, 1991, pp. 45-48, Original Record.

[31] Javier vs. Veridiano II, *supra*.

[32] Bernabe vs. Luna, *supra*.

[33] *Ibid*.

[34] 81 Phil. 54 (1948).

[35] Sarabia vs. Secretary of Agriculture and Natural Resources, 2 SCRA 54 (1961).

[36] Ipekdjian Mercjandising Co., Inc. vs. Court of Appeals, 9 SCRA 72 (1963); Mangoma vs. Court of Appeals, et al., 241 SCRA 21(1995) ; Guevarra vs. Benito, 247 SCRA 570, 573(1995).

[37] Mendiola vs. Court of Appeals, 258 SCRA 492 (1996); Comilang vs. Bautista, 21 SCRA 486, 491(1967); Penalosa vs. Tuason, 22 Phil. 303, 323 (1912).

[38] 14 SCRA 721 (1965); Guevarra vs. Benito, et al., *ibid*.

[39] Decision of the Court of Appeals, *supra*.

[40] Valenzuela vs. Court of Appeals, 253 SCRA 303; Mallari vs. Court of Appeals, 265 SCRA 456.

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